Investment & Financial Services Association Ltd
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23 April 2004

The Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Room SG.64
Parliament House
CANBERRA ACT 2600

Dear Dr Dermody

SUPPLEMENTARY SUBMISSION RE CLERP 9

In the course of providing evidence to the Parliamentary Joint Committee on Corporations and Financial Services ('**PJC**') at its Sydney hearings on 16 March 2003, IFSA undertook to make a supplementary submission to the PJC on the disclosure of executive remuneration and non-recourse loans.

The following statement addresses each of these issues and two further points of clarification in relation to the non-binding vote proposal and the IFSA position on the proposal of resolutions for consideration at a general meeting of a company.

1. Disclosure of Executive Remuneration

In the context of the discussion on executive remuneration, reference was made to the requirements under the ASX Listing Rules for the disclosure of executive remuneration. Listing Rule 3.1 requires the disclosure of price sensitive information. The ASX has advised (see Companies Update No. 03/03) that to the maximum extent practicable, the market should be made aware of the components of the CEO's pay package which might govern the actions of the CEO and drive levels of performance.

The issue raised at the Committee Hearing was whether the law should specifically require such real time disclosure and whether its application should be extended to non-executive directors. IFSA considers that the disclosure requirements under the ASX Listing Rules should be allowed to settle and, for an assessment to be made of any change in market dynamics as a result of the ASX disclosure requirements for CEO executive remuneration arrangements, or the provision of an explanation why the information is not considered to be price sensitive.

Listing Rule 3.1 generally requires the disclosure of price sensitive information and, the requirement would encompass non-executive directors where their remuneration arrangements are considered to be price sensitive. As the continuous disclosure obligations under the ASX Listing Rules have legislative backing pursuant to section 674 of the Corporations Act 2001, a breach of which is an offence, additional legislation is not considered necessary.

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As stated in IFSA's submission, IFSA supports the extension of the requirements under section 300A of the Corporations Act 2001 for the disclosure of the remuneration of up to 10 senior managers including the directors of a listed company. IFSA also notes that section 202B of the Act enables 100 shareholders entitled to vote, or shareholders with at least 5% of votes that may be cast at a general meeting of the company, to direct the company to provide information and an audited statement about directors' remuneration for the financial year immediately preceding the direction from shareholders.

In the circumstances, together with the proposed amendment to section 300A of the Corporations Act, IFSA considers that the law is sufficiently robust to address the issues raised by the Committee in this respect.

2. Equity value protection schemes and non-recourse loans.

The IFSA position on Board and Executive Remuneration Policy and Disclosure, and Share and Option Schemes is set out in IFSA Guideline 13. The IFSA position is that they should be disclosed to shareholders.

The Guideline provides guidance for Boards and shareholders regarding the development of share and option schemes that aim to drive improved company performance and thereby increase shareholder value. The Guideline specifies key principles that Boards should consider in designing incentive schemes and the process for shareholder approval of the schemes.

The IFSA Guidelines are not intended to restrict or diminish the flexibility of companies to attract, retain and motivate employees in the interest of improved company performance. However, shareholders have a right to know the costs of such schemes and the success of these elements of remuneration measured against the original reasons for their use. The Key Principles within the Executive Share and Option Scheme Guidelines are that:

- All schemes should be disclosed to shareholders for their approval;
- Executive remuneration should realistically reflect the responsibilities of executives;
- Remuneration should be reasonable and comparable with market standards;
- Incentive schemes should reward superior company performance and be clearly linked to appropriate performance benchmarks;
- The performance hurdles must be based on specific benchmarks which assess actual performance eg peer assessment in terms of long term growth of the company resulting in shareholder value;
- The cost of the schemes must be disclosed in accordance with relevant accounting standards.

3. Non-Binding Vote – Senator Conroy raised the issue of the possible legal consequences for directors following a failure to abide by a non-binding resolution of shareholders on executive remuneration. As stated at the Hearing, IFSA considers that the non-binding resolution on executive remuneration will be an effective vehicle for moral suasion. Additionally, it is understood that the Government had sought legal advice from the Australian Government Solicitor and was advised that the failure of directors to abide by a non-binding resolution could not, of itself, constitute a breach of directors' duties (see House of Representatives Hansard of 16 February 2004 at page 24593).

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4. Proposal of Resolutions

Senator Conroy raised the apparent ability of the constitution of a company to effectively circumvent section 249N and the rights of shareholders to put resolutions to the company at a general meeting.

As stated, and without discussing the merits of the provision, the Corporations Act 2001 does permit the constitution of a company to impose further requirements in relation to special resolutions modifying the constitution. Section 136(3) of the Act provides that "the company's constitution may provide that a special resolution does not have effect unless a further requirement specified in the constitution relating to the modification or repeal has been complied with".

It is the position of IFSA that 100 shareholders should be able to notify the company of a resolution that they propose to move at a general meeting of the company. However, section 249D of the Corporations Act 2001 should be amended to limit the calling of a meeting to a request by members who are entitled to vote at the meeting holding at least 5% of the votes that may be cast at the general meeting.

We trust that this supplemental submission is of assistance to the PJC in its consideration of the matters under review.

Yours sincerely

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