



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2005/1672
Contact Officer: Nadia Cooke
Contact Phone: (03) 9290 1478

2 February 2006

Dear

**Re: Investment & Financial Services Association Ltd (IFSA) applications
for revocation and substitution of authorisations - draft determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination in respect of the applications for revocation and substitution of authorisations lodged by IFSA on 4 October 2005.

IFSA is seeking authorisation for clauses 10.1 and 10.3 of its Standard No. 11.00, Genetic Testing Policy. The clauses provide for an agreement between IFSA members that they will not require applicants for life insurance to undergo any genetic testing and will not induce applicants to undergo such testing by offering individuals insurance at a lower than standard rate in light of favourable genetic test results.

A copy of the ACCC's draft determination is attached. For the reasons set out in its draft determination, the ACCC proposes to grant authorisation to IFSA's arrangements for five years.

Interim authorisation

The ACCC granted interim authorisation to clauses 10.1 and 10.3 of IFSA's Genetic Testing Policy on 2 November 2005 until the date of its final determination.

Next steps

Once the ACCC issues a draft determination, the applicant or any interested party who may be dissatisfied with the ACCC's draft determination may request that the ACCC convene a 'pre-decision conference'. A pre-decision conference provides the opportunity for interested parties to make oral submissions in relation to the draft determination. Under the *Trade Practices Act 1974*, the ACCC must set a date within 14 days of which any pre-decision conference must be requested. Accordingly, if you wish the ACCC to hold a pre-decision conference in relation to this draft determination, you must notify the ACCC in writing by **cob on Thursday 16 February 2006**. Conferences are conducted informally, without the participation of legal or other professional advisers.



Alternatively, you are also invited to make a written submission in response to the ACCC's draft determination. Written submissions should be lodged by **24 February 2006** at the following address:

The General Manager
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by e-mail to adjudication@acc.gov.au or by facsimile on (02) 6243 1211.

Any submission you make will be placed on the ACCC's Public Register. You may request that information you provide in a submission to the ACCC be treated as confidential and not placed on the Public Register. Information excluded from the Public Register for reasons of confidentiality will still be considered by the ACCC when reaching its decision. Guidelines for seeking confidentiality are attached for your information.

The ACCC will consider any submissions it receives, including any oral submissions made should a pre-determination conference be called, and will then release a final determination in relation to these applications.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact me on (03) 9290 1475 or Nadia Cooke on (03) 9290 1478.

Yours



fr Gavin Jones
Director
Adjudication Branch

GUIDELINES FOR CONFIDENTIALITY CLAIMS

The process whereby the Commission assesses applications for authorisation or notification is very public, transparent and consultative. The *Trade Practices Act 1974* (the Act) requires the Commission to maintain a public register in respect of authorisation and notification applications.

Applicants and interested parties can request that a submission, or part of a submission, be excluded from the public register.

The Commission is required under the Act to exclude from the public register upon request details of:

- (i) secret formulae or process;
- (ii) the cash consideration offered for the acquisition of shares in the capital of a body corporate or assets of a person; or
- (iii) the current manufacturing, producing or marketing costs of goods or services.

However, even if a document does not meet these technical requirements, the Commission may still grant confidentiality where, in the Commission's view, it is desirable to do so.

The Commission also has the discretion, under s89 of the Act, to exclude material from the public register if it is satisfied that it is desirable to do so, either by reason of the confidential nature of the material or for any other reason. The Commission expects that a party claiming confidentiality on these grounds will present a case for its treatment in this manner.

Under Regulation 24 of the *Trade Practices Regulations*, when a request for confidentiality is made to the Commission:

- (a) where the request is that a whole document be excluded, the words "**Restriction of Publication Claimed**" should appear in red writing near the top of each page; and
- (b) where the request is that part of a document be excluded, the words "**Restriction of Publication of Part Claimed**" should appear in red near the top of the first page of each document, and the part for which confidentiality is claimed should also be marked in red. A submission of more than 5 pages should also include a description of the whereabouts of the parts for which confidentiality is claimed.

Applicants, as a matter of course, should remove headers claiming "confidential communication" from all Emails and otherwise, unless they have a particular piece of information that they justify to the Commission deserves exclusion from the public register. If confidentiality is not requested but a header cannot be removed, it should be clearly stated at the beginning of the communication that confidentiality is not requested.

If the Commission denies a confidentiality request, the requesting party may ask that the material be returned. As a matter of practice, the Commission will specify a period (usually 14 days) in which they can request the return of such material. Upon response, the Commission will return the original material and destroy all associated copies. The Commission will not consider this material when reaching its decision.

If the Commission does not receive a response within the specified period, the original material will be placed on the public register.

Information or documents granted confidentiality may be used by the Commission pursuant to its powers generally under the *Trade Practices Act*.

Interested party

Australian Medical Association
Department of Health and Ageing
Australian Consumers Association
Breast Cancer Action Group
Royal College of Pathologists Australasia
Australian Health Ethics Committee
Human Genetics Society of Australasia
Prof Margaret Otlowski
Department of Human Services
NSW Department of Health
WA Department of Health
National Health and Medical Research Council
Insurance Council of Australia
Attorney General's Department
Australian Law Reform Commission
Australian Prudential Regulation Authority
South Australian Department of Health
Cancer Voices NSW
Human Genetics Advisory Committee of the NHMRC