

Mr John Kluver  
Executive Director  
Corporations and Markets Advisory Committee  
GPO Box 3967  
SYDNEY NSW 2001

Dear Mr Kluver,

#### INSIDER TRADING PROPOSALS PAPER

Macquarie Generation is pleased to comment on CAMAC's Insider Trading Proposals Paper of September 2002. Macquarie Generation is the largest generator on the National Electricity Market and makes extensive use of OTC hedge products to manage our market risk.

Macquarie Generation firmly believes that OTC markets should be exempt from the Insider Trading provisions. We have participated in discussions facilitated by the ESAA and support their recommendation that insider trading laws should not apply to OTC-traded contracts. Whilst we agree with the market principles of the legislation – fairness, efficiency and market competitive neutrality – we believe that these are already a feature of the OTC electricity market.

We give the following specific reasons why electricity OTC markets should not be captured by the Insider Trading provisions:

1. *Nature of Market participants* – There are no retail participants. All parties have teams of well informed and experienced traders backed up by sophisticated IT systems. The market is also served by a number of agencies that help disseminate data and information. For example:
  - Energy Bank Link (EBL) – daily market happenings, opinions and reported prices and volumes traded.
  - Reuters – Brokers posting bid and offer prices as well as general financial markets news.
  - Australian Financial Markets Association (AFMA) – encourage use of standard contract documentation and facilitate the publication of a market revaluation curve.
  - NEMMCO – future generating plant availability is published in the PASA.

Mr John Kluver, Executive Director  
Corporations and Markets Advisory Committee

2. *Defining Price Sensitive information* – We believe that in the OTC electricity markets, it will be difficult to define price sensitive information that should be disclosed. At Macquarie Generation, we regularly prepare budgets, plans and strategies for the marketing and production arms of our business. These are revised and refined over a period of time. This information could be viewed as price sensitive, however we regard such information as “commercial in confidence” and being required to make it available to other market participants would commercially disadvantage us. There is also no centralised procedure or platform for disseminating this information.
3. *Current remedies exist* – Although electricity contracts are based upon standard documentation, deals can be structured to meet the specific needs of the parties. Disclosure obligations can be included in specific contracts. Parties also can rely on statutory and common law protections against misrepresentations or false and misleading statements.
4. *Enforceability of Contracts* – The new Insider Trading provisions may encourage litigation, where the ulterior motive of one of the parties is to frustrate or force renegotiation of a contract that has become “out of the money” for them. Such additional legal risk adds another layer of uncertainty to OTC contracting.
5. *Compliance Cost* – These may become onerous. Standard contractual terms may no longer be sufficient and a legal opinion may be required depending on the circumstances of each deal.

## RECOMMENDATION

Of the policy options considered by CAMAC, Macquarie Generation recommends, in order of preference, that:

- (a) The current insider trading laws applicable to OTC-traded financial products should be repealed.
- (b) If not repealed, the “disclosable information” option should be adopted on the proviso that market participants are consulted in determining the price sensitive information that each particular industry would expect to be disclosed. We consider that this option would still create significant difficulties in its practical application.

All of Macquarie Generation’s output is sold into the National Electricity Market that has a history of price uncertainty and high volatility. We are heavily reliant on a robust and efficient OTC market to achieve predictable revenues and corporate profit targets. We believe that the Insider Trading provisions that now apply have the potential to seriously effect our ability to manage risk in this market.

Yours faithfully

G V EVERY-BURNS  
CHIEF EXECUTIVE  
AND MANAGING DIRECTOR