Financial Services Reform and the Stockbroking Industry

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For the stockbroking industry, FSR [1] has presented a number of issues and challenges. The stockbroking industry was already heavily regulated by ASIC and ASX: FSR added more organic, service-based regulation to the mix. As was the case with all participants in the financial services industry, the first problem was the management of the project to transfer or streamline to a new licence, but there were and continue to be a number of others, including:

1. The difficulty of finding the law
2. Backtracking through the refinements to fix FSR
3. Disclosure
4. Are stockbroking clients better informed? Conflicts management
5. Corporations Act/ASX Market Rule overlap and duplication
6. ASIC and breach reporting
7. Consumer survey - dollar disclosure
8. Market manipulation
9. FSR makes 'unsuitable advice' a criminal offence
10. Government proposal of simpler regulation

1. Finding the law - complex and convoluted legislation

According to the ASIC *Quarterly Overviews of Relief Applications,*[2] from October 2003 to December 2005, the number of instances of ASIC granting relief using its exemption and modification powers to change the law was as follows:

September – December 2005	400
May – August 2005	752
January – April 2005	404
August – December 2004	791
October 2003 – July 2004	1337
Total	3684

Class orders alone during the above period account for some 200 instances of the relief granted:[3]

2006	10
2005	51
2004	89
2003	35

[1] For most of the industry, FSR means Financial Services Reform. ASIC is now using the acronym for Financial Services *Regulation.* The author will be using it in the former sense.

[2] www.asic.gov.au (9 June 2006).

[3] Loc cit.

Total	195

While the above figures are not categorised as being 'FSR related', it is reasonable to presume that a majority of them are. The end of the transition period to 11 March 2004 was a particularly busy period, with over 1300 instances of relief granted.

ASIC has published 15 Policy Statements[4] and 15 Guides to FSR. ASIC's website also carries 162 (July 2006) 'frequently asked questions' (which are called 'QFS's') solely relating to FSR matters.

Accordingly, in order to find the law on a particular subject, it is necessary to check the *Corporations Act* 2001 (Cth), the regulations, any instruments enacted by ASIC which modify the law and any published policy.

Bearing in mind the growing complexity of the law and ASIC modifications and policy, it is no wonder that ASIC is very loathe – as the Securities and Derivatives Industry Association (hereafter SDIA) has recently found - to use its power to make further class orders to remedy problems with the legislative scheme. It is hoped that there will be some form of consolidation process implemented, not necessarily to change the substantive provisions, but to at least bring all the requirements within the same document, preferably the *Corporations Act*.

2. Backtracking through refinements to fix FSR

Much of the complexity of the law arose from the Government's 'one-size-fits-all' approach to FSR, when different sectors in the financial services industry are very different. Almost as soon as this umbrella scheme for financial services was put into place, the Government and ASIC commenced modifying it to take account of the reality of differences in products and services across the industry. For example, the business of financial planning is different to that of stockbroking and vice versa. Unfortunately though, to a large extent FSR dealt with stockbrokers as if they were planners, so a question from a client like 'What stock looks good today?' was treated like a request for a full financial plan.

Since FSR came into effect, the Government has been under pressure to fix it. The 2005 ***Refinements*** program addressed 27 matters by a combination of changes to the *Act*, regulations, ASIC policy and class orders. The main changes of benefit to the stockbroking industry were as follows:

2.1 New Statement of Advice provisions

In line with SDIA recommendations, the new ***further advice*** provisions replaced and expanded upon the former ***further market related advice*** provisions. Where an adviser gives ***further advice***, no statement of advice (SOA) is necessary. The only new requirement is that the old 90-day period in which a client may request brief particulars of the ***further advice*** has been extended to 7 years. The new provisions apply generally to all licensees (including planners), not just market participants. SOAs are no longer required for advice on cash management trusts.

Significant problems that members had experienced with FMRA were solved, namely:

- the product limitation (ie FMRA did not apply to advice on IPO's or unlisted products; further advice does), and
- the medium limitation (ie FMRA did not apply to advice given in person; further advice does).

2.2 Wholesale/retail investor definition

SDIA argued that aggregation of associated assets to fulfil the assets tests ought to be allowed. This has been adopted. This should make it easier for clients to meet the $10m test through aggregation of all their assets on a gross basis. The accountant's certificate for the net $2.5m assets or $250,000 income test is now only needed every 2 years, instead of every six months.

[4] ASIC Regulatory Guides RG146, 164-169, 175-176, 178-183, 185.

2.3 General Advice Warning

ASIC released a class order on simplified warnings for oral general advice. The following are some examples:

> 'This advice is general, it may not be right for you.'
> 'This advice is not tailored, so you can't assume it will be suitable for you.'
> 'This advice may not be suitable for you because it is general advice.'
> 'You will need to decide whether this advice meets your needs because I haven't.'

SDIA Members still have concerns about the repetition of the Limited Information Advice Warning under s 945B and have sought the restatement of ASIC's 1997 *Good Advice* policy guidance under PS121, which took a realistic approach to repetition of the warning. ASIC has replied that it is unwilling to provide guidance because the law is different. The SDIA is taking this up with Treasury.

2.4 Tailored FSGs

Tailoring of financial services guides (FSGs) to suit the service offered is allowed.

2.5 Alternative Products in SOA

SDIA objected to a proposal to specifically consider alternative products in an SOA**.** The Government acted on these objections, and the regulation did not go ahead. The obligation was never part of the law, but was only mentioned in ASIC policy, which was no reason to enshrine it in legislation.

The *Refinements* were welcomed by the stockbroking industry. However, outstanding issues remained.

Refinements Mark II[5] has 56 proposals currently under consideration for further changes. SDIA has made a substantial (30 page) submission to the Federal Government's review. The Review covers many of the areas not fully dealt with in last year's *FSR Refinements* programme, particularly some of the harder issues. Some of the key areas for the stockbroking industry include:

- Wholesale/retail client definition
- Secondary services requirements
- Personal v General advice to retail clients
- Dollar disclosure
- Breach Reporting
- Regulatory Overlap (ASIC/ASX)
- Register of Sanctioned service providers ('Bad Apples' Register).

The last two topics in particular mentioned in the Paper have been raised extensively by SDIA in the past.

3. Disclosure - FSR and stockbroking

In the stockbroking area, particular problems have been encountered in a variety of areas, including:

- Documentary and dollar disclosure
- Licensing
- Wholesale/retail definition, and
- Secondary services.

Like all financial services providers, the process of re-licensing to AFSLs in the lead up to March 2004 caused resource and cost problems, but the ASIC streamlining process at least helped to minimise disruption to their continuing business.

The transition to FSR has not given rise to increased regulatory action or client complaints across the stockbroking industry:

[5] Treasury, *Corporate and Financial Services Regulation Review Discussion Paper*, April 2006.

- There has been no significant increase in FICS complaint numbers.
- The threatened departure of senior advisers did not eventuate
- ASIC's review of research policies and procedures 2002-3 found no evidence of significant issues as there had been in the U.S., the subject of the $1.2b global settlement across Wall Street firms in 2001.

4. Are stockbroking clients better informed?

There is no convincing evidence that clients are better informed. In April, ASIC issued a discussion paper on Conflicts Management,[6] comprising a series of scenarios in the wholesale and retail, corporate and research environments such as:

- Lead manager on IPO issuing favourable research
- Selective publication of changes in research recommendations
- Favourable research on corporate clients generally
- Ineffective and deficient disclosures in research
- Commissioned research
- Commission-only based remuneration
- Directed brokerage.

ASIC's conflicts paper notes a scenario where clients routinely 'bin' research the disclosure and disclaimer pages in research reports. It is not just these documents which are treated this way. In the lead-up to March 2004, clients of stockbrokers were bombarded with the usual FSR documents, including FSGs, PDSs and SOAs. They also needed to receive new CHESS sponsorship agreements or disclosures, and every client under ASX rules needed to receive written notification of ASX's new power to unwind or re-price trades in order to restore a 'fair and orderly market'.[7] All this was a very expensive printing and distribution exercise, and evidence is that most documents were routinely 'binned'. It is therefore not surprising that research reports are treated in a similar way, especially those from international firms affected by Sarbanes-Oxley reforms and NYSE requirements.

In a pure, perfect world, ASIC would have a stockbroking adviser who works in a full service firm attached to an investment bank, appraised of all the possible interests and conflicts, including corporate roles, private holdings of research analysts and proprietary trading, regardless of Chinese Walls, which could possibly influence or be relevant to the advice they give on a stock. Moreover, as well as being fully across all this information, the adviser would be able to seamlessly and automatically express all these interests to the client, and why they are relevant and/or conflicting with his duty to the client. The adviser's disclosure is clear, concise and effective[8] - say 20 words or less - and yet conveys perfectly what the client needs to know and what they need to say in order to avoid criminal prosecution. Achieving this balance is one of the main challenges facing SDIA members in dealings with retail clients.

5. Corporations Act/ASX Market Rule overlap and duplication

SDIA has for some time raised this as an issue that is causing added cost and inconvenience to members, with questionable regulatory benefit.

SDIA member firms are both market participants under ASX Market Rules and financial service licensees under the *Corporations Act*. As such they are regulated by ASX and ASIC. This has been the position for many years, but the on-going effect of duplication of rules and enforcement has become critical in recent years, especially with the advent of FSR, to the point where it threatens the efficiency

[6] ASIC, *Managing Conflicts of Interest in the Financial Services Industry*, Discussion Paper, April 2006.

[7] ASX Market Rule 14.1.5.

[8] Like the requirement for the information in a Statements of Advice in s 947C(6).

of financial sector regulation. The problem lies with ASX interpretation of its obligations under the Act, particularly the obligation to ensure that the market is 'fair, orderly and transparent'.[9]

The area of most duplication is with rules concerning client relations, particularly in ASX Market Rules Chapter 7.

The following Table gives several examples of areas which are subject to duplication and/or overlap of requirements administered by ASX and ASIC:

Subject	Corporations Act	ASX Market Rule
Client Order Priority	s 991B	7.5
Confirmations	s 1017F	7.9
Managed discretionary accounts	ASIC Class Order 04/194; PS179	7.10
Principal trading	s 991E; regs 7.8.20, 7.9.63B(4)	7.3
Staff trading	s 991F	7.8.2
Trading Records	s 988E; reg 7.8.11	4.10
Trust Accounts	s 981C; regs 7.8.01, 7.8.02	7.11

There is no requirement that client relations be covered in ASX Rules: s 792A concentrates on supervising the market, ensuring a fair and orderly market and monitoring the conduct of participants on or in relation to the market. There is no mention of regulating matters between the client and the participant. Other licensed market operators (eg BSX, NSX) have chosen to recognise this duplication, and incorporate *Corporations Act* requirements in their rules by reference without repeating them. It would simplify the regulation of this sector if ASX were to adopt a similar attitude, especially in relation to client relations matters.

Complying with 2 sets of requirements means that staff must be familiar with both the law and the rules. (For SDIA members who are also SFE participants, this means three.) Firms must have compliance programs which address both sets of requirements. This reduces efficiency and increases costs, and is very difficult to justify, particularly where the requirements are very similar. If they were the same, at least SDIA members would only need to look at one set of requirements (albeit duplicated). However this is not the case, and most of the above examples have differences between the Act and the Rules which need to be taken into account.

5.1 Confirmations

[9] Under the *Corporations Act* s 792A, ASX must:

> '(a) to the extent that it is reasonably practicable to do so, do all things necessary to ensure that the market is a fair, orderly and transparent market; and
>
> (b) comply with the conditions on the licence; and
>
> (c) have adequate arrangements (whether they involve a self-regulatory structure or the appointment of an independent person or related entity) for supervising the market, including arrangements for:
> (i) handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the market operates in the way mentioned in paragraph (a); and
> (ii) monitoring the conduct of participants on or in relation to the market; and
> (iii) enforcing compliance with the market's operating rules; and
>
> (d) have sufficient resources (including financial, technological and human resources) to operate the market properly and for the required supervisory arrangements to be provided…'

Post FSR, under the *Corporations Act*, trade confirmations (the old 'contract notes') only need to be given to retail clients, not wholesale. After a series of submissions by SDIA, in 2005 ASX amended its rule on reporting transactions to clients. The changes align the ASX rule more closely to the *Act*. The ASX now excludes some, but not all wholesale clients – the important exception being licensed intermediaries like financial planners – from the obligation to be given a confirmation. Accordingly, the ASX Rule that exempts brokers from the requirement to send contract notes to wholesale investors is still subject to various conditions that are not reflected in the *Corporations Act*.

In addition, ASX continues to insist, notwithstanding provisions in the *Act* that allow confirmations to be sent to the client's agent,[10] that confirmations be sent to the 'end client's' address. ASX does not allow confirmations to be sent to the client's financial planner or even to a licensed third party administrator appointed by the client. This has created significant issues when dealing with the planning community, the latter which are not subject to ASX rules or jurisdiction, and frustration to the end client who has organised his/her affairs in order to avoid receiving such documentation.

5.2 Enforcement

As well as the subject matter of the rules, there is also occasional duplication of the enforcement of the rules. This is perhaps inevitable where the jurisdiction of ASX and ASIC is blurred by overlapping or identical requirements.

In the past there have been agreements as to ASX's role as 'lead regulator' of market participants. The current MOU between ASX and ASIC signed in 2004 covers matters such as management of (ASX) conflicts, communications and breach reporting between the 2 bodies. Moreover, there have been unfortunate overlaps in the timing of monitoring activities. At the end of 2004 and early 2005, ASIC embarked on a much-publicised 'stockbrokers campaign' involving target surveillance of a number of SDIA members. At the same time, ASX was also conducting its annual review of brokers. While approaches by SDIA led to extensions of time, it was disappointing that greater co-ordination in the planning phase of the campaign between ASX and ASIC had not taken place.

5.3 Breach Reporting

Another issue involving problems of regulatory duplication is breach reporting, where SDIA members must report significant breaches to the relevant regulators. One member noted that a matter arose which needed to be reported to ASX, ASIC and SFE. This makes no sense and is difficult to administer in practice, as the relevant criteria are not identical. (See also para 6, below.)

5.4 Market manipulation

ASX Rule 13.4 on prevention of market manipulation is similar to, but different from, *Corporations Act* s 1041B. (See also para 8, below)

5.5 'Old law securities'/'new law derivatives'

In relation to new products, problems have arisen from the need to have certain new derivative products (usually warrants) categorised as derivatives rather than 'miscellaneous products' in the ASIC licensing scheme. This has meant some brokers have needed to amend their licence to continue to trade in miscellaneous products. Recent discussions with ASIC have not resolved the issues.

5.6 Approval process and solutions

In order to solve these problems, it is necessary to identify duplication and rationalise it. Moreover, it is necessary to revisit the approval processes for new ASX rules. In the past, it appears that new rules (over which the Minister has the power of dis-allowance) have not attracted detailed scrutiny from Government which takes ASX's role and competition concerns into account.

[10] *Corporations Act* 2001 (Cth) s 1017F(5).

At the 2004 SDIA National Conference, ASX announced a regulatory scope review. Part of the review was to identify areas of possible duplication with other regulatory requirements. Whilst we welcomed this initiative, there are still problems, as outlined above. ASX noted at this year's Conference in May this review is on-going. No doubt the merger with SFE will add to the complexity of the project as well.

6. ASIC and breach reporting

Breach reporting continues to be a difficult issue for Members. Despite some reasonable commentary on the operation of the section in its publications,[11] ASIC is interpreting the requirement in s 912D very broadly, and in seminars and presentations – such as the SDIA Breach Reporting Seminars in December 2005 - is recommending an 'if in doubt, report' approach. Concerns are allayed by ASIC quoting the low number of breaches that result in regulatory action.

Under the *Act*, licensees must only report breaches of their licence or the law that are 'significant' in terms of:

(i) the number or frequency of similar previous breaches;
(ii) the impact of the breach or likely breach on the licensee's ability to provide the financial services covered by the licence;
(iii) the extent to which the breach or likely breach indicates that the licensee's arrangements to ensure compliance with those obligations is inadequate;
(iv) the actual or potential financial loss to clients of the licensee, or the licensee itself, arising from the breach or likely breach.

ASX has its own breach reporting requirements which also apply to SDIA members.[12] These are similar but not identical to those of the *Corporations Act*, and are arguably more extensive, which leads to duplication and uncertainty.

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[11] ASIC, *Breach Reporting by AFS Licensees – An ASIC Guide*, October 2004.

[12] ASX Market Rule 28.2.3 states:

> 'A Regulated Person must notify ASX in writing immediately if:
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> (a) it becomes aware that it has breached any of the Rules and that breach is significant;
> (b) the Regulated Person is also a Clearing Participant and any circumstance exists which constitutes an event of default under the operating rules of an Approved Clearing Facility;
> (c) the Regulated Person or any of its Employees is the subject of any regulatory or disciplinary action by any exchange, market operator, clearing and settlement facility, the Commission or any other regulatory authority (or if the Market Participant becomes aware that any Clearing Participant through which it clears Market Transactions or any of the Clearing Participants Employees is the subject of any action of that type);
> (d) the Regulated Person suspects or becomes aware that any Employee has engaged in fraudulent conduct or other conduct which might constitute Unprofessional Conduct; or
> (e) the Regulated Person becomes aware or has reasonable grounds for suspecting the existence of any other event or circumstance which adversely affects or may adversely affect its financial position or solvency or its ability to comply with the Rules.
>
> For the purposes of determining whether a breach is significant for the purposes of paragraph (a), a Regulated Person must have regard to the following:
>
> (f) the number or frequency of similar breaches;
> (g) the impact of the breach on the Market Participant's ability to comply with any other Rule or Procedure or to conduct its business operations;
> (h) the extent to which the breach indicates that a Market Participant's arrangements to ensure compliance with the Rules and Procedures is inadequate;

Clearly something more than isolated breaches are required, especially where the breach does not result in a large financial loss to the licensee or the client. Instances have arisen where ASIC expects relatively minor disciplinary action by market operators to be reported as a 'significant breach', notwithstanding that none of the four criteria above have been satisfied. In its broad interpretation, ASIC seems to be regarding the obligation to report breaches more as a surveillance tool or as a means to provide market knowledge to its officers, even when there is no legal requirement on licensees to report.

In a press release in May,[13] ASIC welcomed a 'doubling' in breach reporting by the financial services industry which it said shows that the industry is taking its obligation to notify ASIC of breaches seriously. ASIC had stated that 'in the first nine months of this financial year, ASIC received 690 breach notifications, or between 28 and 50 a fortnight, which is twice the number received before the October 2004 publication of ASIC's guide to reporting breaches'.

Since 1 July 2005, ASIC reported that it received 690 notifications including:

- 258 breach notifications from the general insurance and superannuation sectors
- 35 breach notifications from deposit taking institutions
- 33 breach notifications from life insurers
- 37 breach notifications from stockbrokers.

The most common types of notifications were breaches involving '…disclosure obligations, financial viability, incorrect fees and charges, statements of advice and unit pricing.'

Of the 690 breach notifications received since 1 July 2005:

- in 431 cases, licensees addressed the matters in a manner acceptable to ASIC
- in 63 cases, ASIC continues to monitor licensees' progress
- in 6 cases, licences have been varied
- in 30 cases, licensees remain under surveillance, and
- in 25 cases, formal investigations are underway.

The life insurance industry has been singled-out for more attention due to its relatively low number of breach notifications. (At the May 2005 National Conference, ASIC expressed similar concerns about stockbrokers, but by December 2005, apparently these were allayed.)

7. Consumer survey - dollar disclosure

Are investors now better informed, or more confused?

A number of consumer surveys are underway which address this question, amongst others. The Association of Superannuation Funds and ING Bank are recently reported to be surveying clients as to satisfaction with service and disclosure. In relation to Dollar Disclosure of fees and charges, SDIA retail members have long been concerned about the practical difficulties and need for dollar disclosure in the stockbroking context. For example, if a client has agreed at the start of the relationship to pay 1% brokerage on all transactions, and this is confirmed the same day on trade confirmations in dollars, is it really necessary before each transaction for the client to be informed of the dollar amount of brokerage the client may be charged, together with the split of brokerage between the firm and the adviser? The general insurance industry has received continuing relief from these requirements.

(i) the actual or potential financial loss to clients of the Market Participant, or the Market Participant itself, arising from the breach; and
(j) any other matters specified by ASX from time to time.'

[13] ASIC, *Information Release* IR06-14, 2 May 2006.

In order to substantiate SDIA claims that it is not always necessary to disclose dollar amounts of brokerage, fees, etc every time advice is given, SDIA has engaged an independent research house to conduct a survey of consumer understanding and needs for disclosure.

8. Market manipulation anomaly

- What are the consequences, what are the unintended consequences?
- Are markets now more fair, orderly and transparent?

An anomaly emerged with the FSR changes to the market manipulation provisions of the *Corporations Act* (principally s 1041B) which took effect in 2004. In short, from 2004 the 'intention defence' (the old s 998(6)) was removed from the *Act*, and transferred to the *Criminal Code*. This was in line with Government policy for all Commonwealth Acts which include criminal offence provisions to be covered by the Code.

The implications are:

(1) for criminal prosecutions – uncertainty as to the application of the *Criminal Code* to market manipulation provisions (and no cases since 2004 have clarified the situation).

(2) for civil penalty actions (by ASIC) and civil actions (between private litigants) generally – the removal of the intention defence means that an otherwise legitimate transaction may constitute a breach of the Act. Examples include portfolio switching for fund managers, crossings between proprietary trading accounts, and crossing stock between family members or members of a corporate group or in/out of superannuation funds for tax or other reasons. These could be caught even if there were no intention to manipulate the market, and there was no manipulation.

In the direct market access area, proposed changes to the ASX Market Rules on crossings may increase the likelihood of breaches of the Act, since more 'accidental (principal or related party) crossings' are likely.

9. FSR makes 'unsuitable advice' a criminal offence

One change that was never explained in the explanatory materials was the fact that the old obligation to give suitable advice (the 'know your client'/'know your product' rule) in the former section 851 became a criminal offence in s 945A. This has become not just a minor offence, as the penalty for unsuitable advice is a maximum fine of $22,000, 5 years jail, or both.

The policy reason for making this matter a criminal offence carrying the same penalty as the serious offence of market manipulation has never been adequately explained. ASIC has not exactly used the new offence for a wave of prosecutions: there has only been one in the last 2½ years of its operations (where a representative received a bond for failure to give an SOA).[14] It would appear that ASIC is treating it more as a regulatory tool for protection of the consumer than a criminal matter, with individuals more likely to be banned than prosecuted. This was the case before FSR. Banning individuals, disciplining firms if necessary, and statutory civil remedies should be enough to protect the consumer. The rationale for the introduction of criminal sanctions remains uncertain.

10. Government proposal of simpler regulation

In a keynote speech in February 2006, the Parliamentary Secretary to the Federal Treasurer, The Hon Chris Pearce MP announced the Government's proposal to simplify business and markets regulation. The proposal, *A Simpler Regulatory System* is founded on the goal of achieving a more productive economy and markets. A principles-based approach is emphasised, underpinned by industry self-regulation. The proviso though, is that self-regulation by industry must include ***proportionate*** sanctions for ***delinquent entities***. Areas to be addressed as part of the project include FSR, market regulation and

[14] ASIC, *Information Release* IR05-370, 25 November 2005.

corporate reporting and disclosure. SDIA commends the Government for this initiative and look forward to participating in the process for the benefit of Members.[15]

In May, drawing on the work of the *Banks Committee* on regulation, ASIC announced a number of initiatives which it hopes will enhance its regulatory function. The initiatives include:

- More transparency in how ASIC operates
- Greater accessibility for industry stakeholders
- Better consultation with industry groups
- Identification of areas of regulatory overlap
- Better understanding the impact of ASIC decisions on business
- Streamlining document lodgement, etc with ASIC.

SDIA welcomed these initiatives and trusts that they are embraced and achieved by ASIC.

Conclusion

A number of pertinent questions were posed for consideration by this Forum.

Has FSR promoted confident and informed decision making by investors? In the stockbroking industry it is doubtful that improvement was needed.

Has it promoted fairness, honesty and professionalism in the financial services industry? The level of fairness honesty and professionalism in stockbroking (despite the stereotypes, and the odd bad apple) was already high. FSR has probably made management more aware of compliance, which is a good thing, as well as growing the compliance industry which may or may not (!) be a good thing.

Has it promoted fair, orderly and transparent stock markets for financial products? Australia already had one of the best regulated stock markets in the world with cutting edge surveillance technology and a fine international reputation. Although transparency has been arguably effected by the removal of broker numbers last year, and the unintended consequence of broadening the offence of market manipulation, FSR has made little change to the quality of financial markets.

Having said that, it is interesting to observe the growing pressure in the USA to roll-back the strict requirements introduced in the wake of the dot com boom-bust in 2000. While the FSR reforms have caused grief for providers and clients, the principles-based approach largely adopted has put Australia in a strong position to grow and adapt its capital markets. In the US there is growing pressure to roll back the highly prescriptive Sarbanes–Oxley and other reforms introduced after 2000. Speaking at the second annual NYSE Regulation conference in New York in June, NYSE Group CEO John Thain noted that 'excessive' regulation was one of the factors responsible for driving capital-raising activity outside the US Twenty-three of the 25 largest initial public offerings that took place in the world in 2005 were not registered in the US, and so far this year, nine out of 10 have not been registered in the US. 'The fact is, we're making the US unattractive for foreign firms looking to raise capital,' he said. Thain also attacked Sarbanes-Oxley, a litigious tort system and confusing accounting standards for discouraging foreign businesses from seeking financing in the US.

The detrimental effects of the US's black-letter legal approach to regulation of capital raising is not apparent in Australia, with new issues at record levels. This is perhaps vindication of the Government's principles-based approach to financial services regulation. In hindsight, the benefits of Australia not joining in the Mexican wave of prescriptive regulation that went up around the world after the events of 2000 may now be showing through.

[15] The Hon Chris Pearce MP, *Address to the G100 Dinner Meeting*, 1 February 2006.