9 December 1999

Ms Alison Champion
Regulatory Policy
Australian Securities & Investments Commission
GPO Box 5179A
MELBOURNE VIC 3001

Dear Ms Champion,

Comments on draft ASIC guidance and discussion paper, "Heard it on the grapevine ....."

The Chartered Institute of Company Secretaries in Australia (CICSA) fully endorses the role of company secretaries in relation to corporate disclosure, as set out in the Commission's paper. The Institute's view is that, where appropriate, company secretaries are ideally placed and qualified to be responsible for managing disclosure in both large and small companies.

In other respects, however, the Commission's paper contains flaws. The impracticality of a number of implementation measures proposed in the paper, the inaccuracy of some key assumptions especially in the discussion section (Part III), and the fact that legislation currently exists to cover many of the issues, are of concern to the Institute.

1. There are references in the paper to a negative perception in the general community that Australian companies are involved in activities that constitute selective disclosure and are not complying with continuous disclosure rules.

The Institute's experience is that the overwhelming majority of companies go to considerable lengths to ensure fair and full disclosure and make every effort to comply with existing legislation and regulations. There is minimal, if any, evidence that such a negative perception exists in the community. Premises relating to selective disclosure and non-compliance by companies, whether inadvertent or not, are unjustified and inaccurate.

2. The guidance section (Part II) refers to information disclosures in private briefings held by companies with stockbroker analysts and institutions. These are more appropriately regarded as background briefings, covering information that has previously been released to the market, and have long been accepted as a valid and useful corporate practice.

3. The Internet is rightly regarded in the paper as an important new disclosure vehicle. However, it provides instant but not universal information distribution; the media, on the other hand, have established reach. In many

cases, communication via the print and electronic media achieves wider coverage than web-based distribution.

The Internet is not a panacea, especially in light of many companies either not having a web site or lacking the resources to maintain one. Of the 1,226 companies listed on the Australian Stock Exchange, 39 per cent do not have a web site.

The rapid growth in the number of shareholders in Australia has led to a significant group of 'mum and dad' investors who largely rely on the media for the latest information on their portfolio. These shareholders would be poorly served without briefings for media held by many companies. While the Institute supports the use by companies of the Internet to disseminate corporate information it also recommends that reference to the media, and their briefings by companies, be added to the guidance section.

4. The different types of information related to corporate disclosure are either treated equally or glossed over in the paper. The Institute believes that distinctions need to be made between, for example, statutory, price sensitive, private and confidential, and commercial-in-confidence information.

Confusion over the various levels of contact between companies and other parties is apparent in the paper. The type and detailed level of background information disclosed in meetings with the financial community and institutions is different from that presented at more formal scheduled events such as annual general meetings, and reflects more the practicality of allocation of resources and sheer logistics rather than disclosure policy.

5. The Institute objects to the advocacy in the discussion section of companies placing all broker reports and tapes of the entire proceedings of analyst and other briefings on their web sites.

Certain stockbrokers do not allow their reports to be published in such a manner as it compromises their ability to sell their research and provides competing brokers with an insight into their proprietary research techniques. This effectively nullifies the paper's advocacy for all – not just a select few – reports to be made available. The Institute does not support the inclusion of broker reports on web sites because by doing so companies will appear to be endorsing the research in the reports.

The scenario of companies taping all the proceedings in all their briefings is implausible. It would be cumbersome and impractical both in terms of sustainability and policing and is based on the pretext that companies cannot or will not comply with continuous disclosure rules. We have already stated our contention that companies act responsibly and there is no evidence that these rules are being breached.

6. Equally impractical is the recommendation of two company representatives – namely the corporate disclosure manager and his or her deputy – attending every discussion in which disclosure of corporate information is conceivable. This may be desirable but strict adherence will be extremely difficult to achieve in reality.

On a more general note, the paper's tendency to overkill begs the question of whether the Commission is paying too much attention to trends in the United States.

Many US companies receive little or no analyst and media coverage, and there have been cases of some companies entering into arrangements in which privileged access to information is exchanged for coverage. Any comparison between the US and Australia in this regard would be dubious, and issues relating to corporate disclosure here need to be viewed in a significantly different context.

The Institute emphasises that legislation already exists to cover the issues in the paper. It is concerned at the implications in the paper that the Commission may introduce further regulation on companies, and that they would have to bear the cost of implementing such regulation.

The direction of the paper is inconsistent with a trend to corporate law simplification and self-regulation apparent elsewhere in the corporate environment. Given this and that many advocated measures are so over-arching as to be unworkable, the Institute believes that some aspects of the Commission's current approach are misguided and counter-productive to good corporate disclosure.

The Institute believes that good corporate disclosure is an integral part of good corporate governance. I would be pleased to discuss the above points with you to ensure that the paper achieves a mutually agreeable outcome for the ASIC, the investment community and the Institute's members.

Yours sincerely,

Tim Sheehy
Chief Executive