



Investment & Financial Services Association Ltd
ACN 080 744 163

18 April 2008

Mr Terry Moran AO
The Secretary
Department of the Prime Minister and Cabinet
By Fax

Dear Mr Moran

RE: LOBBYING CODE OF CONDUCT – EXPOSURE DRAFT

The Investment and Financial Services Association (IFSA) would like to make the following submission in response to the Federal Government's draft Lobbying Code of Conduct.

The Investment and Financial Services Association Limited (IFSA) is a national not-for-profit organisation which represents the retail and wholesale funds management, superannuation and life insurance industries.

IFSA has over 140 members who are responsible for investing over \$1 trillion on behalf of more than ten million Australians. Members' compliance with IFSA Standards and Guidance Notes ensures the promotion of industry best practice.

Whilst the draft Lobbying Code of Conduct makes it clear in the Definitions that not-for-profit associations are excluded from the draft code, IFSA member companies have expressed the following concerns:

1. Definition of Lobbyist:

- The last paragraph of the definition of "Lobbyist" makes it clear that lobbying activity only covers such activity on behalf of third parties. We submit that this should be amended to make it clear that Related Bodies Corporate (as defined in Section 50 of the Corporations Act), managed investment schemes (where the Lobbyist is the responsible entity or manager of those vehicles), and the corporate assets of managed investment vehicles are excluded from the definition.
- The structure of several of IFSA's members is such that if they were required to register each of their related bodies corporate as a client, the actual list of companies submitted could be a very lengthy one indeed.
- Similarly, registration of the companies held as assets of managed investment schemes in respect of which the scheme has a proprietary interest would be unwieldy and the amount of information registered may in fact defeat the intent of the Code - which is to provide useful information.

Level 24, 44 Market Street, Sydney NSW 2000 | Ph: 61 2 9299 3022
Email: ifsa@ifsa.com.au | Fax: 61 2 9299 3198

2. Lobbying on behalf of Third Parties

(1) IFSA members sometimes approach Government representatives on behalf of corporate clients in circumstances where the public disclosure of the client's identity could amount to a potentially serious breach of confidentiality. For instance, member companies may make representations on behalf of a consortium whose constituents are not publicly known and disclosure of those constituents would be market sensitive.

In order to avoid this problem, we suggest that clause 6.1 of the Code be amended by adding the words "Subject to clause 6.2" at the start with a new clause 6.2 to be added as follows:

"The names of clients on whose behalf a lobbyist conducts lobbying activities will be kept confidential in circumstances where:

- (a) disclosure could amount to a breach of statutory or regulatory obligations of confidence; or*
- (b) disclosure relates to a proposal which those clients are not required under any listing rules of an applicable securities exchange to disclose (for example, because the disclosure may relate to an incomplete confidential proposal).*

Such names will be recorded on the Register of Lobbyists as soon as the obligation of confidence has expired, or the transaction is otherwise required to be publicly disclosed by the relevant clients of the lobbyist."

(2) Occasionally, IFSA members approach Government representatives to brief them (on behalf of clients) about imminent transactions. Receiving advance notice of those transactions can be in the interests of Government, particularly where it would involve Government policy, legislation or regulation. However, registering client details in those circumstances may constitute a breach of confidentiality or raise regulatory issues, because the transaction may not have been and is not required to be announced to the market at that stage. In its current form, the Code excludes communications in response to tenders but not the general provision of information in these circumstances.

Consequently, we suggest amending the definition of "Lobbying Activities" to expand the exclusions to cover communications to the Government which are intended to provide factual updates, explain a course of action or give Government representatives advance notice of such an action.

(3) Some IFSA members have employees who approach Government representatives on behalf of clients as a small part of a broader corporate advisory service. They may also have employees whose roles are to represent member interests in Government forums, but who also occasionally assist clients as part of a wider service provided to those clients.

IFSA regards most of this lobbying activity as "incidental" to the provision of other services.

We, therefore, suggest that the definition of "Lobbyist" in clause 3 of the Code be amended to exclude licensed financial services providers (as well as doctors, lawyers or accountants) provided their representations to Government are incidental to their broader professional services.

The term "*incidental*" should be defined and clarified, perhaps by reference to the main role performed by a person.

3. Other drafting suggestions:

(1) Clause 3 of the Code defines "Client" as those who have engaged a lobbyist in the previous 3 months.

The effect of this may be to have Clients added to, and removed from, the Register several times in a year in circumstances where lobbying services go "dormant" for a period of time. Clarity on this definition would be appreciated.

(2) Clause 8.1 of the Code should be amended by adding the word "unlawful" before the word "detriment". As currently drafted, the clause would prevent a Lobbyist from arguing that Government should take a certain course of action in order to prevent harm to a certain sector of the economy or society.

(3) Clause 3 of the Code defines "Government representative" to include any person employed under the Public Service Act, a member of the Defence Force or a contractor or consultant employed by a Government agency. The breadth of this definition means that approaches to government employees, contractors or consultants (when, for example, an IFSA member or its clients are simply participating in a transaction which does not require Government approval or action) could be inadvertently caught within the Code.

The definition of "Lobbying activities" does not adequately address this concern. It excludes communications in response to a request for tender but it does not exclude communications which are made in the context of any other commercial transaction which involves the Commonwealth or an agency. For example, communication with Treasury's FIRB staff in relation to an application under the Foreign Takeovers Act, or an application to the Australian Tax Office for a taxation ruling, or an application to ASIC for it to exercise one of its specific powers under its enabling legislation would be within the Code - yet these processes are already mandated by legislation and are normal activities of administrative arms of Government. This could further lead to disclosure of market sensitive information that could be harmful to an Australian listed company and its investors.

We would be pleased to provide you with further assistance. Please contact Simon Disney or David O'Reilly on (02) 9299 3022.

Yours sincerely



John O'Shaughnessy
Deputy Chief Executive Officer