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16 April 2008

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

MACQUARIE

Dear Mr Moran

Lobbying Code of Conduct – Exposure Draft

Macquarie Group Limited would like to make the attached submission in response to the Federal Government's draft Lobbying Code of Conduct.

Macquarie Group Limited makes this submission on a confidential basis.

I would be happy to discuss the submission if further information is required.

Yours Sincerely

Kris Neill
Executive Director
Corporate Communications Division
Macquarie Group Limited
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Confidential

Submission on Draft Lobbying Code of Conduct from Macquarie Group Limited

Introduction

The Macquarie group of companies ("Macquarie") is a diversified international provider of banking, financial, advisory and investment services headquartered in Sydney Australia. Through its specialist funds Macquarie holds over 100 infrastructure and 700 real estate assets worldwide.

Macquarie regularly interacts with Government at a wide variety of levels across all areas of activity and like many corporations employs specialists in the public policy field.

Macquarie strongly supports the principles of the Code. However, at present the drafting may have a number of unintended consequences. For instance, Macquarie makes representation on behalf of Macquarie Group Limited, its related corporate bodies, and on behalf of funds and trusts which it manages or for which it acts as responsible entity. All of these representations would be caught by the Code. We believe this to be an unintended consequence.

Macquarie also has a number of employees who approach Government representatives on behalf of corporate clients as a small part of a corporate finance advisory service. While Macquarie has not been engaged as a lobbyist in these arrangements, it is not clear whether these activities would be regarded as "incidental" and therefore exempt under the Code.

In addition, the Code raises some important confidentiality issues that need to be addressed.

This submission covers all of the issues outlined above plus some minor drafting comments. It does not cover circumstances where Macquarie engages independent lobby firms to act on its behalf. Macquarie acknowledges and fully accepts it will be named on the proposed register as a client of those organisations.

Lobbying on our own behalf

The last paragraph of the definition of "Lobbyist" makes it clear that lobbying activity only covers such activity on behalf of third parties. We believe that this should be amended to make it clear that Related Bodies Corporate (as defined in Section 50 of the Corporations Act), managed investment vehicles (where the Lobbyist is the responsible entity or manager of those vehicles) and the assets of managed investment vehicles are excluded from the definition.

If Macquarie is required to register each of its related bodies corporate as a client, it would have to register the company list set out in the second attachment to this email. Similarly, registration of the companies that sit within Macquarie's fund/trust structures would be unwieldy. The third attachment to this email sets out the fund companies which sit within just one of Macquarie's business divisions. Macquarie makes representations on behalf of many of these companies but a list of this size would, we believe, defeat the purpose of providing useful information.

Lobbying on behalf of Third Parties

(1) Macquarie sometimes approaches 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, Macquarie 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 and a new clause 6.2 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 Lobbyist 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 Macquarie also approaches 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) Macquarie has a number of employees who approach Government representatives on behalf of clients as a small part of a broader corporate advisory service. In addition, Macquarie has employees whose roles are to represent Macquarie's interests in Government forums but who also occasionally assist clients as part of a wider service provided to those clients. Macquarie would regard 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. And the term "incidental" should be defined and clarified, perhaps by reference to the main role performed by a person.

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. We seek clarity on this.

(2) Clause 8.1 of the Code to 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, Macquarie 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. Further, this could lead to divulgement of market sensitive information that could be harmful to an Australian listed company and its investors.