Regulatory issues arising from the financial crisis for ASIC and for market participants

Speech by

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Securities & Derivatives Industry Association (SDIA)

12th Annual Conference—Sydney

29 May 2009

Introduction

It's been a year since we last met at this conference … and it's been a year of significant change … to put it mildly!

When I spoke to you this time last year there was concern about the global economy and the sub-prime crisis. I spoke about the extensive use of leverage and business models that collapsed with lower asset prices. Looking back the period leading up to last year's conference was just the softening up phase!

As we all know, the subprime burgeoned into the GFC (a globally recognisable acronym), making the last 12 months one of the most challenging periods in our careers. And while things are improving, we have a way to go. Hopefully depending on what sporting analogy you like, we're well into the second half or into the premiership quarter. I also hope that at next year's conference we can have the post match wrap-up and will be able to say that our markets are well on the way to recovery!

My topic today is '***Regulatory issues arising from the financial crisis for ASIC and for market participants***'. What are the issues which have emerged so far? How has ASIC approached those issues? What do they mean for you, the market participants?

As the GFC is still unfolding, it is not possible to give definitive answers to all these questions. What I would like to do is to share with you my observations and thoughts, and let you know how our thinking has been developing.

I will do that by making 5 points which will hopefully provide you with:

- an understanding of the key issues that have emerged, and
- how ASIC is approaching them.

I hope that these insights will be of some assistance to you in assessing the implications for your business.

My first point is that Australia—so far—has fared better in the financial crisis than most other countries, in terms of the operation of both the economy and financial markets.

While this point is widely accepted, I think that it is worth repeating, and also worthwhile to reflect on why this is the case.

Key indicators of the better performance in Australia are:

- Australian banks and financial institutions have not required the degree of Government support provided overseas. While the Australian Government has taken steps to guarantee deposits, no capital support has had to be provided to commercial banks, unlike in the US, UK and many European countries. For example, the IMF estimates that, as of April 2009, authorities in the US, the UK and the Euro Area have, in total, provided around $8.9 trillion in financing support to the financial sector.

- While credit growth has slowed in Australia to 4.9% over the year to March 2009, this is still comparatively buoyant when compared to credit growth over the same period in the US, UK and Europe.
- Australian corporates have been able to raise long-term debt in offshore markets. Australian financial corporations have raised $85 billion of long-term debt since the Government's guarantee arrangements became operational on 28 November 2008.
- The Australian stock market has been impressive as a conduit for raising equity capital for listed companies. Between October 2008 and April 2009, Australian corporations raised around $53.3 billion in capital on the ASX, equivalent to 5.5% of average market capitalisation. Compare this to 1% on the NYSE and 2.5% on the LSE over the same period.

What does this tell us about Australia 'faring better'?

It tells us that despite the volatility, the uncertainty and the considerable falls in market capitalisation, Australia's financial markets, and capital markets have performed their role of providing companies with access to capital. They have given companies a well-functioning and efficient alternative to frozen credit markets—operating at least as a viable 'spare tyre' during a time of intense financial turmoil.

You may ask why Australia has fared better?

There is no single answer. The better performance is probably the result of a combination of the economic momentum arising from the resources boom, the astute conduct of macroeconomic policies by successive governments, the sound position and performance of Australia's main banks, the flow of household incomes into superannuation savings, the strength of the institutional and regulatory framework put in place and supported and improved by successive Governments, and—of course—a good dose of luck. Many people say that luck has to be earned, so some of the late nights we all put in do pay off.

However, there has been pain …

While comparatively Australia's financial system has fared better, I am not saying that there has not been pain. Between the peak and its lowest point on 6 March 2009, the S&P/ASX 200 index lost 54% in local currency terms. Since March it has clawed back some 21% (to 27 May) of its value, which is pleasing to see.

This fall was in line with major overseas markets. For example, between the peak and 27 May 2009 in US$, the S&P ASX 200 is down 52.3%, very similar to the London FTSE 100 (-49.3%). While the fall in Australia may be in line with overseas markets it has nevertheless left behind a destruction of wealth.

This destruction of wealth or pain has impacted the confidence of:

- institutional investors such as managed funds and superannuation funds
- retail investors in both stock market and in linked investments, and
- your businesses.

The loss of confidence for the retail investors is significant. Over the last five to 10 years we have encouraged them to become, and have come to rely heavily on them to be, suppliers of capital and investors in equities and other financial products (e.g. through privatisation, DIY superfunds and so on). Restoring confidence for retail investors (to come back to the market) will be a big issue going forward. Will our financial markets develop the products with the right risk/reward premium to get them back?

So while Australia has fared better, there nevertheless has been a significant destruction of wealth and with that a collapse in confidence. Our collective challenge will be to rebuild that confidence.

ASIC is very much focused on working to rebuild confidence in the integrity of our markets. We are not just mopping up the past; our eye is very much on what we can do, consistent with investor protection, to rebuild confidence in our markets.

My second point is that a significant feature of the collapses which have been part of this wealth destruction, has been flawed business models. Flawed in the sense that they could not withstand the downturn. Too many businesses, and a very large proportion of the failures to date, were built on business models that could only prosper if asset prices continually rose and debt markets remained open and liquid.

When I spoke at this conference last year, I outlined that at the time there had been some $16 billion of losses from collapses and near collapses. At the time, I said that they compared favourably to about $20 billion in losses in 1987 (using Sykes as a source).

Since then, however, and not surprisingly, collapses and near collapses have increased:

- Major company insolvencies (ABC, Allco, Babcock & Brown, Great Southern, Octaviar and Timbercorp) have resulted in a loss of value of around $23 billion (calculated from the peak market capitalisation of each entity).

- A further 11 major entities have lost more than 90% of their market capitalisation. The aggregate loss of value is $39.2 billion. Several listed funds managed by Allco and Babcock & Brown add another $4.4 billion.
- 23 debenture issuers have become insolvent, with a total of $3.1 billion of debentures on issue, including $1.8 billion of unlisted unrated debentures.

The total of what I have listed so far is around $73 billion. As the downturn in the real economy continues, the figure may well increase. Clearly the real estate sector remains a concern, particularly in relation to REITS and unlisted mortgage trusts and property trusts.

To put these collapses and near-collapses into perspective:

- As I said last year, Sykes' estimate of losses from corporate collapses in the wake of the 1987 stock market crash is $20 billion, which is equal to 5.4 of GDP for 1989. The figure of $73 billion which I just used is equal to 6.2 percent of 2008's GDP.
- From November 2007 to April 2009, the Australian stock market lost $617 billion in market value, equivalent to 52.2% of GDP.
- From September 2007 to December 2008, Australians' superannuation recorded a fall of $292 billion, or 24.7% of its value at the beginning of the period.

These numbers, of course, do not tell the story of the pain which goes with wealth destruction, particularly for retail investors and I include members of superannuation funds in this category. Members of accumulative superannuation funds are, in effect, retail investors.

What caused these collapses?

Just market forces? Regulatory flaws or regulatory failures? Regulator inaction?

My view is this: A significant feature of these collapses and near collapses is flawed business models. That is, models that could only prosper if asset prices continually rose and debt markets remained open and liquid.

That's not to say the flawed models may not have been accompanied by wrongdoing (breaches of the Corporations Act). We are clearly looking and in many cases investigating possible wrongdoing. Nevertheless, to date, analysis of these collapses or near collapses is giving a strong sense that at the centre there will often be a flawed business model.

Let me mention examples to illustrate:

- Extensive use of margin loans with loan to valuation ratios (LVRs) that just could not sustain the market downturn. A good example is Storm

Financial. There, for example, margin lending was extended to a 'whole balance sheet' (i.e. against all of an investor's assets) with additional leverage against unrealised gains as the market rose.

- Extending products used in the institutional sector into the retail sector as Opes Prime did. Opes operated a securities lending business. From the clients' perspective, the arrangement with Opes had the same commercial effect as a margin loan, that is the clients accessed cash, using their securities as collateral.

  The flaw in the business model was that Opes was not well capitalised and as a result when a number of its clients faced significant losses in the market downturn, it was not able to cover the shortfall. A business model built for a bull market with little thought for a downturn.

- Highly leveraged models: A range of other highly leveraged models (Allco, Babcock & Brown) which could not withhold the deficiency brought about by asset falls.

These collapses have lead to losses and it is proper to ask the question: Could more have been done to prevent these?

More specifically, should ASIC have prevented these business models or put an end to them earlier?

Now, the answer to this specific question, in the context of the Corporations Act and ASIC's powers, is clearly 'no'.

As an audience such as this will readily understand, under our system, responsibility for flawed business models lies with management and with their Boards. It's part of the 'free enterprise' system. Nevertheless, in the broader community and parts of the media, there is a misunderstanding and, at times, a perception that ASIC is, in effect, a 'guarantor of last resort' of investor risk (particularly where retail investors may be involved).

Let me therefore expand on my answer on why ASIC is not in the position to prevent the failure of business models.

First a little history … The implementation of significant features of the Campbell Report by the Hawke-Keating Government had far reaching implications for the banking system in Australia, such as removal of interest rate and lending controls and the floating of the Australian dollar.

In 1996 the Wallis inquiry was set up to examine the deregulation which had followed the Campbell Report. The Wallis Inquiry produced a report that made a series of recommendations concerning the operation of the financial markets including what was to become known as the 'twin peaks policy'. The Howard-Costello Government implemented significant aspects of this 'twin peaks policy'.

The first peak, APRA, regulates ADIs, important systemic institutions, which Government believe need to have their business models prudentially regulated.

The second peak (ASIC) regulates securities and investments. Let me say a little more on this second peak. Unlike intermediaries (banks and insurance companies) the policy (reflected in the Wallis Report) was that financial markets did not need prudential regulation. As was said by commentators at the time, at the centre of the Wallis Report was the view that efficiency of the capital markets would be enhanced by the absence of capital backing regulation and these markets only needed disclosure and transparency and enforcement of proper market conduct for their operation (e.g. the development of the securitisation markets is a good example of the working of that policy). They did not need prudential standards.

This policy behind this second peak is reflected in the Corporations Act and in ASIC's role and powers. The US certainly applied this policy which economists, I think, call the Efficient Markets Theory.

Our Corporations Act is self-executing—that is, it is left to the market participants to comply with the law. Rules are around disclosure and preventing market abuse. ASIC, unlike APRA, is an oversight and enforcement body. We are not a prudential authority. Several things flow from this difference:

- Inevitably ASIC will come in after a collapse has occurred. We are there, as an oversight body, to see if the law was complied with and, as such, we will arrive 'at the scene of the accident' (i.e. after the accident to see who caused it!).
- Our powers to act ahead of time are limited. For example, we do not have power to regulate capital adequacy or to prohibit certain business models.

ASIC was simply not designed or equipped to regulate the financial markets to, for example, ensure capital adequacy. Indeed, the underpinning policy behind the legislation (Corporations Act) does not do that.

This is why the answer to the question of whether ASIC could have prevented these flawed business models is clearly 'no'.

Now you will be thinking, we can probably accept that these collapses or near collapses are a feature of the current policy settings. Nevertheless, is ASIC enforcing market conduct and disclosure rules as intended or required to do by the Corporations Act? Could ASIC have done more to minimise the damage?

This brings me to my third point which is that while collapses or near collapses were essentially business model failures, ASIC is acting

decisively in exercising its powers to regulate market conduct and disclosure and fulfilling its mandate on regulating market conduct and disclosure. It is part of the work we are doing to rebuild and maintain confidence in the integrity of our markets.

Let me illustrate how we are doing that with a number of examples.

- ***Our work on insider trading, market manipulation and continuous disclosure***:

  As a result of additional resources and focus in these areas there has been an increase in investigations, with a number of these investigations being completed and progressed by way of briefs to the CDPP. We have an active Market Watch team headed by Tom Veidners and two Deterrence teams that deal with market integrity issues headed by Kathleen Harris and George Stogdale. These teams report to Commissioner Belinda Gibson who has immense experience in these areas.

  Importantly, we are now starting to see results from this work. Since January 2008 ASIC has achieved the following outcomes:

  - 3 criminal convictions
  - 10 bannings (7 on appeal)
  - 3 infringement notices for continuous disclosure breaches
  - 3 enforceable undertakings, and
  - 1 licence condition.

  A relatively new development for ASIC is the greater focus on bannings as a deterrent in markets matters. The combination of the strong deterrent effect and speedier outcome, compared to other remedies, makes them a useful tool. The majority of these bannings to date relate to brokers and market manipulation.

  In terms of convictions, a recent example is the outcome against the former Queensland Gas Company executive and company secretary. He pleaded guilty to four insider-trading charges and was sentenced to two years jail (14 months minimum non-parole period).

  This was also acknowledged as a significant outcome outside of ASIC with an article in the AFR observing that a '*pleasing aspect of the conviction…is that it was secured with 15 months of the offence' and that 'this speedier resolution is a direct consequence of the change in ASIC* '.[1]

[1] Alan Jury, 'ASIC takes scalp for insider trading' *Australian Financial Review*, 28 April 2008.

While ASX remains the front line supervisor, ASIC has significantly increased its surveillance capability and its enforcement resources.

- ***Our work on short selling***: This went through three distinct phases and on each occasion, ASIC's judgment was, we believe, correct:

  – March/April in 2008: considerable pressure was placed on ASIC to impose a ban but at the time we felt that the balance between price discovery and efficiency (benefits of short selling) outweighed possible systemic issues. Hence we resisted imposing the ban. We left it to the market. We did say, however, along with ASX that a short selling disclosure regime was needed and the Government agreed.

  – September/October 2008: where the combination of lack of confidence in the market, rumourtrage and the state of the international financial markets put the odds too much in favour of the 'short sellers' and we felt a 'circuit breaker' was needed. We also foreshadowed gross daily reporting as a minimum disclosure when the ban was lifted.

  – In November 2008 we reopened non financials but our concern on potential systemic issues in the financial sector remained until (earlier this week) when we reopened the financials. As we said in our release, the balance between market efficiencies and potential systemic risk has now moved in favour of the ban being lifted.

  We have been assisted in exercising these powers with recent Government legislation and by APRA and RBA. We will not hesitate to reimpose the ban if we feel that the potential for systemic risk outweighs the benefits of short selling from price discovery and liquidity.

- ***Our work on retail investor issues***: Clearly issues arise around proper disclosure to retail investors. Collapses involving retail investors are being closely reviewed and investigated by ASIC. Actions, where possible, are being taken under s50 of the ASIC Act to recover money for retail investors.

  – Since November 2007, ASIC has commenced 16 civil actions seeking to recover funds for investors in Westpoint. These include claims against the directors of Westpoint mezzanine companies, the auditors of the Westpoint Group, and financial planners. These are substantial actions seeking to recover some $329 million for investors.

    ASIC was successful in obtaining court orders for a global mediation (to commence mid June) of all Federal Court actions we commenced for compensation arising from the failure of the Westpoint group.

  – Opes is another example where ASIC focused on recovering money for investors. As a result of mediation a scheme of arrangement is to be put to Opes' creditors and the court. If approved by creditors and the court, the scheme should increase the return to creditors (including investors) of Opes.

- ***Our work on better corporate governance***: Our deterrence action extends to corporate governance as well. For example, the James Hardie case has involved the role of executives and non-executives in making important market disclosures.

  The case brought into sharp focus the fundamental responsibilities of both executive officers and non-executive directors who are ultimately responsible for significant public company decisions, and the release of information concerning those decisions, to the share market, employees, creditors and the public.

You can see from this brief list that ASIC is taking decisive action, within its powers, to enforce the law and protect retail investors (including seeking to recover compensation for them). ASIC's focus with those actions is rebuild and maintain confidence in the integrity of our financial markets.

Now you'll be thinking, yes we can see how bad business models are matters for Boards and CEOs and how punishing wrongdoing maintains and builds confidence, but couldn't more be done earlier and more proactively to minimise failures and maximise investor protection? Couldn't ASIC act earlier to detect problems?

This brings me to my fourth point that ASIC is pursuing surveillance and compliance with more rigor and resources, and is being more proactive in detecting potential regulatory problems earlier.

Following a recent strategic review, ASIC set up 12 stakeholder teams (by and large based on industry groupings). The thinking behind this restructure is that it facilitates ASIC getting closer to the market to better understand the specific businesses we regulate—for example, how they manage disclosure and risk. This in turn improves the ability of our teams to work with entities to identify potential compliance issues early (the benefit translating into better investor protection).

It is important here to again stress that this is not assessment of business models to see if they may be commercially flawed (for example, that they have adequate capital). It is about active surveillance and compliance to assist companies to detect potential regulatory issues at an early stage, for them to be able to better assess risks, and to keep their investors informed.

Let me illustrate this surveillance and compliance by outlining some of the work of 3 stakeholder teams which impact more directly on you:

- Market Participants team headed by Greg Yanco

- Exchange Market Operators team headed by Mark Adams
- Investment Banks and Intermediaries team headed by Camille Blackburn.

Let me give some examples of the work of these teams:

- ***Balance sheet strength***: I spoke last year on ASIC examining balance sheet strength and risks of market participants. This is a specific focus for us and initially we are looking at the larger market participants to ensure they have sound processes for managing and measuring financial and trading book risk. This is part of a broader review of capital liquidity requirements for non-APRA regulated licence holders.

  This means looking beyond the reported financial information to the nature of financial risks being taken and how they are managed. For example, we will look at principal positions and how they are used to facilitate client business from straight client facilitation through stock lending to writing options, swaps and warrants.

- ***Risk-based Compliance***: In a similar vein we'll be taking a more active and ongoing look at operational and business risks and how these are managed. In the next eighteen months we will engage market participants in assessing their compliance and risk management frameworks to see whether they are suitable for the size and nature of the businesses.

- ***White label brokers***: We know that many of you are concerned that, there are now a large number of licence holders that provide advice on exchange traded products with access to trading through a market participant. The compliance structure of these entities may not be to the same standard as that of market participants. Since our restructure became effective in September we have been active in this area. We have conducted surveillance on a number of entities and this has resulted in some of those licence holders making significant changes to their compliance and risk management structure. We have included these licence holders in our risk-based compliance approach within the market participants team and we are recruiting additional staff for this purpose

- ***Retail broker issues***: We are going to conduct a survey of retail stockbroking clients to see how they value the services you are providing.

  The focus of the survey will be on the quality and nature of financial services provided to retail clients of stockbrokers. We want to see how well the current model is working. The areas we are looking into include general and personal advice, and how it is provided; and we will examine managed discretionary accounts, point of sale disclosure on complex product features including partly paid securities and whether advice is useful and understandable. We will also specifically cover partly paid securities (i.e. the lessons from BrisConnect).

- ***Market rumours***: A key concern is the ease with which unsubstantiated information spreads. We have seen several instances where what look like well thought out and sound internal policies for dealing with rumours have been breached.

  Our experience in looking into rumours and spread of information is that there needs to be a more consistent approach. We do not want to inhibit the role of research sales and sales traders however in some areas the standards have not been very high. Greg's team is about to consult on a framework for dealing with rumours. This may lead to a regulatory guide or agreement on a set of principles that we can release as guidance.

- ***ASX assessment***: ASIC is required to conduct an annual assessment of compliance by market operators with their statutory duties. These duties include whether the operator has adequate arrangements for supervising its market and participants, handling conflicts and enforcing its operating rules.

  ASIC is currently undertaking its annual assessment of the ASX Group. We see this assessment process as one of the important opportunities we have to work with ASX and focus on things that are being done or could be done to promote confidence in the stock market.

  In this year's assessment which, when completed, will go to the Minister, we are paying attention to ASX's arrangements for the real time supervision of its market and the ongoing supervision of its participants.

- ***OTC markets***: OTC markets are fundamentally important to Australia's financial markets and economy.

  ASIC is working with industry to improve efficiency and transparency of Australian OTC derivatives market. This includes encouraging: standardisation of contract terms; the increased use of electronic trading platforms, and the provision of data to regulators about trading activity, pricing, and size and location of exposures.

  We will continue to explore ways to ensure that participants can confidently participate in Australian OTC markets and assess and manage their counterparty exposures.

So, you can see from these initiatives that we are tackling our compliance surveillance work so that we are more proactive in assessing risk earlier and working with you. Again, we are taking decisive action and adding resources to what falls within our mandate on the 'second peak'.

We are mindful that compliance and surveillance add costs in your business. We will strive to minimise those consistent with our responsibilities under the

Corporations Act. We will continue to work with ASX to minimise risks of duplication.

Now, so far I have mainly focused on market conditions in Australia and how we have responded. We are, of course, talking about the GFC and international regulatory changes will be relevant to us here.

This brings me to my fifth point that there is a significant global change agenda developing and ASIC's role will, to the extent it can, engage and provide advice to Government on measures which will rebuild and improve confidence in the financial markets.

The first observation to make is that, to date, the global reform agenda has focused on the immediate issues of the 'toxic' assets and prudential regulation of banks and on recapitalising of banks. Over the next year or so, the agenda will shift more to regulating markets and investments.

IOSCO, of which ASIC is an active member, will carry significant responsibility in this area.

At the outset I should say that the issue of global architecture for regulation is still in discussion. Earlier I mentioned our 'twin peaks' policy. There is debate going on whether more entities (e.g. hedge funds) should be prudentially regulated. In other words, to move more entities into the first peak of prudential regulation.

Let me illustrate that in Australia with our work on unrated and unlisted debentures. We pushed disclosure to the limit and brought in benchmarks for issuers to report on (e.g. capital adequacy and liquidity). These benchmarks were provided and will need to report on an 'if not, why not' basis. In other words we worked within our powers of disclosure. We did not (and could not) make those benchmarks compulsory. If you do make them compulsory, you are moving into the realm of prudential regulation.

Moving into prudential regulation may have efficiency impact on the financial markets which to date, have not been regulated this way. In other words, possible reduction of competition if players drop out if they cannot meet capital adequacy requirements. This needs to be balanced against investor protection.

Globally, whether financial markets (other than banks and other intermediaries) remain largely unregulated as in the past is still an open issue. There are difficult policy issues here for Governments. They need to find a balance between allowing risk taking and protecting investors.

Let me, however, move from the general architecture to the more specific. In the area of securities and investments regulation, there is work going on for specific reforms and it is useful to outline these (principally the work of IOSCO).

IOSCO's work has focused on regulation of areas which are key to restoring confidence in our financial markets:

- credit ratings
- short selling
- OTC markets and securitisation, and
- hedge funds.

IOSCO has established dedicated Task Forces in each of these areas. The Task Forces have been working to develop guidance to both Regulators and Governments in the form of high-level principles. The intention is that these principles will guide a consistent global approach to addressing the issues and weaknesses identified by the crisis.

ASIC has been a contributor to each stream of work and has co-chaired the Task Force on OTC markets and securitisation. This involvement places ASIC in a good position to provide advice to the Government on these issues. ASIC's overall approach is to seek support measures that will assist in restoring confidence in financial markets. We see restoring confidence is the key issue in any reform. We need vibrant markets; we need to restore investor confidence.

In the interests of time, I'll outline work we've done through IOSCO with short selling and credit rating agencies.

First, short selling

The IOSCO work on short selling sits well with the approach we have taken domestically.

The Task Force on Short Selling has developed four principles to guide regulating short selling. These principles have been generally endorsed and we envisage that there will be further discussion on them during the Tel Aviv meeting of the Technical Committee in June.

The four principles are that short selling should be subject to:

- controls, including strict settlement regimes, to minimise potential risks to the effective functioning and stability of markets
- disclosure and reporting requirements recognising local differences
- effective compliance and enforcement arrangements
- exemption regimes.

The approach Australian Government has taken to regulating short selling is consistent with each of these principles. For instance, our ban on naked short selling is consistent with the intended effect of the strict settlement regime proposed by IOSCO.

Yet consultation on the report indicates there is still much work to do to ensure a consistent approach, particularly on reporting and disclosure regimes. Issues include:

- whether reporting should only gross short positions or be supplemented with net open positions
- whether reporting and disclosure should apply to both derivatives and equities, and
- the level and frequency of reporting and disclosure.

ASIC will contribute to this work, which will involve advising and working with the Government to assess the implications for Australia.

Secondly, credit rating agencies (CRAs)

The international work on CRAs is another example of how Australia's made effective use of IOSCO's lead.

IOSCO laid the foundation for a consistent global approach by developing a Code of Conduct for CRAs and providing guidance to IOSCO members about how to inspect CRAs.

Australia's response to regulating CRAs has embraced these initiatives. Specifically as announced by the Government earlier this year:

- CRAs will be required to hold an Australian financial services licence
- licence conditions will include compliance with the IOSCO Code, and
- CRAs will be required to report annually about compliance with the IOSCO Code and we will undertake surveillance.

ASIC, with Treasury, is working through with industry important details on implementation.

Conclusion

Let me summarise and conclude:

- Australia's financial markets have fared better than overseas markets. Nevertheless, the destruction in shareholder wealth has impacted investor confidence and the rebuilding of that confidence is our collective challenge. ASIC is playing its part.

- While we have fared better, the collapses and near collapses are greater than in 1987. Weak business models have been behind or a significant factor behind these collapses or near collapses. ASIC could not have prevented these collapses, and nor can it prevent similar collapses in the future. Both the policy (Wallis Report) and the law (Corporations Act) support this and the position that ASIC is an oversight and enforcement regulator.
- ASIC's role is around market conduct and disclosure and here it has acted decisively and will continue to do so with a focus on rebuilding and maintaining confidence in the integrity of our markets. Examples I mentioned were our work on insider trading, short selling, retail investor protection, and corporate governance.
- ASIC has embraced the need for it to be more proactive, and minimising ahead of time the impact of market risks on investors. An example of what we are doing, and the resources we have added, is in the regulation and oversight of market participants, exchange traded operators, and investment banks.
- ASIC is involved in the international reform agenda which is unfolding. Australia's capital markets are global so it is important that we remain involved. ASIC's role is to assist Government to understand and assess the policy implications for Australia on the global agenda unfolding.

The Government's support of ASIC, particularly from the Treasurer and Minister Sherry, has been important in providing ASIC with the financial resources it needs to carry out the expanded functions which I have covered.

I said at last year's conference that I would, this year, update you on what ASIC is doing. I hope from what I have outlined you can see that:

- We are an active regulator in investments and securities working within the policy framework established for it.
- We are discharging our compliance, oversight and enforcement functions with a focus of rebuilding and maintaining confidence in our markets.

In that way, we will play a role, with you and Government and investors, in rebuilding the attraction of our capital markets and in that way help keep our cost of capital low as our corporates recapitalise.

Thank you.