23 April, 2002

Committee Secretary
Joint Statutory Committee of Public Accounts and Audit
Department of the House of Representatives
Parliament House
Canberra ACT 2600

Dear Chairman,

Re: Corporate Review - Continuous Disclosure

Introduction

In Australia there has been a significant increase in the number of small shareholders since the float of Telstra with more than 50% of adult Australians owning shares. The recent wreckage of Corporate entities like Ansett, OneTel, HIH, Harris Scarfe and in the United States Enron, together with the audit firm "Arthur Anderson" not performing their function has done enormous damage which can't be quantified. This has highlighted the need for the Australian Securities and Investments Commission (ASIC) and the Australian Stock Exchange (ASX) to be proactive, address the issues and make changes now.

They must take the initiative and make change now and importantly the Australian Public needs the ASIC and the ASX to be proactive bodies, not bodies that play catch up. These bodies must adopt a "zero tolerance" on all matters so that the integrity of the market will be maintained in order to protect all stakeholders directly or indirectly through their present and future retirement benefits.

The headlines over the past year has shown that change is needed now. The Corporate world has shown that they can't take the challenge and so it must be left to the Government to act. Current and future retirement benefits are at risk due to the Corporate World, ASX and the ASIC playing "catch-up", blaming each other or not enforcing the current rules and regulations.

I have been reading the various articles and press reports on the issue of "Continuous Disclosure" and clearly we need to have a good hard look at how publicly listed entities are run and how they report in the interests of those shareholders and for the protection of current and future retirement benefits.

It appears that both Australian Stock Exchange "ASX" and Australian Securities & Investments Commission "ASIC" could do more in addressing the issue.

Reports like the ASIC media release on the 7 March 2002 stated "that although there is a good arguable case that WMC breached ASX continuous disclosure rules in the period prior to 17 October 2001, there is considerable doubt that any effective remedy is available to ASIC under the Corporations Act" do little to warm the heart of future retirees.

Focus

Clearly we need to look at the "big picture" to see how change can best be achieved and not make change that is just a knee jerk reaction with no improvement to the current set-up. There are currently only a little over 1,500 companies listed on the ASX of the 1.2 million companies in Australia. It is those 1,500 companies that need the focus of our attention, as they are the companies that can do the greatest damage to the financial position of every Australian, whether a shareholder or a member of a superannuation fund.

ASIC / ASX Relationship

Both ASX and the ASIC should adopt a policy change to "zero tolerance" approach towards the reporting of results, changing conditions of businesses and the lodgment of documents. One would have to be very naive to think that all companies will follow the spirit of the requirement to report to the ASX following the requirements of Listing Rule 3.1.

The continued relationship between the ASIC and the ASX in achieving greater integrity is a must, instead of the approach by both, one of caution. Currently an individual can contact the ASIC and advise the ASIC after reviewing the ASX web site and data base that a listed company has not lodged their audited annual report or any other data only to be informed by the ASIC "do you want to make a complaint". One would expect the reply to be "thank-you for the information and we will follow that up" but instead "do you want to make a complaint". Forget addressing continuous disclosure and address the inner workings of a more proactive ASIC, the current appearance is that the corporate policeman is impotent and needs to change its culture to being proactive.

The view of the ASIC is that they are only interested in shareholders where investments have been lost and not in policing areas like continuous disclosure of any other matter. They wait for the carnage instead of being proactive and maybe avoiding a corporate collapse.

Similarly as regards the ASX, it is only interested in the Appendix 4B (form for reporting yearly and half-yearly results to ASX) being lodged by the due date and it does not matter if the Appendix 4B is audited or unaudited, one is left wondering about the integrity of the data given to the market. The ASX will advise when contacted that audited statutory accounts are the area of responsibility of the ASIC and that the Appendix 4B can be audited or not audited with no follow up to ensure that the market receives audited numbers.

If the ASX is not interested in audited results to the market and the ASIC is not interest in information then what hope have we of addressing the future.

The **following examples** may give a better understanding of issues that surrounds the area of "**continuous disclosure**".

(a.) Example of Reporting - 14 March 2002

1. As disclosed on the ASX announcements database. On 14 March 2002 Becker Group Limited (BKR) were asked by the ASX to explain with regards to the increase in pre-tax profit for the half-year ended 31 December 2001. The profit increased from $105,000 to $249,000, an increase of 137%, and when did the company become first aware that its profits would be significantly different from the previous corresponding period. The reverse of the above reported numbers would be a decrease of 58%.

2. The ASX rightly referred to the guidance note titled "Continuous disclosure: Listing Rule 3.1" if on reviewing management accounts an entity becomes aware that the actual revenues and profits for the period may not meet the financial results for the previous corresponding period, disclosure would be required. It was pleasing to see the Becker Group receive a please explain from the ASX.

3. The response by the Becker Group highlighted an ignorance of reporting for discrete accounting periods. Companies must treat each reporting half-year, as totally separate in its own right, this fact was lost in the response.

4. The above highlighted a need for greater education where the ASX should make announcements in the press, web site or the next mail out. Companies must be reminded of their obligations of reporting and continuous disclosure and possibly publish a list of companies that have been in breach of the Listing Rules or have been queried by the ASX.

(b.) Example of Reporting - 29 October 2001

The Australian Financial Review reported on Tuesday 30 October 2001 that the Prudential Investment Company of Australia (PIA) had been suspended from trade at the request of its directors because of an "inability to reach agreement" with its auditors, Ernst & Young. The auditors resigned on 5 December 2001. A research of the ASX web site and database reveals a chronology of following events: -

1. The company lodged an unaudited Preliminary Final Report (Appendix 4B) for the year ended 30 June 2001 with the ASX on Thursday 13 September 2001.

2. The Appendix 4B showed that the date of the AGM to be 29 October 2001 and that the annual report would be available by 30 September 2001.

3. The company did not lodge audited annual financial accounts with the ASIC by the due date of 30 September 2001 and records show that the previous half-year accounts were lodged on 21 May 2001 with the ASIC, over 2 months late. A listed company must lodge annual audited accounts within 3 months of the year end or audited/reviewed half-year statutory accounts within 75 days of the completion of the half year.

4. The company made no announcement to the market between Thursday 13 September 2001 and Monday 29 October, nearly a month after the audited statutory accounts were due for lodgment with the ASIC.

5. The company made no announcement to the ASX until the morning of the anticipated AGM date of 29 October 2001 when the directors requested suspension from listing of ASX.

6. The company made an announcement to the ASX on the morning of 29 October 2001 as they were already in breach of the Listing Rules for failure to send Annual Report to security holders within 17 weeks of the completion of the year-end or by Saturday 27 October 2001. The ASX were going to suspend the company as they were in breach of the Listing Rules.

(c.) Issues

1. All disclosing entities must lodge audited annual financial accounts within three (3) months of the completion the year-end or audited/reviewed half-year financial accounts within 75 days of the completion of the half-year with the ASIC.

2. Listed entities must follow the continuous disclosure requirements under the Corporations Law so as to keep the market properly informed.

3. If listed entities must lodge annual audited financial accounts by the 30 September then surely the directors of PIA had a duty at that time under "continuous disclosure" requirements to report to the ASX that there were issues with the auditors regarding the signing of the accounts.

4. The directors waited a month before making an announcement to the ASX requesting suspension.

5. Chapter 19 of the Listing Rules draws attention to the definition of "aware". An entity becomes aware of information if a director or executive directors has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as a director or executive officer of that entity. One would expect that the directors may of had a duty to inform the market a lot earlier that the date of 29 October 2001.

Recommendation

The example shows change is needed by the ASIC, the ASX and importantly by the Government in giving assistance to those bodies whether by way of legislation or by increased funding.

I feel the following recommendation may contribute to enhancing the integrity of the market and assist the market integrity of data.

The ASX be proactive and amend the existing listing requirements and include the following as part of the listing requirements. Disclosing entities must lodge with the ASX, audited annual financial accounts within three (3) months of the completion of the year-end and audited or reviewed half-year accounts within 75 days completion of the half-year.

This change to the listing requirements will add no further burden or responsibility to companies as they currently lodge those accounts with the ASIC via an announcement to the ASX. The change will mean that if a company fails to lodge by the due date with the ASX then the ASX has the power of the listing requirements to suspend trading in the company immediately.

The company would have been suspended just after 30 September 2001 and the issue would have been resolved earlier that asking for suspension on 29 October 2001. If the company had been of the size of a HIH, Ansett, OneTel or Harris Scarfe then the ASX would be seen as letting the company have a month's breathing space.

This change will then remove a weakness in the existing reporting regime for disclosing entities, enhance the integrity of the available information and assist in keeping the market properly informed. Failure by the ASX to adopt this change may mean that the ASX condones the existence of the current loop hole unknowing assisting use of it.

AUSTRALIAN CORPORATE OVERVIEW RECOMMENDATIONS

The need for change is obvious and the above example has highlighted one small area for change to external reporting focusing on the flaws in the current system. For change to happen we must look at the current market and interaction of various entities with the market. I make the following recommendations to the current structure in the hope they may assist in improving the system we currently have and use.

Recommendation 1 - The Use of Financial Penalties

Senator Campbell has made various comments about on-the-spot fines for companies. There are various options available to the ASX and that is up to the ASX to change, but they could put in place a penalty system. On renewal of Listing Fees, companies that neglected the issue of Continuous Disclosure or had been suspended for late lodgment of documents would incur an increased listing fee each year for two years.

Similarly the ASIC could improve its approach to the late or non lodgment of statutory reports and adopt a "zero tolerance" approach by fining all directors and the company secretary as against the current system of the company being given a late fee. A director who was fined once would not want or allow it to happen twice. Consideration would be given to companies that requested extension of time for lodgment prior to the lodgment date.

Recommendation 2 - Amendment of Corporation Law for a category of "Listed Entities"

Currently there are just over 1,500 out of 1.2 million companies listed on the ASX so it would be in the best interests of all that those entities be described as such in the CL accordingly the Act be amended to include a category of "Listed Entity".

With such a change focusing on the new classification of "Listed Entity" by the ASIC there must be an increase in the budget of the ASIC to accommodate the change. An ASIC budget increased by a few million dollars now is far better than possibly in the future spending vast amounts on a Royal Commission after the damage had been done and being wise with hindsight. There must be a "zero tolerance" approach as we move forward, prevention is better than cure.

Recommendation 3 - Public Awareness of Listed Entities

Most Australians are not aware of the issues or announcements made by Listed Entities except as reported in the daily newspapers. There are announcements made on various web sites the average shareholder or Australian is not aware of until it is reported in the press.

An advertising program could be undertaken where the ASX names in the press each quarter all listed companies that have been asked to respond to an ASX query or have been suspended. Similarly the ASIC could also publish a list of listed companies that have been late in lodging their accounts or any other material documentation.

A Listed Entity that has shown a possible lack of respect for, or possible disregard for ASX Listing Rules or Corporations Law (CL) being named in the press may have more impact than fines or penalties as the entity may place far greater value on it's Corporate or Public Image.

Recommendation 4 - Board Composition

The issue of the composition of Boards of listed companies has always been an issue for discussion. The ASX has the power to change listing rules and prescribe composition of Listed Company Boards but is reluctant to do so and would prefer to wait for the Government to act and make amendments to the Corporation Law. I feel that the CL should be amended to include composition of Boards of Listed Entities and be as follows:

(a.) All former Auditors of Listed Entities be banned from being directors of those entities for a period of say two (2) years. This would be a cooling off period and would add to the integrity of the data and operation of the company. This would remove any possible issue of conflict of interest where an auditor may audit the company, resign the next day and then be a director of that company.

(b.) A maxim percentage limit be set on the composition of Boards for the number of directors representing major share holdings to say forty (40) percent of the total number of directors.

(c.) The CL include a section that all listed entity Boards include a certain number of independent non-executive directors. There are presently listed entities with no independent directors or a minimalist number of independent directors on their Boards. A minimum limit for independent directors on the composition of Boards could be set at say thirty (30) percent.

(d.) An independent director would be a person who has no existing commercial links with the company and would be allowed to own a minimal shareholding in the company of say a maximum of 5,000 shares held beneficially or non-beneficially.

Recommendation 5 - Independent Audit Commission

The ASX must be proactive with change and so must the ASIC with the assistance of Government, where all parties adopt a united approach to assist the ASIC. The Government must do all it can to protect shareholders and retirement benefits that are currently in superannuation funds.

The market requires data and information with credibility and integrity, and consideration be given whereby all auditors be required to lodge a report on each listed entity they audit, reporting on all issues discussed, issues uncovered, issues discussed with management or at an audit committee meeting. The report would be lodged with an independent government body, independent of the ASIC.

The objective is that the Auditor will be able to report independently, and companies will have to accept the boundaries for "true and fair" to exist. Far too often we hear of companies arguing over various issues prior to signing audit reports. This change will allow for enhanced audit independence.

Recommendation 6 - Quarterly Reporting

The ASX request all listed entities to report to the market within 60 days of the completion of the first and third quarters what their estimated management/pre-tax profit for the quarter has been. This would give the market an indication of how the company was tracking and would subtly assist the continuous disclosure issue.

Quarterly reporting will still mean that companies that currently report at the last possible moment will still report at the last possible moment but at least the market will have a far better idea on how the company is tracking. The "Continuous Disclosure" mechanism is vital and would stay in place at all costs.

Recommendation 7 - Additional Reporting

Banks at present are privy to a variety of other data and information, not the least sighting the budgets of listed entities. Companies could report the budget estimates when they lodge with the ASX their yearly results on the Appendix 4B and this would further assist the market. Banks are often in a far better position to gauge how a company is tracking and could possibly be seen as having access to information and possibly benefiting from that information. The market should also have access to that information.

Recommendation 8 - Accounting Bodies

Presently there are numerous accounting and government bodies with different agendas and objectives. A change is needed and it is paramount the Government would be the leader in addressing the current issue of change and set the agenda for it.

There may well be the need for accounting bodies to unite as one body, being supported by the government to do so. The government would add greater weight to the accounting profession by legislating on the use of the word "Accountant" in that a person would have to be a member of the "Australian Association of Accountants". This body would replace all existing accounting bodies in Australia and be on a par with doctors and other professional people.

Summary

I wanted to contribute to the debate and felt it important to states some facts and views that may assist in the process of change. The greatest flaws in any system are human flaws. It may be beneficial if more could be done to gather and consult with the experience from outside of the government and regulatory authorities by those bodies in moving ahead.

Whether any of my ideas will lead to any change only time will tell. I have outlined a lot of different points with most of the changes not creating further workloads for companies but enhancing the market data and integrity of the data.

The objective is the improvement in the integrity of the market information and data, the protection of shareholder wealth and importantly safeguarding the present and future retirement benefits of all Australians is paramount for the future of our financial system and potentially assisting in decreasing future outflows of Government expenditure.

I seriously hope the above is of assistance and look forward to your reply.

Yours sincerely,

Rodney Bennett B.Bus, MAS, FCPA, FCIS.