



"CORPORATE CITIZENSHIP"

A NEWSLETTER OF
THE AUSTRALIAN COUNCIL OF SUPERANNUATION INVESTORS

DISCLOSURE OF ETHICAL, ENVIRONMENTAL AND LABOUR CONSIDERATIONS

The new disclosure requirements arising out of the Financial Services Reform Act ("FSRA"), will require Superannuation funds to outline the extent to which they take into account ethical, environmental and labour standards in relation to their investments. How will these provisions interrelate with the broader disclosure requirements under the Act?

The object of the Act is to assist consumers of financial services and products to make informed decisions and to compare products and services that are on offer in the market place.

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The Australian Securities and Investment Commission ("ASIC") has not determined whether it will provide guidance on the ethical disclosure provisions contained in the FSRA.

Superannuation Fund Trustees will need to be apprised of the broader FSRA requirements that arise out of recently introduced regulations that draw on the three issues discussed below:-

1. Preparation and distribution of a Financial Services Guide ("FSG")

The FSG will be provided when personal advice is given to a consumer and will provide details as to the organisation that is giving the service or advice, contact details, qualifications and remuneration.

2. Preparation and distribution of a Product Disclosure Statement ("PDS")

This replaces the current Key Features Statement and must be given at the earliest possible time when a retail client is considering the acquisition of a financial product. Trustees will be required to include a number of specific statements including a

description of the rules governing the investment. It is likely that where a Superannuation Fund offers a 'product' that is influenced by ethical, environmental or labour standard considerations, the product disclosure statement will need to include the degree to which these considerations impact on the product. The documentary disclosure requirements will ensure that the consumer is given information on the environmental, ethical or labour related issues prior to purchasing or investing in the product.

'Financial products' include a superannuation interest under SIS, therefore making it clear that APRA regulated superannuation funds will operate under these provisions.

3. Maintenance of Ongoing and Periodic Reporting

Disclosure will be required where there is a material change to, or a significant event affecting, any of the information that was required to be given in the product disclosure statement. Further periodic disclosure for superannuation products is required with a maximum reporting period of 12 months for superannuation products

The FSRA will in general allow for a two-year transition period from March 11, 2002 before a range of requirements would need to be implemented, particularly in relation to existing products. In relation to new products that come on to the market following the introduction of the FSRA, they will have to meet the obligations arising out of the Act.

Therefore any product that purports to be underpinned by ethical, environmental or labour standard considerations will need to immediately meet the provisions of the FSRA.

DUAL-LISTED COMPANIES

The Australian Securities and Investment Commission ("ASIC") has recently released Practice Note 71 ("PN71") outlining financial reporting guidelines for Australian entities in dual-listed company (DLC) arrangements. ASIC has prepared PN71 because it has been approached by Australian companies considering proposals to enter into dual listed company arrangements and these companies have sought ASIC's views as to the appropriate accounting treatment to be adopted by under such arrangements. It is evident that proposals similar to the BHP-Billiton dual listing arrangements will be considered by shareholders in 2002.

This highlights the need to ensure that issues relating to share values, the entrenchment of board, management powers and the ability of shareholders to discipline non-performing boards are properly addressed in the

context of dual listed company provisions.

The ASIC Practice Note outlines the circumstances in which an Australian entity in a (DLC) structure should be regarded as having acquired the foreign-listed entity. Where the fair value of the Australian entity is more than 1.5 times the fair value of the other entity at the time the DLC is created, ASIC will usually take the view that there has been an acquisition in substance. Where the Australian entity is regarded as having acquired the foreign-listed entity, the consolidated financial statements will recognise the foreign-listed entity's assets at fair values, including purchasing good will.

Where the Australian entity is not regarded as having made the acquisition, the Practice Note introduces a requirement of the production of combined financial statements covering both of the listed entities in the DLC structure. These financial statements are required in addition to consolidated and single-entity financial statements which are specifically required under the Corporations Act, and must be prepared in accordance with Australian accounting standards.

Please contact Phil Spathis for a copy of the Practice Note at pspathis@ifsfairley.com.au.

CHARTERED SECRETARIES AUSTRALIA CALL ON GOVERNANCE AND COMPLIANCE IMPERATIVES

The Chartered Secretaries Australia ("CSA"), Australia's peak body representing company secretaries, has announced key policy priorities for the government and key regulators on corporate governance issues recently. A summary of these priorities include:-

Corporate governance - self regulation

Creation of Corporations Panel

The CSA proposes the creation of a Corporations Panel, similar in concept to the Takeovers Panel, to facilitate a swift response to any failure to comply with the Corporations Act. The Corporations Panel would be responsible for overseeing the more 'wholesale' aspects of corporations law compliance, which are essentially contained within Chapter 2 of the legislation, such as members' rights, meetings, related party transactions and changes of auditor. A key role of the panel would be to address the perceived imbalances between the big end of town and small shareholders.

According to the CSA a Corporations Panel would be central to the self-regulation process. As with the existing Takeovers Panel, the panel would be comprised of industry members and empowered to undertake its role.

Corporate Guidelines

Governance

Other proposals from the CSA include:

Making it compulsory that all publicly listed companies and large private companies publish meaningful corporate governance guidelines. To be easily accessible, and at least available on the companies' website, these guidelines would outline the way boards operate, develop committees and communicate to shareholders.

While the CSA notes the requirements under the ASX Listing Rules for a 'statement of main corporate governance practices' it calls for all companies to publish meaningful guidelines with a particular focus on the practical implementation aspects of the guidelines.

Notwithstanding the contents of Appendix 4A of the ASX Listing Rules, the guidelines should cover:

- criteria for attracting and selecting directors and the appropriate skills sets being sought that are particular to that company;
- mechanisms to ensure transparency to shareholders in such areas as policies and processes for the release of company information, disclosure of directors' dealings, executive remuneration, the terms and types of options arrangements, and performance hurdles for senior executives;
- full disclosure of the remuneration paid during

the financial year to the five most highly remunerated officers of the company who are in service at the end of the year;

- mechanism to ensure a culture of transparency and full disclosure between management and non-executive directors; and
- board processes, board committees and their responsibilities and the expectations places on directors in terms of the time commitment to the company.

Effective forms of participation and communication

CSA also supports a debate on the role of the traditional AGM and the printed annual report as effective mechanisms to ensure investors are adequately informed and empowered to participate.

The implications of new forms of communication and participation such as on-line voting, electronic AGM's and web-casting are not properly addressed in the Corporations Act. These forms of communication may have rendered current methods less effective.

It also supports the introduction of a Replaceable Rule in the Corporations Act, mandatory for publicly listed companies, that allows for electronic voting and electronic participation in general meetings. CSA is willing to work with the Government and regulators in developing the appropriate changes.

Continuous Disclosure

Websites

CSA is emphatic that no new price sensitive information should be disclosed in all briefings, whether private or selective, that is not simultaneously available at the same time to the market as a whole. CSA supports any sensible moves to discourage the selective release of new information that is price sensitive.

To facilitate the effective distribution of information, CSA supports a requirement that all publicly listed companies maintain websites so that all slides and handouts from presentations and/or roadshows for analysts can be made available on release to all shareholders simultaneously.

Civil Penalties

CSA is promoting far greater use of civil penalties over criminal prosecution regarding breaches of insider trading provisions. Australia's current regime results in too few successful prosecutions. The CSA consider that swift retribution via civil penalties for a transgression against the insider trading provisions will also be effective.

CORPORATE GOVERNANCE MONITORS IN EUROPE ALIGN TO PROMOTE GREATER ACTIVISM

Corporate governance monitors across Europe have formed a cross-boarder marketing alliance bound to expand shareowner activism at European listed corporations. Britain's National

Association of Pension Funds (NAPF) will now give subscribers to its UK-only Voting Issue Service discounted access to AGM analyses produced by Belgium's Déminor on more than 300 continental companies. The two groups are offering clients admission to each other's conferences. They are also harmonising aspects of report designs. The Corporate Governance communities in Europe are heralding the group's new link to Déminor as further evidence of rising demand among institutional investors to cast proxy votes at companies outside home markets. It is worth noting London-based rival PIRC already offers similar coverage through the European Corporate Governance Service, a collaboration of seven governance firms. Single-country advisory services are increasingly finding global alliances critical to survival.

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This newsletter is correct to the best of our knowledge and belief at the time of going to press. It is, however, written as a general guide so it is recommended that specific professional advice is sought before any action is taken