ASIC

Australian Securities & Investments Commission

The business of Australia is …

Speech by ASIC Chairman, Alan Cameron AM, at the launch of the newly established Victoria Graduate School of Business at Victoria University on 23 March 2000.

Introduction

The Economist's Survey, *The World in 2000*, includes an interesting article entitled "Will Business Schools Last?" — a difficult question to deal with, when launching a new one you might think. But the author is John Quelch, Dean of the London Business School, so one would assume he will have a view on the topic. He refers to internet delivery and study groups connected by e-mail supplementing on-site coursework for part time and executive MBA programmes, concluding,

> "However, there will always be a market for the full time MBA among bright twenty-somethings who want to take time out to take stock of their career path, brush up on the latest thinking, perhaps develop a business plan for a start-up and become a member of the global alumni network."

So, the answer, you will be relieved to hear is, yes — business schools will last.

I certainly believe that it was appropriate to invite me, as chairman of ASIC, to perform this role today. After all ASIC is one of the principal regulators of business in Australia — not only as the principal regulator of the financial markets, intermediaries and products but also as the corporate regulator — the keeper of the records of Australia's 1.2 million companies, and the minder of corporate behaviour. But we are more than that — we are also charged with striving to maintain and improve the performance of Australia's companies, and all of the entities in the financial system — stock and futures markets, brokers of the stock, futures and insurance kind, advisers on almost all kinds of investments, superannuation, even the consumer aspects of banking. If as Calvin Coolidge said, "the business of the American people is business", then the business of ASIC is business with a capital B.

So we have more than a passing interest in the establishment of a new school of business. Indeed, if I were to write a credo for a new business school, it would be, to make the expression “entrepreneur” once more a positive description, rather than a term of abuse. The growing internationalisation and increasing use of technology in business ensures a continuing need for more and better prepared people to assume leadership roles in business.

As you reflect on the launch of this new school and its relevance to the future of the University and to the future of business in Australia, it might be helpful if I were to venture some thoughts on just where Australian financial markets are heading, a subject which despite its inherent attractions at a time when markets are booming, appears to daunt many observers. But the health of the business which produce the goods and services we need every day both depends on and is reflected by the markets.

And the markets at present are hard to pick. Some are predicting that the bubble is due to burst; others claim that it is not a bubble; while still others say it was one, but has burst. If we were putting together a prospectus, ASIC would require us to set out our assumptions. My assumptions are that you want to hear from me about high tech stocks, about Australia’s place in the world and about electronic commerce. Before I do that however, I would like to take this opportunity to comment on the unsatisfactory state of the Corporations Law as it currently stands being wrenched back and forth between state and federal jurisdictions.

It is not appropriate or necessary for me to comment on the merits of the recent High Court decision which led to the unexpected, somewhat early release from prison of Mr Alan Bond. Rather I want first to dispel any impression that I have any problem with the High Court, or the High Court with ASIC; indeed in the last year or so, ASIC has won several important matters in the High Court relating to its powers and discretions, such as the *DB Management v Southcorp* case, in which the Court upheld the wider view of ASIC’s discretionary powers with respect to takeovers than the Full Federal Court had taken.

The recent decisions in Byrnes and Hopwood, Wakim and now Bond reflect the High Court’s view that the complex, highly technical scheme to create by agreement a regime of national regulation by the Commonwealth administering State laws, is indeed so complex, that it falls under its own weight. Justice Kirby in one recent case refers to the “unpleasant task” of having to deal with this regime of laws. These cases do demonstrate, however, that we should once and for all, fix properly the jurisdiction of the Courts and ASIC with respect to the basic question of company law in Australia.

I am optimistic that these cases will provide the impetus for a reference of powers by the States to the Commonwealth which will provide a sound underpinning for a regulatory system which is vital to a sound and credible business economy.

The growth of high tech stocks

The financial press of late has contained much comment on the share prices of high technology stocks and the stockmarket's mania over dot.com. This all looks like good news for business schools and their graduates entering careers in the financial sector.

In an environment where over 50% of the Australian adult population own shares, and where there has been a liberalisation of the rules governing corporate fundraising with the implementation of the corporate law economic reform package, there is high demand for qualified, business professionals.

Internationally, commentators have focussed on the extent of the divide which appears to be growing between the new economy and the old; the high tech stocks, and the rest. This is reflected in the disparate performance of the Dow Jones index, the indicator of performance on the New York Stock Exchange and widely regarded as reflective of the old economy, despite the recent inclusion of stocks such as Microsoft; and on the other hand, NASDAQ, the home of the new economy, high tech stocks, exemplified by amazon.com. There are occasional wide swings, but the general trend has been for the former blue chip old economy stocks to wilt in price in face of the burgeoning internet related stocks in particular.

Australia has its own version, with our unitary market, the ASX (although that changed on Tuesday with the relaunch of the Newcastle Exchange). The index of the performance on the ASX, has been reaching record heights not because of a general strengthening of demand for leading stocks, but because the outstanding performance of one stock has caused it to become even more important in the calculation of that index — which in turn has further increased the demand beyond what the so-called fundamentals would have required.

What does the well-intentioned market regulator do in response to these gyrations? First, it is no part of our role to talk the market down. Others with a more general remit to monitor and supervise the economy may talk of irrational exuberance, to little apparent effect; but I have less call to be judgemental. But there are several basic messages which a market regulator can and should repeat.

1. There is a relationship between risk and return. The high returns some folk are presently deriving from the markets are due to the higher risk — and losses will follow eventually.

2. You can minimise those losses by following the old rules; spread your risk. Too many Australians who now hold shares,

hold shares in one or a handful of companies. That cannot be sensible.

3. We will do what we can to help protect investors. For example, ASIC and the ASX have a major campaign underway to improve the disclosure practices of listed companies which will bite hard on dot.coms which try to manage information, the way old economy stocks many years ago, tried to manage reported earnings. As a result of that campaign, on average, 3 - 4 referrals per week are being received from the ASX and responses have been sought from companies whose share price has fluctuated. At this stage no enforcement action has been necessary but the campaign has certainly had a positive educational impact. Companies are looking closely at their corporate governance arrangements to ensure they are complying. A greater number of trading halts, prior to a price sensitive announcement being made, have been observed since the campaign commenced.

4. Similarly, ASIC will continue its role of ensuring that accounting standards are complied with in the financial reports of these companies. New economy does not mean new accounting.

5. Do not speculate with money you can’t afford to lose. Borrowed money is top of that list — that’s why ASIC issued a release urging caution with respect to margin lending; an activity only to be engaged in by consenting adults.

From the regulator’s perspective, we face endless challenges in a market that has the capacity for such rapid change and where activity is increasingly at variance with accepted rules of market behaviour. How do you regulate a market place which does not behave in ways which have been observed for decades — where stocks that report increased earnings go down in price; where price-earnings multiples look like one day cricket scores rather than table tennis score sheets; where as US SEC Chairman Arthur Levitt said several weeks ago, “are some of today’s companies really worth 100 times nothing?”

One possible answer to that question was provided by financial commentator, Rob Ferguson in *The Australian* earlier this month. He was commenting on the enormous growth in the internet industry and the boom in high tech stocks and what that should mean to our political leaders. He referred to the merger of America Online with the outdated Time-Warner, using that as an example of how the focus on e-commerce has led to the rise and rise of the likes of Microsoft, Nokia, Cisco, Vodafone and AOL at the expense of Old World icons such as Coca-Cola, Unilever and General Electric. Like others who attended the World Economic Forum in Davos, he referred to the prediction that 80 per cent to 90 per cent of the Internet stocks might fail, but what is left will scoop the pool and the industry will be many times bigger in aggregate than its current seemingly inflated value. He concluded that the only issue which really mattered was ensuring that Australia was wired; was ready for the age of e-commerce.

That requires us all to develop, encourage and maintain the brain power and skills required to live and work in such a market place. Producing, attracting and keeping our well educated professionals within the industry should be a primary objective. But the regulator will have a continuing challenge to ensure that its capacities to understand the marketplace develop in line with the market itself. The credibility of the market to participants, both wholesale and retail, depends not solely, but to a large degree nevertheless, on the credibility of the regulator. That is why ASIC is investing heavily in electronic commerce of its own — like our world first, paperless, entirely on-line system of company registration; is encouraging entirely electronic prospectuses and applications; and is at the same time, developing and actively demonstrating a capacity for electronic enforcement.

In relation to the future direction of the Australian financial markets therefore, I can see only a burgeoning and constantly evolving playing field where the old world players are going to have to bring themselves up to speed or be left in the wake of young professionals who will graduate from schools such as this. I think perhaps our political leaders are also recognising the changes afoot. Evidence of this can be seen in the Government's initiative in relation to promoting Australia as a Centre for Global Finance.

It has become trite, and if that is possible at the same time, inaccurate, to observe that borders are coming down. It is true that borders are being crossed more often, more easily, and unobserved, but the borders are still there. The capacity to do business, lawfully, or unlawfully, across borders has given that dimension of the regulator's job even greater importance in recent times. Regulators respond by working even more closely with their international counterparts.

Conferences such as the International Organisation of Securities Commissions Conference (the IOSCO conference) which is taking place in Sydney this year from 14 to 19 May will help us to improve our international profile, and our performance, and provide, in the public sessions from 17 to 19 May, a good opportunity to hear the issues of financial market regulation debated by the world's leading practitioners.