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Dear Dr Dermody,

I would like to thank the committee for the opportunity to give evidence as a witness on April 14, 2004. There are further points that need raising that result directly from my evidence and additional points need to be made in order to further build on some of the discussions that took place that day between myself and Senator Andrew Murray.

ASIC and powers to set rules

There is a rather quaint conflict in the argument Senator Murray was putting in relation to the provision of further powers to the Australian Securities and Investments Commission. If one was to give the powers of rule making with regard to listing rules and corporate governance guidance then expect them to enforce those same rules and piece of guidance then the situation would be no better than the one we have at the present day. The enforcer is then put in charge of the rules it is supposed to enforce. The stock exchange behaves in an enforcement mechanism and a committee it has within its nest sets the rules. It is true that it must also abide by those rules as an entity listed on the stock exchange and this presents an added complication in the systems as it presently stands, but this does not automatically validate the concept that the ASIC be given those responsibilities.

It is also worth pondering whether it is appropriate to have a body in charge of rule setting that is more likely to want to make things more easily enforceable irrespective of whether ease of enforceability takes precedence over reasonable and rational regulation. While there is much about the commission that is positive caution must be exercised so that absolute power over various areas is not given to a single authority. We regularly think about the balance of power in political circles and the separation of powers and the handing over of some responsibilities to the commission would not line up with that. We should aim to tool the Financial Reporting Council up in order for it to be the overseer of those entities that promulgate the rules that regulate the activities of accountants, auditors, officers of companies and company directors amongst others.



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FRC: independence and audit quality

If the FRC retains the power to oversee matters of independence – a policing function in a sense – then it should have a corresponding responsibility to deal with audit quality. The two need to be linked together because one by necessity influences the other. The evidence presented by Keith Alfredson on this matter is particularly relevant given his view that separating the two issues is a nonsense. It may be necessary for the FRC to set up a policing arm that does not share the premises of the rule making sides of its operation and there is no conflict between the bodies that set the rules and the individuals responsible for enforcing those pronouncements.

Financial Reporting Panel

The panel is a part of an enforcement function. It must be located someplace other than within the authority of the FRC. It is an enforcement and dispute resolution arm and activities that take place within it may lead to matters being heard in the Federal Court or elsewhere. It should exist in a separate organisation that houses the Takeovers Panel and the Companies Auditors and Liquidators Disciplinary Board. Compromising on this means you compromise the integrity of the structure that this government will then peddle as being a first class corporate regulatory regime. I cannot reinforce the importance of this further. The law should provide the FRP with qualified privilege and its hearings should be public and be recorded in written transcript. I provided the committee with a copy of an excellent piece on the need for an accounting court written in the 1950s by a leader in accounting thought, Leonard Spacek. I may address this in more detail within the week if time permits.

The committee should not entertain the nonsensical suggestion being put by some accounting aficionados suggesting the FRP ought to be a service for auditors and clients to run to when they have a little bit of a problem during an audit. That would create a situation where the shareholders may rightfully question why it is they are paying an audit firm to audit a set of financial statements. You may as well then have auditors employed by the FRP to do audits of listed and unlisted companies and do away with audits done by professional accounting firms in their entirety. It is probably worth remembering the mottos of two of the professional accounting bodies are ‘intergrity’ and ‘without fear or favor’. One would hope those words actually mean something in this day and age and that investors can rely on auditors’ judgments to always be done in the public interest. If professional accountants and companies want to demonstrate their lack of



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intestinal fortitude when a contentious issue arises then both parties ought to rethink whether the participants in that particular charade belong in their respective roles any longer.

I would also like to give greater emphasis to the problem the corporate regulator faces if the FRP is used as a pre-vetting device by auditors and clients. What happens in circumstances when the corporate regulator believes the answer the FRP comes up with before the annual report is released into the wild is inappropriate? Where does the matter then go for further deliberation? Or is the pre-vetting idea an attempt by some individuals to have a mechanism whereby the commission is shut out from being able to take further enforcement action if a bunch of experts has approved a certain accounting treatment? These are all risks of providing a pre-vetting function. Auditors are hired in the name of shareholders to show backbone.

Future of standard setting

The committee secretariat may wish to read my column in CFO Magazine late last year on the future of accounting standard setting. I contemplate the future role of the Australian Accounting Standards Board in that column and one of the points I make is that seeking a regional powerbase is critical. That column was published last December and can be downloaded from <http://www.cfoweb.com.au/stories/20031201/20970.asp> . Should the committee want further thoughts from me on these issues I would be happy to spend time articulating my views in greater detail.

Kindest Regards

Tom Ravlic