

ASAF Members Attacking Corporate and Market Malpractice

Hot on the heels of corporate collapses, management and market malpractices and their inevitable impact on the professional conduct and ethics of securities analysts, **ASAF member countries/regions**, like the rest of the world, are busy **reviewing/restructuring/implementing legislations and practices** to tighten the standards of corporate governance and disclosure, as well as to ensure that corporate cowboys are reined in and pay their dues.

In this quarterly issue, we bring to our readers interesting articles on how some of our members “attack malpractices” in their respective regions: under the ExComm member section, **Mr Robert Bunker, ASAF Director from HKSI**, writes about the new **HK Securities and Futures Ordinance**, aimed at **tackling “market misconduct”**; under Members’ regional news, the **SIA** provides a brief, on the newly formed **Corporate Governance Council**, by the **ASX**, and of which the **SIA** is a member, to develop, amongst other things, a set of corporate best practice governance standards; **SAA, Chinese Taipei** provides an interesting account of the newly approved **“Regulation Governing the Protection of Securities Investors and Futures Traders”**, which, inter alia, establishes an **Investor Protection Fund** drawn from institutions related to the securities and futures industry, provides mediation for disputes, and class action for aggrieved investors and/traders. As one of its **Advocacy Committee’s initiatives**, **ASAF** is developing a policy paper on **Corporate Disclosure** as recommended best practice for its members, to be adopted at the **AGM 2002**.

More related articles could be found in the next issue of E-journal due for release in September.

From the Desk of an ExComm Member: Hong Kong Attacks Malpractice



Mr Robert Bunker

The new **HK Securities and Futures Ordinance (SFO)** is expected to come into full force at the end of 2002, pulling together and reinforcing existing laws and sanctions.

“Market Misconduct”, is defined as:

1. Insider dealing
2. False trading
3. Price rigging
4. Disclosure of information about prohibited transactions
5. Disclosure of false or misleading information inducing transactions
6. Stock market manipulation

The insider dealing provisions under the **SFO** repeat the substance of the existing provisions, while the other forms of market misconduct represent an expansion of the provisions under the existing **Securities, Commodities Trading, and Leveraged Foreign Exchange Trading Ordinances**.

All six forms of market misconduct will be subject to the civil regime as at present, at the same time, but all may be punishable as criminal offences where the evidence available is sufficient to lead to a conviction.

For the civil cases, the **SFC** will refer them to the **Financial Secretary** who decides whether civil proceedings should be instituted before the **Market Misconduct Tribunal (MMT)**, and for the criminal cases, the SFC will refer them to the **Secretary for Justice** who will decide on criminal prosecution.

Where there are dealings by “**connected persons**”, the term is defined very widely. “**Inside**” information (now referred to as “**relevant**” information) is any specific information not generally known to the persons who would be likely to deal in the securities.

False trading is defined as:

- False appearance of active trading, intentional or reckless creation of a false or misleading appearance of active trading, or with respect to the market for or price of securities or futures.
- Creating or maintaining an artificial price; intentional or reckless involvement directly or indirectly in transaction(s) which create an artificial price.
- “Wash sales” (transactions which do not result in a change in beneficial ownership).
- Matched orders (transactions that involve substantially the same price for substantially the same quantity).

Disclosure of false or misleading information refers to anything which has an effect of inducing transactions or has an effect on the price of securities or futures.

Stock market manipulation involves two or more transactions which will likely affect the price of securities with an intention to influence another person’s investment decisions. This is a re-enactment of the existing provisions under the old Ordinance.

The **SFC** is empowered to make rules from time to time with a view to creating exceptions to the civil and criminal provisions regarding market misconduct. This power is provided to preserve the flexibility to modify the laws (by subsidiary legislation) to suit changing business and market conditions, so that legitimate market practices are protected. Such will be subject to public consultation, the Financial Secretary’s approval and the usual vetting of the Legislative Council. An example of these rules is the recently published draft **Securities and Futures (Price Stabilizing) Rules**.

Civil Sanctions can be imposed by the **MMT** by:

Disgorgement orders (payment to the Government of any gains)

“Cold shoulder” orders (restriction on market participation – up to five years)

Disqualification orders (up to five years)

Costs orders (payment for the authorities’ costs)

Disciplinary referral orders to professional bodies for their action

Criminal sanctions – the penalties are a fine of up to HK\$10 million and up to 10 years’ imprisonment.

The SFO creates a **new right of civil action** against persons who have engaged in market misconduct by those who have suffered loss as a result.

Effect of the new law on SFC enforcement actions:

- A much wider range of market malpractices will be punishable under the SFO, either civilly or criminally.
- The Government has repeatedly emphasized its intention to improve the effectiveness of the enforcement measures used by the SFC. It is anticipated that investigations and follow-up actions will be conducted by the SFC aggressively under the new SFO.
- The Civil sanctions such as the disqualification orders, cold shoulder orders and disciplinary referral orders have serious implications on a person’s livelihood and reputation, causing potentially long-lasting social stigma.
- Very heavy fines and long jail terms may be imposed upon a criminal conviction.
- The private cause of action for damages available to the “victims” of market misconduct poses a new threat of potential litigation.

Robert Bunker

ASAF Director/HKSI Director

Education Committee News

EdComm submitted its draft **Action Plan** to the **EdComm/ExComm** members for comments, **deadline 2 September**. A final draft will be distributed to all ASAF members to be adopted at the **AGM on 27 October**.

Communications Committee News

ComComm submitted its draft **Action Plan** to the **ExComm** and thence Committee members and other committee chairs for comments on 21 August. A revised draft will be distributed to all ASAF members in **mid-September**, in time for a final plan to be adopted at the **AGM on 27 October**.

Advocacy Committee News

Based on responses by members to the questionnaire on **Corporate Disclosure of Material Price-Sensitive Information**, **AdComm** circulated a draft paper for members' comments, **deadline 30 September**.

The draft paper covers principles & premises governing disclosure. Members' comments will be used to finalise a paper for submission to the **AGM on 27 October** for adoption.

ACIIA® News

ACIIA® Council meeting and AGM: 26 & 27 June 2002, Rome

The **ACIIA® Council meeting and Annual General Meeting held in Rome on 26 and 27 June 2002** went off as planned. Members enthusiastically discussed a broad range of agenda items, not only regular items such as approval of the financial statements/budget, but also constructive and strategic items like implementation of the Foundation Examinations and development of the CIIA® promotion strategy and marketing materials. During the meetings, two new members (the **Austrian** and **Belgian** societies) were approved as **Contracting Members**. Also, the **Korean** society was approved as an **Associate Member** at the subsequent Council meeting in writing held on 16 August 2002; Consequently, the ACIIA® is currently comprised of 18 members (15 associations: **Austria, Belgium, China, France, Germany, Hong Kong, Italy, India, Korea, Japan, Poland, Russia, Spain, Switzerland**, and **Ukraine**, and 3 federations: **ASAF, EFFAS, and ABAMEC**).

The eleven Council members (the three federations above and eight associations: **France, Germany, Italy, Spain, Switzerland, Japan, China, and India**) were duly confirmed and **Mr Fritz Rau** was reappointed as Chairman. **Mr Kiyoto Hagiwara** was newly appointed Deputy Chairman. The more rapidly ACIIA® develops, the stronger will participation in CIIA® exams be.

The next AGM will be held in **Stockholm in June 2003**.

ABAMEC-ACIIA® Conference and the ACIIA® Council meeting (physical): 11 & 12 November 2002, São Paulo

An **ABAMEC-ACIIA® Conference** entitled "**Global Markets: A View of the Financial Analysts**" will be held on 11 November in conjunction with the ACIIA® Council meeting to be held on 12 November 2002 in **São Paulo, Brazil**. The Conference will emphasize the advantages and international features of ACIIA® and address major issues that are currently affecting the global markets. Presentations and discussions will be given/led by experienced professionals from various ACIIA® members including potential members. The Conference program will soon be sent to members. **ABAMEC and ACIIA®** welcome participation by as many ASAF members as possible.

Results of the March 2002 CIIA® Final Examination session

The results of the March 2002 CIIA® Final Examinations are as follows:

Pass Rate = (Number of Successful Papers per exam paper) / (Candidates Present per exam paper)

Exam 1 Pass Rate: 68.00%

Exam 1: (Economics, Financial Accounting and Financial Statement Analysis, Equity Valuation and Analysis, Corporate Finance)

Exam 2 Pass Rate: 77.39%

Exam 2: (Fixed Income Valuation and Analysis, Derivative Valuation and Analysis, Portfolio Management)

The cumulative number of candidates who have successfully passed both papers of the final exams was **1,365** as of **March 2002**. It's not surprising that CIIA® exams continue to stimulate employers and potential candidates in the domestic and international financial/investment fields in view of the outstanding knowledge and skills of those who hold the CIIA® designation.

The last CIIA® Final Examinations smoothly took place on **30 (Europe and the Americas) and 31 (Asia) August 2002**. **The Examination results will be disclosed in due course**.

Secretariat News

The Treasurer, Mr Leigh Hall, announced his **retirement** and will **step down after AGM 2002**, and is expected to be replaced by **Mr Mike Willis, the past President and current Honorary Treasurer of the SIA**.

The Manager, Mrs Shereen Khor-Nga will also leave ASAF **after the AGM, due to a career change**. **ExComm** is currently reviewing the issue of replacement/possible restructuring of the current combined roles of the managerial/accounting/public office functions.

Members' Regional News

SIA — CEO's Brief

Initiatives in Corporate Governance

In the midst of calls from the **Australian government** and **professional bodies** for corporate Australia to uphold the standards of corporate governance and disclosure, the **SIA** welcomes the opportunity to be involved in addressing various related issues.

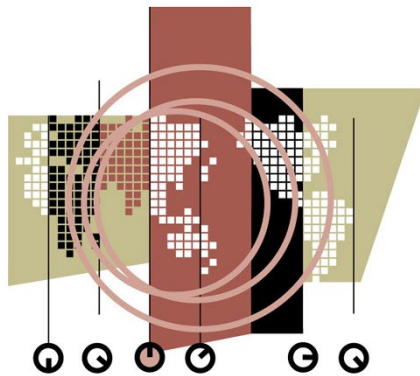
The Institute is now a member of the **Corporate Governance Council formed by the ASX** which will, as one of its initiatives, develop an agreed set of corporate best practice governance standards. In addition, the SIA is also examining the **ASX Exposure Draft on "Enhanced Disclosure"**.

The **ASAF Advocacy Committee**, chaired by the Institute's past president, **Mike Willis**, is also reviewing research on corporate disclosure practices submitted by ASAF member societies and undertaking a detailed analysis of existing disclosure policies. A draft paper highlighting best practices and principles was distributed to ASAF member societies and will form the basis for a proposed regional standard on disclosure.

SIA/AIMR Inaugural Conference

23-24 Sept 2002 in Sydney

Australasian
Investment
Management
Conference



2002

The Institute is pleased to hold its inaugural **Australasian Investment Management Conference** jointly with the **AIMR** and its two local affiliated bodies, the **Sydney Society of Financial Analysts** and **Melbourne Society of Financial Analysts**.

Prominent international and domestic speakers include: **Abby Joseph Cohen, Goldman Sachs (via video conference); Richard Humphry, CEO of the ASX, Lynne E Turner, former chief accountant, SEC; Michael Sharpe, director ASX and former chair IASB; Mark Kritzman, Wyndham Capital Management; Gifford Fong, Gifford Fong & Associates; Chris Heasman, Lazard Asset Management.**

For more info: www.tourhosts.com.au/investment

SAAJ-IPS Conference:

10 September 2002, Tokyo

SAAJ Investment Performance Standards (SAAJ-IPS®), amended as the **Japanese Version of Global Investment Performance Standards (GIPS)** in April 2002, officially received endorsement of the **Investment Performance Council (IPC, established by AIMR) as a Country Version of GIPS (CVG)** on June 25, 2002.

Taking this opportunity, SAAJ held the **4th SAAJ-IPS Conference** in Tokyo on September 10, 2002, focusing on: **future developments of GIPS/CVG; interpretations and future revisions to GIPS/CVG; and practical issues in implementation of the standards.**

Speakers included **IPC delegates for the Japan seat as well as SAAJ-IPS Committee members.** Some 240 including asset managers, pension plan sponsors, consultants, verifiers, etc., participated in the conference.

Calendar 2002/2003

26 & 27 October 2002

ASAF AGM & meetings 2002
Sheraton Mirage, Gold Coast
Australia

11 & 12 November 2002

ABAMEC-ACIIA® Conference/
ACIIA® Council Meeting
Sao Paulo, Brazil

12 & 13 May 2003

AIMR Conference
Phoenix, USA

24 & 25 June 2003

ICIA meeting/EFFAS/ACIIA® AGM
Stockholm, Sweden

Members' Regional News

SAA Chinese Taipei — Enactment of “Regulation Governing the Protection of Securities Investors and Futures Traders”

The Taiwan Parliament approved a new legislation, “Regulation Governing the Protection of Securities Investors and Futures Traders” on June 20 2002. The purpose of the regulation is to strengthen protection over securities investors and futures traders to complement the Securities and Exchange Law, Futures Trading Law and related regulations. The regulation has 41 articles and its salient features are:

1. Investor Protection Institution (IPI)

IPI is a statutory body established with donations from the peripheral institutions of securities and futures market as appointed by the relevant authority, and is responsible for the protection of securities investors and futures traders.

2. IPI Supervises the Depository and Usage of Protection Fund

Besides the initial donation, the source of **Protection Funds** include appropriations from securities firms, futures commission merchants, Taiwan Stock Exchange, OTC, and Taiwan Futures Exchange. Appropriation ceases when the amount of Protection Fund reaches NT\$5 billion. The Fund will meet the financial obligations due to securities investors and futures traders by securities firms and futures commission merchants in the event of default by the latter due to financial difficulty.

3. Mediation Committee Charges for Mediation of Securities and Futures Trading Disputes

IPI will establish a **Mediation Committee** to handle disputes arising from securities and futures trading. Findings through the mediation process will have the same effect as the irrevocable judgement of civil proceedings.

4. Class Action

As securities investors and futures traders hurt on common grounds are often dispersed, with individuals hesitating to petition in the court for protection due to the high costs associated with providing evidence and the entire litigation process. The article of incorporation of the IPI empowers the IPI, for the sake of public interest, to launch class actions or arbitration with the authorization of more than 20 securities investors and futures traders.

5. Exclusive Account

The regulation stipulates that payment collected by a securities firm for the purpose of this legislation should be deposited in an exclusive account, and be kept separate from the assets of the securities firm. Appropriation from the exclusive account is strictly forbidden, and funds in the account are not subject to any seizure or claims by the creditors of the securities firm concerned.

SAA, Chinese Taipei has encouraged its members to provide detailed information about the Regulation to their customers. In addition to giving investment advice, members of **SAA,CT** will also try to safeguard small investors' interests and prevent them from being adversely affected when unscrupulous senior executives or large shareholders of listed companies siphoned off capital from the companies.

INFINZ (previously NZSIA) — Restructuring

The New Zealand Society of Investment Analysts (NZSIA) recently completed a merger with the New Zealand Society of Corporate Treasurers (NZSCT), forming a new body, the Institute of Finance Professional New Zealand Inc. (INFINZ)

The primary objective in the merger of the NZSIA and NZSCT is to form a more influential and representative industry body that is representative of individuals in the broad capital and investment markets in New Zealand.



Mr Roger Kerr



Mr Paul Hocking



Mr Deepak Gupta

The new **Chairman of INFINZ** is **Mr Roger J Kerr**, who was the **Chairman of the NZSCT** immediately prior to the merger.

INFINZ has appointed an **Executive Director, Mr Paul Hocking** who has 20 years experience in funds management and merchant banking to lead the organisation.

Mr Deepak Gupta shall remain the **ASAF** delegate representing **INFINZ**, as he has done for the **NZSIA** for many years.

In creating **INFINZ**, there is a strong mandate from members of both societies to combine and form a new body that has more influence, advocacy presence, research resources and standing with the finance community, business community and government agencies.

There also exists a common interest from all members to:

- Promote and enhance strong and liquid financial, capital and investment markets in New Zealand.
- Improve the reputation, credibility and standing of New Zealand’s markets by lifting individual participant’s professional standards, practices and conduct through the self-regulatory activities of an active industry association.

An unashamedly ‘nationalistic’ desire to retain and maintain independent representation for financial and capital markets in New Zealand was also of concern to members of both the NZSIA and NZSCT in promoting the creation of INFINZ.

INFINZ’s members are involved in all aspects of the finance and capital markets and come from major corporates, banks, investment banks, financial institutions, fund managers, stockbrokers, government departments, academia, legal and accountancy firms, treasury/investment advisers and small-medium companies.



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