



29 October 2013

Mr Tim Bryant
Secretary
Senate Economics References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email : economics.sen@aph.gov.au

Dear Mr Bryant

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Alex Malley FCPA**

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Inquiry into the Performance of the Australian Securities and Investments Commission

CPA Australia welcomes the opportunity to make a submission to this inquiry and do so in the public interest and on behalf of the more than 144,000 professionals in finance, accounting, business and academia, whom we represent. This submission sets out CPA Australia's overall views and we attach specific detail on particular areas in Appendix 1.

The Australian Securities and Investments Commission (ASIC) plays a significant role in our national economy. The exercise of ASIC's jurisdiction is critical to the public interest and touches on almost all of the professional activities of CPA Australia's members. Since ASIC was established in 1991, CPA Australia has sought to maintain an ongoing dialogue and a relationship conducive to the open exchange of views and information across a broad range of areas.

Regrettably however, under its current leadership, the organisation has increasingly isolated itself from its key stakeholders. Rather than collaborating in a genuine and constructive dialogue with potential partners in change, it is our view that ASIC is now defined by a combative, compliance focused approach which, on its Chairman's own admission, places a premium on "leveraging" media headlines over substantive outcomes (Appendix 2).

While this media driven approach is doubtless sometimes useful in creating a perception of action to paper over an otherwise unimpressive recent track record, it has unfortunately too often led to ASIC producing public communications that are confusing and which do little to tackle the risks faced in evolving capital markets and the corporate environment, such as insider trading and corporate failure.

In the interests of our members and the national interest, CPA Australia has raised these concerns with ASIC in both public and private forums on numerous occasions. However, it is our experience that the response too often reveals a regulator with a glass jaw, content with shifting blame rather than responding in a considered or constructive way, or in the spirit of cooperation which previously defined the organisation's approach. By necessity, we have therefore often been forced to raise these issues in other forums, including through the media (Appendix 3), for which we receive regular commendation from a business community increasingly frustrated with its regulator yet reluctant to themselves draw ASIC's ire.

It is within that context that I note Senator Cameron's concerns about the lack of participation in this inquiry by the banking sector. CPA Australia too shares these concerns. We trust that this inquiry will nonetheless take a broad and wide-ranging analysis of ASIC's mandate and track-record of delivery across its full suite of operations.

It is our view that it is only by reverting to a culture of openness, transparency, collaboration and continuous improvement that ASIC can truly expect to serve the public interest.

We thank the Committee again for the opportunity to present this submission, and trust that the information provided will be useful to the Committee's inquiry. We would welcome the opportunity to elaborate further, including before a public hearing, at the Committee's convenience.

Please refer to Appendix 1 for further specific detail regarding our comments.

Yours sincerely

Alex Malley FCPA
Chief Executive

Appendix 1

Maintaining and improving the integrity and efficiency of our capital markets

The efficiency and integrity of Australia's capital markets are, according to CPA Australia research, one of Australia's substantial competitive advantages. If we are to maintain that advantage, we must continue to ensure that the regulation, supervision and transparency of capital markets are consistent with Australia's aspiration to be a leading financial market. It is therefore important for the government to periodically review the regulatory infrastructure, including the regulators that support the capital markets to identify potential improvements.

The current Australian model for regulating the financial sector, which separates financial services regulatory responsibility between the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia, has been in operation for the past 15 years.

We note that Australia's 'twin peaks' model for financial services regulation is highly regarded globally. In October 2008 a Group of Thirty (G30) report on the structure of financial supervision found that Australia and The Netherlands, who both have a 'twin peaks' regulatory model, had the most effective regulatory regimes in the world. In the years following the global financial crisis, financial services regulators globally have moved towards forms of a 'twin peaks' model, most notably the UK with the formation of the Financial Conduct Authority and the transfer of prudential supervision to the Bank of England.

While Australia's 'twin peaks' model has proven to be robust, this does not mean that critical elements of the model should be immune from review and scrutiny. Concerns have been raised over recent years of the broadening remit, especially of ASIC, in moving from a defined regulator into a policy-making body. This move raises issues around the robustness and authority of the regulator to deliver on its mandate.

Despite expanding its responsibilities and powers over the last 15 years, ASIC has repeatedly been criticised for its inability to regulate the markets it is responsible for, or to take appropriate action against breaches in regulation.

CPA Australia therefore supports the government's proposed review of Australia's banking and financial services sector. We believe such an inquiry needs to consider the adequacy and effectiveness of the regulatory system, including the regulators supporting that sector. Given other issues raised in this and other submissions, we suggest that this inquiry take a detailed look at all the roles and responsibilities of ASIC, not just those related to financial services.

This, however, does not mean that the government should wait for the results of that inquiry before improvements can be made to ASIC. ASIC's strategic priorities are clear – it is tasked with ensuring confidence in the capital markets, informed investors and financial consumers, ensuring Australia has fair and efficient capital markets and has an efficient registration and licensing regime. This is a broad remit for any regulator. However ASIC has not been required to provide a Statement of Intent to the government since 2007. The introduction of a Statement of Intent was a Howard Government initiative which had the effect of making ASIC accountable and constrained by the statement it made. By articulating an annual plan and agreement with the government, a regulator such as ASIC can ensure that it works towards meeting the Government's expectations and appropriately manages its resources.

CPA Australia recommends that the Government issues a new Statement of Expectations to ASIC and requires ASIC to provide it with a Statement of Intent in response, clearly defining its role and purpose and for ASIC to undertake and publish an annual review to articulate what it has delivered against the Statement of Intent and its expectation for the coming year. This requirement is not only

good policy but increases the transparency and certainty for the market, consumers and government. Good regulatory policy is based on outcomes, not on the volume of rules a regulator produces.

If Australia's capital markets are to remain one of our competitive advantages, we must have a regulatory system that is world's best practice and improves the integrity and efficiency of the capital markets to encourage capital flows and formation.

Recommendations:

- The Government's proposed review of the operation of the banking and financial services sector should also consider the adequacy and effectiveness of the regulatory system that supports the broader capital markets, as well as the regulators supporting that sector.
- The Government issues a new Statement of Expectations to ASIC and ask that ASIC responds with a Statement of Intent and publishes an annual review of how it has met its Statement of Intent.

Financial advisory services

Consistent approach to policy implementation – ASIC Consultation Paper 215 *Assessment and approval of training courses for financial product advisers: Update to RG 146*

Over the past three years the financial services industry has experienced the most significant reforms since the implementation of Financial Services Reform over a decade ago. The Future of Financial Advice (FoFA) reforms followed extensive consultation, and aims to improve the quality of financial product advice provided to consumers in order to increase consumer confidence in this sector.

The FoFA reforms commenced less than four months ago, and since this time ASIC has released four consultation papers proposing further reforms. Whilst we acknowledge that we operate in an evolving environment, there is still a need to ensure future reforms are necessary, effective and can be implemented efficiently.

For example, in June 2013 ASIC released a consultation paper proposing to amend the current training requirements for financial product advisers. While there is common agreement amongst relevant stakeholders that the current training framework requires review, the proposals in the consultation paper:

- are limited to select facets of the current regime based on limited research
- do not clearly articulate the benefits of implementing such change
- will result in extensive compliance burden and cost to the industry, which will be ultimately borne by the consumer

Importantly, the proposed changes to the training requirements appear to disregard other important reforms that are currently underway or will commence in the near future. The proposals in the ASIC consultation paper referred to above are set to commence on 1 January 2015 and conclude 1 January 2019. Yet, on 1 July 2013 a three year transition period commenced for recognised accountants to transition into the AFS licensing regime through a limited AFS licence (limited licence). This change represents a significant and important reform for both the accounting profession and consumers.

For ASIC, as regulator of the financial services industry to propose to increase the education level requirements mid-way through such a significant reform impacting thousands of professional accountants is concerning for the accounting profession. We believe ASIC's proposal is in direct conflict with the policy framework which was established and implemented prior to the consultation paper being released.

Of great concern are the comments in the consultation paper that flag the potential for further significant reform in an unidentified timeframe.

We also believe the consultation paper represents a missed opportunity for ASIC. The review of the training framework for financial product advisers should not be limited to select facets of the current regime, but rather be all-encompassing to ensure that a robust training framework is built that is relevant now and in the foreseeable future.

Avoiding unnecessary regulation – ASIC Consultation Paper 216: *Advice on self-managed superannuation funds: Specific disclosure requirements and SMSF costs*

Currently ASIC is consulting on whether it should implement, by way of a Class Order, a requirement for a licensed financial adviser to provide specific disclosures to a client when recommending a self-managed superannuation fund (SMSF).

ASIC has based this proposal on two factors. Firstly, the impact of the collapse of Trio on SMSF investors, where the Parliamentary Joint Committee on Corporations and Financial Services report found that some investors were not aware of the risks associated with investing in SMSFs. Secondly, the result of its 2012 review into the quality of advice provided by financial planners and accountants to SMSFs.

Both of these reports were released in 2012 prior to the implementation of the best interests' duty under the FoFA reforms. This statutory obligation requires a financial planner to act in the client's best interest, specifically prioritising the interests of the client over those of the financial planner and any other associated party. Further, it requires the financial planner to identify the objectives, financial situation and needs of the client and to base all judgements in advising the client on the client's relevant circumstances.

Further, ASIC's 2012 review was not based on a representative sample. Rather, it was limited to 100 investor files relating to the establishment of a SMSF, where the majority of funds had a balance of \$150,000 or less.

Given that the measures being proposed by ASIC are now arguably required under the law, we question if further regulation, based on past events, is in fact necessary.

Further, one does not need to seek advice to establish a SMSF. Therefore, it is possible that a different approach is necessary to address issues such as ensuring that a potential SMSF trustee understands the associated obligations and risks of establishing a SMSF. Such measures could be worked on collaboratively with ASIC and the Australian Taxation Office in order to deliver far-reaching, effective and positive results for this growing sector.

Improving industry engagement

CPA Australia believes that ASIC should work more closely with the industry.

Previously ASIC consulted regularly with financial services industry associations and their representatives through regular forums. These forums allowed all parties to discuss issues, raise

new concerns and seek clarification on specific topics. These consultations were then replaced with the Financial Services Consultative Committee, which provided an open forum for representatives of the financial services sector to discuss general financial services issues.

The Financial Services Consultative Committee meetings have not been held for a number of years. Currently there is no ongoing regular contact between ASIC and the financial services industry. Rather, ASIC engages with the industry, be it collectively or on a segmented basis, when it issues a specific consultation paper.

ASIC needs to have an open and ongoing dialogue with the industry it regulates. To facilitate this, CPA Australia recommends that ASIC reactivates these forums with meetings on a bi-annual basis. This would help ensure ASIC has discussions with relevant stakeholders before consultation papers are issued.

Such consultation could ensure proposed changes increase the effectiveness of the existing regulation, rather than increasing regulation in reaction to isolated events.

Recommendations:

- ASIC withdraws both Consultation Papers 212 and 215 and instead undertakes a broad-based review of the training requirements for financial product advisers.
- ASIC avoids unnecessary regulation. For example, ASIC's Consultation Paper 216 is proposing additional disclosure requirements that are evidently already required by the law. ASIC should withdraw this consultation paper and seek non-regulatory approaches to improving consumer knowledge of the risks and obligations associated with establishing a SMSF.
- ASIC improves its engagement with industry. For the financial services industry, ASIC should reactivate the financial planning industry consultation forums and hold such forums at least twice a year.

Financial reporting

The *Corporations Act 2001* (Corporations Act) governs the financial reporting of companies, registered schemes and disclosing entities in Australia.

The financial reports of entities that list their securities (disclosing entities) are prepared in accordance with the law and accounting standards, to help maintain and promote confidence and integrity in Australia's capital markets.

ASIC, through its financial reporting surveillance program, monitors compliance with the Corporations Act and Australian Accounting Standards by reviewing the annual and interim financial reports of selected listed companies and other significant unlisted public and private companies. Its aim is to improve the quality of financial reporting. The subjects of the review are selected on the basis of random selection, complaints received and other intelligence including information gained through the ASIC audit inspection program.

At the start of each financial reporting season, ASIC releases its areas of focus for the forthcoming financial reporting season and the results of its most recent review. For example, on 2 July this year, ASIC released its areas of focus for 30 June 2013 financial reports and the results of its reviews of 31 December 2012 financial reports. This process is replicated on a 6 monthly rolling basis with the next report expected in late November. Information about the 'top 10' is most helpful

to all the participants to the financial reporting supply chain and CPA Australia reports this information to its members and the public using print and web based channels including a podcast discussion with ASIC.

We have been informed that ASIC is considering changes to its approach, whereby the results of the most recent review would be released two or three months later than is the current practice. We do not believe such a change is warranted or is in the public interest. To the contrary, we think a delay in releasing this information has the potential to reduce the quality of financial reports.

In August 2012, the *Australian Securities and Investments Commission Act 2001*, the Corporations Act and the *Corporations (Fees) Act 2001* were amended to repeal the functions and powers of the Financial Reporting Panel (FRP). We consider this action may have unintended consequences for confidence in the integrity of our financial reporting system and we suggest consideration be given to reversing the effects of the amendments.

The FRP was established as a mechanism to resolve contested issues between ASIC and reporting entities over the application of the accounting standards to a specific circumstance within a financial report. We acknowledge that demand for the mechanism was low. However, we consider an arbiter in technical accounting disputes to be an important part of any process to maintain integrity in our financial reporting system.

In our submission to the Treasury Consultation Document “Future of the Financial Reporting” we highlighted our strong support for maintaining the FRP. We noted it provided a speedy path to resolving significant accounting issues as an alternative to the Court system. We also noted the importance of ensuring the operations of the FRP were constructed to minimise the regulatory risk that can be occasioned by the public airing of a dispute between ASIC and a company which can have an impact more harmful than might flow from the matter in dispute. In pursuit of these objectives we recommended that:

- there be an automatic referral of disputes that meet certain defined characteristics that determine the seriousness of the matter after a specified time period
- a company be allowed to refer a matter to the FRP without ASIC’s approval
- matters coming before the FRP should be those where all parties have reasonably arguable positions
- prima facie, referral should not lead to disciplinary or criminal action

Recommendations:

- The release of ASIC’s top areas of focus should be accompanied by the results of the most recent review.
- Reinstate the Financial Reporting Panel.

Whistle-blower protection

CPA Australia sees whistleblowing as an effective mechanism for the identification and rectification of wrongdoing. Effective whistleblowing addresses both the protection of whistle-blowers, as well as the timely and appropriate resolution of concerns raised. Research on whistleblowing indicates that people are more likely to disclose wrongdoing if they believe that the recipients take it seriously and

will respond to the disclosure. Therefore, individuals who identify potential wrongdoing that falls under the responsibility of ASIC would be more likely to consider making a public interest disclosure if they think that it will be taken seriously and addressed.

Unfortunately, recent high profile cases appear to have undermined ASIC's reputation in regards to managing whistleblowing disclosures. CPA Australia proposes that ASIC consults with key stakeholders and reviews its whistleblowing policy. We also think that as part of the review, and to improve transparency, appropriate communication processes with whistle-blowers should be established. We also are of the opinion that ASIC should report annually on the number of whistleblowing reports received, stage of investigation and outcomes, both in terms of wrongdoings and whistle-blowers, to the public.

Recommendations:

- Undertake a review of ASIC's whistleblowing policy
- Review communication and reporting with whistle-blowers and the public.

Audit

CPA Australia has publicly expressed concerns in regard to ASIC's communication surrounding its Audit Inspection Program Report for 2011 – 12. The ASIC audit inspection program is designed to provide focus areas and insights for use by the profession in achieving continuous improvement and high quality audits through a very small risk-based sample. This sample is not designed as a measure of, or a report card on, overall audit quality in Australia.

ASIC's communication has in many instances been unnecessarily emotive and has not appropriately addressed the context or purpose of its audit inspection program. This has resulted in significant distraction from the core value and objectives of the program and potential confusion amongst the wider community of stakeholders of audit in Australia. Further, Australia's strong audit profession and the integrity of our capital markets are recognised as a key competitive advantage for doing business and investing in our economy. ASIC's communications have the potential to undermine this strength throughout our region and more widely. ASIC has also publicly advocated regulatory reforms as a reported threat in response to its audit inspection program findings, rather than on an assessment of what would contribute to the improvement of the regulatory framework supporting audit.

ASIC's communications have been reported widely in the media over an extended period of time. Given the importance of clarity and balance in communication to the public interest regarding ASIC's audit inspection program, and without any response to extensive non-public appeals to ASIC for greater clarity in its communication (both before and after publication of the Audit Inspection Program report for 2011 – 12), we have taken the extraordinary step of writing publicly on this matter. By invitation we have also raised these issues with the Parliamentary Joint Committee on Corporations and Financial Services in its Statutory Oversight of ASIC inquiry of March 2013. ASIC's stated strategy of seeking "leverage" through the media is noted, however, we continue to urge ASIC to appreciate the critical importance of clear, accurate and balanced communication about this program, particularly given the already existing expectation gaps in regard to the role of audit.

Collaboration and constructive dialogue is critical to the achievement of continuous improvement in audit quality. Clarity and understanding of the audit role among key stakeholders and the wider community is a critical aspect of audit quality.

Recommendation:

The purpose and findings of the audit inspection program, as well as its methodology, should be clearly articulated and objectively communicated by ASIC.

Other Issues

The past few weeks have seen some controversy played out in the media with vigorous interchange about ASIC's capacity, some even suggested unwillingness, to pursue matters which have an alleged basis in corrupt conduct. Setting aside the two sets of circumstances which have now gained some notoriety, it is worth reflecting on problems which do arise at the threshold between ASIC's and other agencies responsibilities. We refer in particular to the use of the Corporations Act civil penalty provisions as the concluding outcome of wider ranging investigations which indicate possible breaches of the Commonwealth Criminal Code or counterpart State Crimes acts. A number of aspects of the conduct of these matters are noteworthy:

- the long drawn out nature of the proceedings
- the parties found in breach may not be those at the very centre of the errant conduct
- the fact that liability, and thus pecuniary and disqualification penalties, are agreed between parties rather than being determined by the Court
- the remoteness from the core wrongdoing with breach of the general duty of care and diligence applied rather than a form of more serious liability

Notwithstanding the high thresholds in achieving criminal outcomes, this avenue of pursuing a particular matter seriously detracts from any wider deterrent impact that might otherwise be achieved, let alone applying punishment where most appropriate. CPA Australia suggests one possible avenue for achieving more coordinated, efficient and targeted outcomes could be through considering how both ASIC's general powers of investigation (ASIC Act s 13) and the ministerial directions to investigate (ASIC Act s 14) might be better applied.

Recommendation:

Those concerned with the conduct of corporations would benefit from clear expression of the threshold between agency responsibility and, where alleged misconduct crosses legislative boundaries, adequate resource be provided for joint action from relevant agencies.

Appendix 2

THE AUSTRALIAN

ASIC chairman Medcraft lays out ASIC's approach to fighting corporate crime

GLEENDA KORPORAAL THE AUSTRALIAN FEBRUARY 21, 2012 12:00AM



ASIC chairman Greg Medcraft addresses the corporate regulator's summer school in Sydney yesterday. Picture: Dan Himbrechts Source: The Australian

GREG Medcraft was always going to do things a little differently as chairman of Australia's corporate regulator, the Australian Securities & Investments Commission.

As an investment banker with a strong interest in securitisation, Medcraft took over the top job at the regulator in May from veteran lawyer Tony D'Aloisio, with a clear view of trying to open up the workings of the organisation to the public as much as possible.

Medcraft began his first "summer school" as ASIC chairman yesterday by releasing details of its views on its approach to enforceable undertakings with corporate wrongdoers and its views on public comment on its investigations. As ASIC deputy chairman Belinda Gibson said, the detail of what was released yesterday by the commission did not represent any great change in its internal approach.

What was new was the fact ASIC had gone to the trouble of setting out publicly the way it approached some of its investigations and the approaches it took to penalties and doing deals with people under investigation.

Medcraft, who spent nearly 30 years in investment banking with Societe Generale in Australia, Asia and Wall Street, was chief executive of the Australian Securitisation Forum before becoming ASIC chairman.

He was always going to take a practical, sleeves-rolled-up approach.

This involved being a lot more open in running an organisation of lawyers that was well known for preferring to keep its investigations private.

But with ASIC's annual budget cut to \$355 million, there was increased pressure on the chairman to do more with less -- and that means using the media and public statements to get out its message on its approach to combating corporate crime. "Our job is to leverage our resources to the best of our ability, and that is what I will do as chairman," Medcraft said yesterday.

"One of the ways of getting leverage is with the media -- to tell people how we do things so they understand how we do things."

It is not something a lawyer's lawyer such as D'Aloisio would have been as comfortable with.

"Tony did a fabulous job when he was chairman," Medcraft said.

"I have a different philosophy."

As Medcraft acknowledged, it has taken some time for him to work through his views internally with the commission.

There are good reasons for a corporate regulator not to be too open about investigations -- including prejudicing a potential legal case, as Gibson pointed out.

Medcraft admitted he started out wanting to be a lot more open about ASIC investigations -- just as the police often name someone who is a "person of interest", but has had to agree to be a little more guarded.

But when it comes to its specific approach to investigation and enforcement, he wants to get a lot more information out there.

No, there are not going to be daily bulletins about ASIC investigations, but where it sees that releasing details of an investigation may promote public confidence in administration of the law or public compliance with the law, it hopes to be more open.

More openness with the public can only be applauded, and ASIC's statements yesterday also make clear it was prepared to consider deals on sentencing and penalties on people under investigation who co-operated, provided their offence was not too serious or deliberately reckless.

But in the end the corporate regulator still has to get some enforcement runs on the board.

It is always a tough job running the corporate regulator but, as Medcraft says, sunlight is the best disinfectant.

The old days of ASIC speaking softly and carrying a big stick are gone.

In the noisy corporate market of today, Medcraft is making a calculated decision that speaking up is part of his armoury.

Appendix 3

- Opinion pieces:
 - Don't regulate for non-existent issues, Australian Financial Review, 8 November 2012
 - ASIC should listen to criticism, The Australian, 1 May 2013
 - Watchdog out of touch with investor's needs, The Australian, 17 March 2013

- Letter to the Editor:
 - ASIC spread to thinly, Australian Financial Review, 7 October 2013

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Don't regulate for non-existent issues

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GIFT ARTICLE: 100

ALEX MALLEY

When I was in kindergarten in the 1960s, if one child misbehaved and did not own up to their behaviour, the whole class would be kept in as punishment; inevitably, a new rule would be introduced as a result of the errant actions of one individual. Little did I know that this would be my introduction to regulation in today's financial markets.

While much has been said of the need for Australia to increase its productivity and international competitiveness, not enough has been said of how the regulatory framework within which Australian business operates will be crucial in working towards this aim.

In a nation where the costs of doing business are becoming a distinct competitive disadvantage, Australia must do more to build and maintain competitive advantages, especially in the area within direct control of the government: regulation.

Instead, in our apparent quest to be internationalised in our regulation, we find ourselves influenced by economies with fractured governance systems; namely, the United States and UK. After the global financial crisis, it is not surprising that such economies are attempting to overcorrect with regulation, but this should be their problem to deal with – not ours.

Of course, today's global market and the prevalence of multinational companies and activities means that no issue can occur in isolation; as we have seen with the sub-prime mortgage disaster in the US, for example, its effects are hardly endemic in the US. However, if Australia follows blindly the regulatory examples of Europe and the US and ignores the strengths and achievements being of our shores we risk losing any competitive advantage we may have.

Take one of the proposed reforms from the financial markets regulator, the Australian Securities and Investments Commission: a new national exam for all financial planners (to be regulated by another body). This proposal seems to be based on requirements in the US financial planning industry, but

considering it was this industry that created some of the most toxic products that contributed to the sub-prime mortgage crisis, this is hardly a model to follow. Additional regulation that arguably adds no benefit and which results in higher transaction costs for business is hardly a competitive business advantage for Australia.

The proposal to regulate small business credit advice is another example. It seems Treasury is focused on regulating such advice despite a lack of debate on any evidence supporting the need for such regulation, and the potential negative consequences on the cost and availability of credit to small business. This is consistent with a trend towards regulate first, ask questions later. The mindset of our policymakers must change if the government is serious about reducing red tape.

Take the post-GFC European Commission green paper on audit (and the ensuing proposals). The paper included various recommendations, such as forced audit firm rotation (whereby audit firms would have a limited tenure with companies) and audit-only firms (where major audit firms would be restricted to providing audit services only).

While the aim is to increase audit quality and independence, the auditor's role is to provide an opinion on the presentation of financials, and this opinion on its own won't warn of a collapse, let alone a financial crisis. Even though Australia's Treasury paper on audit quality in 2010 found no systemic issues, there are already signs there will be the inevitable pressure to conform to the legislative developments of the Northern Hemisphere – whatever these may be. This is hardly the panacea we need for a problem we don't have.

Of course, there will always be an issue that demands a cross-border approach and that is when we should consider what works for the Australian context and attempt to influence international developments. The latest focus on high frequency trading, and the potential risk it creates for capital markets, is one example where an international contemporaneous solution may be sought.

Whether in kindergarten, or in today's financial markets, creating a new rule every time someone misbehaves, particularly when the misbehaviour is a consequence of non-compliance with existing rules, is unnecessary and burdens the rest. Australia's regulators need to ensure the business environment is not flooded with unnecessary regulation as part of the presumption that all risk can be mitigated. Given Australia's challenges with productivity and competitiveness, it is critical that our governments work towards a balanced regulatory framework before Australia is left behind, resulting not in a two-speed economy, but in a no-speed economy.

Alex Malley is chief executive of CPA Australia.

The Australian Financial Review

THE AUSTRALIAN

ASIC should listen to criticism

ALEX MALLEY THE AUSTRALIAN MAY 01, 2013 12:00AM

FOR a long period CPA Australia has enjoyed strong, productive relationships with regulators in Australia and globally, including the Australian Securities & Investments Commission.

However, over the past 12 months or so, in what for us is an unprecedented step, we have felt the need to make a series of public statements on issues pertaining to the public interest.

Such issues include ASIC's apparent role creep; communication quality; approach to stakeholder management; reliance on US and British policy thinking; the burden of unnecessary regulation and its impact on competitiveness, to name but a few.

Of course, as one of the nation's largest professional membership bodies, our views and opinions are informed and shaped by a diverse constituency working at all levels, from small to big business in all sectors, with a front-row view of what's happening in corporate Australia.

With 144,000 members in 126 countries, and 19 offices globally, we are not in the business of making ill-informed statements.

We are not surprised that ASIC commissioner John Price feels the need to extensively defend its actions ("ASIC spells it out in audit quality report", April 23), but we are surprised that he chose to be selective as to the broad range of issues we have raised over the past 12 months. Perhaps most extraordinarily, he raised in defence of ASIC's communication capabilities the number of meetings that have been held.

Surely ASIC -- like our business, like all small, medium and large, profit and not-for-profit businesses and government sector departments and agencies -- would benchmark to agreed outcomes from such activities, rather than simply listing volume, which is at the core of the subject we raised.

With respect to the issue of audit inspections and ASIC's selective statements regarding them, we do not resile from the issue we raised, as it has not been responded to.

Leadership is often a lonely place -- moments of isolation, criticism and the need for self-reflection. Our organisation aims to be the best member organisation in the world, and this is framed by metrics and outcomes.

An integral part of achieving this goal is to ensure we persevere on issues of public interest, no matter the criticism or from whence it comes.

Only a few months into his job, ASIC chairman Greg Medcraft foreshadowed a new approach for the regulator.

Gone would be the staid, meticulous communication of a grey-suited regulator, and in its place a new media-driven strategy. In his own words: "Our job is to leverage our resources . . .

. one of the ways of getting leverage is with the media." Perhaps commissioner Price's opinion piece is a step towards such a vision.

Like all leaders, chairman Medcraft and I will be judged by our performance as leaders in achieving our respective goals.

I stand available to constructively and publicly debate the range of issues we have raised over the past 12 months with chairman Medcraft.

Alex Malley is chief executive of CPA Australia.

THE AUSTRALIAN

Watchdog out of touch with investors

ALEX MALLEY THE AUSTRALIAN APRIL 17, 2013 12:00AM

FINANCIAL markets have become more accessible and complex than ever before, highlighting investor needs for better, simpler information.

Genuine, constructive work towards addressing systemic and subversive risks is needed. Yet Australia's corporate regulator, like the boy who cried wolf, seems more focused on drumming up a reaction than tending to dangers that might exist.

Today's financial markets have been described as having become so complex that instability does not grow in the markets gradually, but arrives suddenly.

Physicist Mark Buchanan has likened this to "the way ice abruptly melts into liquid water. Beyond this point, collective financial meltdown becomes effectively certain."

Concurrently, over just the past few years, it has become easier and faster in many instances to set up online and start trading international shares, forex or complex derivatives than it is to open a bank account at the local branch. Growth in share ownership, trading and self-managed superannuation funds testify Australians have taken on the associated opportunities with vigour.

More Australians are likely to be exposed to more turbulent markets than has ever been the case before now -- a fact underscored by a number of high-profile corporate collapses in recent years. However, the basic concepts of investing, of balancing rewards and risk, haven't changed in the centuries since the earliest New York Stock Exchange was conducted under a large buttonwood tree or when the gold rush in Australia spawned our own first markets.

The extent of financial instability worldwide, and the influx of so-called "retail investors" into financial markets demand a response from professions, regulators and governments -- all those involved. There is a need for genuine initiatives towards people, institutions and systems working more effectively together to provide investors with information they can understand, and address systemic or subversive risks that can affect their lives deeply.

Yet the Australian Securities & Investments Commission seems firmly attached to an insular, blame-shifting approach -- scrambling for headlines to cast doubt anywhere but home. A constant growling indignation that gives Australians the impression of activity and action, the feeling that they're covered, while real issues may be missed.

ASIC's audit inspection program should provide real value as a catalyst for constructive work and constant improvement. Yet the regulator's sensationalised communication since the release of its most recent report has badly distracted from this, and taken its findings out of context.

The mantra of "one in every six audits" being deficient, of "frustration", "disappointment" and "significant deterioration" are just not backed up by the science and logic you would expect given the ramifications of such statements.

The same approach has extended to ASIC's communication on a broad range of issues and stakeholders including company directors, managers, advisers and investors themselves. Recently, ASIC floated the idea of online learning and exams for investors before they are allowed to invest in certain products.

The corporate regulator's rhetoric frequently conjures the "lemming investor". A hapless, well-meaning individual with hard-earned life savings in hand, rushing at any opportunity to be swindled. This is not only condescending, it demonstrates the regulator is out of touch with the needs of investors.

Effective policy is built on a systemic approach and collaboration with key stakeholders. It is not built on emotion or regulatory overreaction to capture poor outlier behaviours, which only burdens those who are playing by the established rules.

Most Australian investors are aware of balancing the risks and rewards in an expanding range of opportunities becoming available. The priority should be to provide them with more effective, clearer information and the tools for their own decision making.

The accounting profession globally is committed to this objective and working towards paradigm shifts such as Integrated Reporting -- cohesively reporting on business models and risks and their impact on society in a simple and understandable way. Representing CPA Australia, I have accepted a position on the International Integrated Reporting Council domiciled in London, and CPA Australia will host the launch of the draft international IR framework for consultation.

An effective regulator working constructively with professions and stakeholders to identify and respond to systemic or subversive risks is the least investors should expect for their tax dollar. Yet, like those relying on the little boy who cried wolf, the real dangers facing investors may be missed or obscured by ASIC's ongoing affectations.

Alex Malley is the chief executive of CPA Australia



ASIC 'spread too thinly' to do its job

Too often we've seen ASIC pursue regulation to punish outlier behaviour which has the effect of impacting the many for the bad behaviour of a few.

Perversely, it would appear, on the evidence currently available, there is at least a perception that ASIC failed to enforce the law and pursue the bad behaviour of the few for the benefit of the many.

As the heat gets turned up on the role of ASIC in the evolving Securrency scandal and now claims of bribery, corruption and cover-ups in Leighton Holdings, it's increasingly clear that ASIC has taken its eye off the ball when it comes to the basic functions of corporate regulation and oversight with which it is charged.

As I have said in the past, both

publicly and in evidence to the Parliamentary Joint Committee on Corporations and Financial Services, ASIC has a primary responsibility to build trust and confidence in Australia's capital markets and in the robustness of our regulatory frameworks. Any failure to do so undermines public and corporate trust and confidence in the organisation.

There is a growing body of evidence that ASIC is spread too thinly, without the expertise or capability to appropriately regulate both the markets and providers. As a former lawyer for the organisation observed this week, it is very difficult for ASIC to focus on its core responsibilities.

Organised along three streams: Markets, Investors and Financial Consumers and Registry and Licensing – the last time a government requested a statement of intent from ASIC was back in 2007.

A review of functions, expectations and operations of ASIC is now well overdue and in the public interest.

As we've seen in the past, ASIC has a glass jaw when it comes to criticism of its performance or the way it does or does not discharge its duties. I hope that the current Senate inquiry adds strength to the arm of the government in clarifying its role.

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