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Secretariat
Regulation Taskforce
PO Box 282
BELCONNEN ACT 2616

By email: info@regulationtaskforce.gov.au

Submission from Australian Financial Markets Association

Introduction:

This note should be viewed as a supplement to two other submissions:

- that from the International Banks & Securities Association; and
- the paper commissioned by the Finance Industry Council of Australia (AFMA is a member of FICA).

AFMA works closely with IBSA on policy issues and supports those comments and recommendations in the IBSA paper which fall within the AFMA bailiwick. Specifically, we endorse the general thrust of 1.2 and 1.3, 2 Item 1, the comments on FSR and AML, and 3 (excluding issues relating to taxation and the ATO where AFMA is not in a position to comment).

AFMA has a history of almost 20 years in fulfilling the role of a self-regulatory organisation (SRO) in OTC markets, setting industry standards via Market Conventions, Codes of Ethics and Conduct, market data & price transparency, transaction documentation and the accreditation & training of individuals.

AFMA as a SRO and FSR issues

We note the approach by Treasury to FSR that the legislation should set overarching principles, with industry bodies, such as AFMA, providing standardised guidance and standards to participants in their market sector.

AFMA has the experienced staff and, through its Committee and Working Group structure, access to widespread experts as required, to provide practical interpretations of black letter law. If the legislation attempts to drill down to the minutiae of all possible outcomes, this process will be defeated. In such circumstances, the need to strictly comply with what is

necessarily inflexible requirements, can and has, meant that the protection of consumers is lost in a bewildering range of legalistic and unnecessarily convoluted disclosure documents.

A recent example of this is a legal opinion commissioned by AFMA for consideration by ASIC recommending a general Class Order to overcome the impossibility of providing meaningful worked examples of salary and bonus payments in OTC markets. Through its Compliance Committee, the members of which are elected by the wider AFMA membership, AFMA was able to provide a single industry proposal in an area causing considerable concern in the industry.

The various refinements to, and relief granted in respect of, FSR have provided welcome clarifications in recognising and largely overcoming, unintended consequences of the legislation. The Proposals Paper of May 2005 made significant progress in this area.

AFMA encourages continuing consultation before and during the drafting stages of legislation and stresses the need for the final draft of all bills to receive industry-wide consultation before enactment. The comments on AML in the IBSA submission (page 17) are particularly relevant here.

Notwithstanding statements to the effect that Australian OTC markets are "lightly regulated", AFMA believes there is considerable scope for much greater self-regulation, provided this underpins the drafting process. At present, the conservative "cover all possibilities" approach, which stems from a very narrow interpretation of the legislation, has resulted in disclosure documents which ultimately fail the test of effective consumer protection.

This is compounded by a tendency to adopt a "one size fits all" mentality, which fails to recognise the significant structural and operational differences between on-exchange and OTC markets.

In many cases in FSR implementation and ongoing compliance, the costs to our members in complying with excessive legislative requirements have been high, and the increase in consumer protection/awareness has been at best doubtful. We would caution against such an approach when the framework for anti-money laundering legislation is being developed and in the approach by ASIC to bond market transparency.

Energy markets

Another area where excessive legislation impedes the efficient working of markets is in the energy sector. Whilst the National Electricity Market is administered by NEMMCO and NECA, the states are so intent on protecting their own interests (the ETEF scheme in NSW springs immediately to mind) that the benefits of a national scheme are significantly eroded.

Looking specifically at emissions markets, there is a mix of schemes with similar, though not identical, policy goals – the Queensland GEC, the NSW Greenhouse Gas Abatement, the recently announced Victorian Renewables Target (with no policy detail as yet) and of course the federal Mandatory Renewable Energy Target.

Even though the policy aims for each of these differ (to a lesser or greater extent), much of the underlying structure, such as registries, auditing requirements etc, could be made identical. To date this has not occurred and there is considerable duplication of registry, certification and auditing processes. Setting national standards would remove a great deal of overlap thereby reducing the costs to market participants.

Conclusion:

This letter is necessarily brief as the two submissions mentioned earlier cover most of the issues germane to the AFMA membership and we do not see the point in reiterating them here.

AFMA's principal exposure of late to over-regulation has been in FSR and we are effectively, if somewhat painstakingly, addressing our issues with ASIC. Such bilateral negotiation is the most efficient way for AFMA to ultimately promulgate standard industry guidelines to give direction in interpretation of legislation. That ASIC has indicated a willingness to work with AFMA to this end is heartening.

In OTC financial markets, the SRO model as developed by AFMA, is working very well. We encourage the Government to continue its "light touch" approach to legislation.

Kenton G Farrow
Chief Executive

Australian Financial Markets Association Inc.
ABN 69 793 968 987
Level 3, 95 Pitt Street Sydney GPO Box 3655 Sydney NSW 2000 Tel: (61 2) 9776 4411 Facsimile: (61 2) 9776 4488
info@afma.com.au www.afma.com.au