9 July 2007

Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir or Madam

Corporations (National Guarantee Fund Levies) Amendment Bill 2007

The Australian Financial Markets Association (AFMA) represents over 130 participants in the Australian wholesale banking and financial markets in respect of regulation and other matters that impact their business. AFMA's membership includes the major participants on the Australian Securities Exchange (ASX). We have reviewed the Bill and support its introduction. The proposed cap would leave the regulatory protection afforded to securities investors materially unaffected but it would increase the potential for competition and efficiency, improved delivery of services and enhanced financial stability.

1. Providing Adequate Investor Protection

The National Guarantee Fund (NGF) is a compensation fund available to meet claims arising from specified failures arising from securities transactions as set out in Division 4 of Part 7.5 of the Corporations Act and the related regulations. This covers matters such as the completion of securities transactions, unauthorised transfers and losses as a result of dealer insolvency. Thus, as a fidelity fund, it provides an important protection to securities investors who trade on the ASX.

The minimum amount for the NGF under section 889I of the Corporations Act is $76 million and the actual net assets of the fund at 30 June 2006 were $96.8 million, compared with $93.9 at 30 June 2005. Investment earnings are the main source of funds for the NGF.

The size of the NGF is substantial relative to the claims on the Fund. According to the 2006 Annual Report of the Securities Exchange Guarantee Corporation (which manages the NGF), $21.65 million has been paid from the NGF since its inception in 1987 and $13.43 million of that amount has been recovered. In the period from 1995 to 2006, only $0.95 million was paid in respect of claims.

The regulatory infrastructure that underpins the activities covered by the NGF has been significantly improved since it was established, perhaps most notably in recent years through the Financial Services Reform Act 2001. Together with technical improvements to the operation of the market, like shorter settlement periods, this has lowered the level of risk in the securities trading system for investors.

Having regard to the current size of the NGF, the minimum amount at which it must be maintained, the improvements to regulation and the claims history since its inception, we do not believe that the proposed cap on levies payable by market participants diminishes the protection afforded to investors in a material way. Indeed, we believe there are benefits to the financial stability of the securities

market through the greater participation of prudentially regulated entities as providers in the market (as outlined below). Moreover, if there were a change in prevailing circumstances over time that required attention, the minimum amount of the NGF could be altered and levies could be applied accordingly.

2. Facilitating More Efficient Markets

AFMA has for some years now supported the introduction of a cap on ASX participant contributions to the NGF, in a manner that is consistent with the structural soundness of the Fund.

While the effect of the proposed cap would not materially alter the level of regulatory protection afforded to securities investors, it would tackle an impediment to the development of the market in a manner that would likely enhance its ability to service investors in a more efficient and innovative manner.

At present, ASX market participants have an unlimited financial exposure to the NGF and though this exposure is more theoretical than real, it does impose a commercial cost on participants. In particular, prudential regulators, like APRA, oppose regulated entities taking on open-ended exposures and so affected entities, like banks, cannot become ASX market participants in their own right.

The effect of this is to require some financial services groups to maintain a separate entity specifically to conduct their ASX equities business. Apart from the cost involved in maintaining and capitalising a separate entity, this prevents many financial services providers from being able to service their clients through a single platform and it limits the potential for product and service innovation that builds on the associated synergies.

The introduction of the proposed cap would greatly enhance the prospect of prudentially regulated entities, like banks, becoming ASX participants and, thus, facilitating more effective business integration. This outcome would require ASX action to modify its supervision of these entities in order to minimise regulatory overlap but this change is possible and it would offer other regulatory benefits.

Other significant advantages would flow from the consolidation of businesses within a single entity and some examples are:

- The potential for market participants to reduce client credit exposures through netting;
- Greater potential for cross-margining between products;
- Better capitalised entities to support the clearing and settlement system;
- Enhanced financial stability of a key financial market;
- A broader range of market participants;
- It would improve the competitiveness of Australia as a location from which to conduct financial business.

Further, the introduction of a cap on NGF levy contributions is required to achieve the full efficiency gains for industry from the merger between the Australian Stock Exchange and the Sydney Futures Exchange (SFE) last year. At present, banks are able to fully participate on the SFE market and many do so. However, for the reasons outlined above, they must operate separate subsidiaries for the purpose of conducting their ASX securities business. Some participants on the merged exchange would understandably prefer to access the full range of its products and services through a single business entity. In addition, over time a single market co-regulator, with ultimately one set of market rules, should reduce compliance costs and net capital requirements to support a market participant's business.

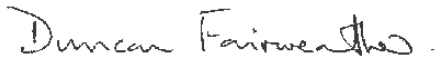
These commercial outcomes would bring closer to reality the regulatory consistency sought under the Financial Services Reform Act, as ASX equities and futures participating brokers could operate through a single entity.

Finally, we note that the practical effect of the Bill, as outlined above, is consistent with the Government's international tax and regulatory reforms. In particular, foreign-owned branches are more likely to become ASX participants if the NGF cap is introduced. In 2005, the Review of International Tax Arrangements reforms included vital changes to remove uncertainty about the rules for taxing income from shares held by foreign-owned branches. In addition, through the financial services reform process, ASIC has been given the capacity to, and in practice does, recognise certain overseas regulation of foreign financial services providers who conduct business with wholesale clients in Australia. This approach may be helpful to some foreign-owned entities who wish to conduct their ASX business through a branch in Australia.

3. Concluding Comments

In summary, for the reasons outlined above, AFMA supports the enactment of this Bill. Thank you for accepting our submission and considering the points that we have raised.

Yours sincerely



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