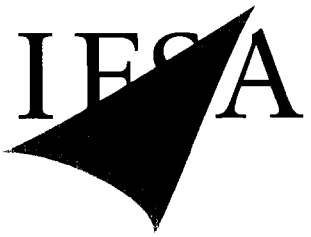
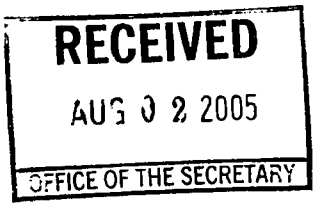


Investment &
Financial
Services
Association Limited
ABN 82 080 744 163

8

26 July 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
United States of America



Dear Mr. Katz

Re: NASD Rule 2790 (File No. SR-NASD-2004-165)

We are writing to express the concerns of the Australian funds management industry with the operation of NASD Rule 2790 (**Rule**) and the implications it has for investment by Australian public offer funds in the US capital markets. We consider that the Rule operates to the detriment of both Australian interests and the raising of capital by US companies. It also raises issues for Australia in the context of the US/Australia Free Trade Agreement which we have raised with the Australian Government.

The Investment and Financial Services Association (**IFSA**) represents the retail and wholesale funds management and life insurance industries. IFSA has over 100 members who are responsible for investing approximately $790 billion, on behalf of over nine million Australians. An increasingly large part of that investment relates to superannuation savings under Australia's prudentially regulated compulsory superannuation regime.

The Rule, in its current form, operates to deny Australian fund manager access to US IPOs. We make the following comments and recommendations for the purpose of encouraging a review of the Rule and, what we consider must be unintended consequences of the Rule as revised.

Operation of NASD Rule 2790

Subject to transitional requirements, NASD Rule 2790 was effective from 23 December 2003 and prohibited a NASD member from selling new issue securities (IPO) to an account in which a restricted person has a beneficial interest. For the

Level 24, 44 Market Street, Sydney NSW 2000 Ph: (02) 9299 3022

purposes of the Rule, a blanket exemption applies to US registered investment companies and other specified collective funds (e.g. ERISA plans). Subject to limited exemptions, foreign investment companies, foreign pension funds and foreign charitable foundations do not benefit from the exemptions available to similar US entities.

Under the Rule, a foreign fund could be exempt from the Rule only if the fund is listed on a foreign exchange or authorized for public sale by a foreign regulatory authority and no person owning 5% or more of the fund is a restricted person. We understand that the second condition is almost impossible to certify given industry structures and high proportion of superannuation fund investment involved in Australia. A de minimus exemption also applies but certification that the beneficial interests of restricted persons do not exceed in the aggregate 10% is likewise almost impossible.

Australian fund managers provide services to superannuation trustees, offer retail financial products, and individual investment mandates. Such services and products are offered directly and through various modern "wrap" and "wrap-like" arrangements involving nominee arrangements delivering operational efficiency. As in U.S., foreign investment companies may not know the identity of some of their shareholders because they are held in omnibus accounts by intermediaries on behalf of the beneficial owners of the shares. These intermediaries do not provide ownership information to the funds regarding the accounts held on an omnibus basis. Where services and financial products are not directly offered to a customer, a fund manager could neither calculate the relevant threshold not make the certification of beneficial ownership required by the Rule.

The operation of the Rule can directly impact the international fund portfolio of both Australian fund managers and non-US asset managers where they are denied access to US IPOs. The response of at least one IFSA member, as an investor in the US market, has been to opt out of US IPO's given the complexity of the problem. They have indicated that they will review this policy in due course if the position is changed. Similar sentiments have been expressed by other IFSA members. The Rule presents an unfortunate precedent for both Australian and, potentially, US companies.

Submission and Recommendation

While we recognise and support the policy intent of the Rule to protect the integrity of the public offering process by ensuring that, among other things, industry insiders do not take advantage of their "insider" position to purchase new issues for their own benefit at the expense of public customers. However, we submit that action should be taken to remove unintended consequences of the Rule that have been identified and are now widely known.

Exemptions for US mutual funds and pension plans should be extended to non-US funds if they are set up for similar purposes and operate from a properly-regulated jurisdiction. In particular, to prevent funds being used as merely a conduit for investment at the direction of their clients, investment powers should be exercised by the fund managers on a discretionary basis on behalf of clients. For IPOs subject to the Rule, fund managers should only be asked to confirm that new issues are purchased on behalf of clients to whom discretionary investment management services are provided.

We recommend that an exemption for non-US public funds be introduced under Rule 203(b)(3)-1(d)(1) of the Investment Advisers Act Rule. A "foreign public fund" could be defined for the purposes of exemption as one that:

- has its principal office and place of business outside the US;
- makes a public offering of its securities in a country outside the US;
- is regulated as a public investment company under the laws of the country other than the US;
- is offered based on the investment advisory skills, ability or expertise of the investment adviser that is regulated in a jurisdiction that is a member of IOSCO [it is generally accepted that IOSCO has in place a robust set of criteria for membership];
- is not created for the purpose of circumventing the Rule; and
- the investment adviser has investment discretion over the account and makes specific investment decisions.

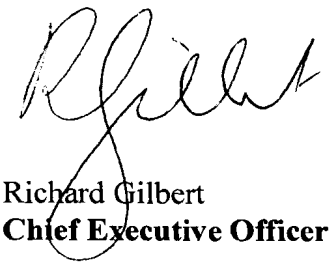
Similarly, we submit that the exemption should be extended to pension funds and charitable organizations.

Conclusion

We believe that the changes outlined above would permit regulated Australian funds to invest in the U.S. IPO market while, at the same time, preventing the policy avoidance purpose of the Rule.

We would welcome the opportunity to further discuss our concerns and recommendations, and would be pleased to provide any further information you may require for the purposes of a review of the Rule.

Yours sincerely



Richard Gilbert
Chief Executive Officer