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Profit-driven exchange hampers information flow

INFORMATION IS POWER in the modern age but Australia remains a relatively secret democracy and this undoubtedly works against the interests of shareholders trying to encourage ethical behaviour and accountability.

Even in the most open societies, the media only reports about 5 per cent of what is going on. But Australia has the most restrictive defamation laws of any English-speaking country with the exception of Singapore and also quite restrictive censorship and free speech laws.

The 95 per cent of what happens that remains secret provides a lot of power to the lucky insiders who know it. Therefore, the challenge for financial regulators in Australia is to get as much information on the table as possible.

However, the Australian Stock Exchange has abrogated this responsibility since becoming a "for profit" monopoly three years ago. Rather than informing the market they are trying to profit from it by selling market data. Revenue from this source leapt 30 per cent to $30 million in 1999-2000 which was great for the ASX monopolists but comes at a cost to our market.

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The Howard government was complicit in the ASX demutualisation. In fact John Howard subsequently appointed ASX chairman Maurice Newman to the ABC board and called in ASX CEO Dick Humphry to do a review of the flawed IT out-sourcing process.

The ASX is increasingly granting waivers to companies that reduce the rights of shareholders and reduce the flow of information. At the recent Santos AGM on May 4, the ASX secretly gave the company an exemption to the listing rules that allowed it to issue an $8 million share freebie to new CEO John Ellice-Flint without any reference to shareholders.

This sets a terrible precedent because it now means the ASX can exempt companies from listing rule 10.11 which states: "a listed entity must not issue equity securities to a director without the approval of the holders of ordinary securities."

This was the biggest sign-on fee in Australian corporate history but there is no mention of it in the latest Santos annual report.

As the ASX becomes more profit-focused, you can see the surveillance role waning. In 1999-2000 we had the 'tech wreck' yet the ASX only managed 17 referrals to ASIC - the lowest number over the past 5 years.

With disasters such as HIH and One.Tel, combined with the range of tech-wrecked companies such as Eisa, Liberty One and Infosentials, you have got to ask yourself what the ASX was doing to protect and inform investors.

In the case of HIH and One.Tel, the market has been clearly misinformed yet anyone wanting to go back and search company announcements more than 12 months old to see what happened has to pay the ASX for the privilege.

The same goes with things such as director dealings. In the UK directors must disclose any share sales within 48 hours yet in Australia they have two weeks, by which time a lot more shares have been traded without disclosure that, for example, a director like Rodney Adler has been dumping One.Tel and HIH stock.

The BHP-Billiton merger is another example. BHP got access to the shareholder lists and proxy counts ahead of the meeting to approve the merger and used them to lobby support. Anyone wishing to oppose the merger and solicit proxies was denied access to this information. BHP chairman Don Argus refused to disclose the proxy votes to the meeting and then BHP did not disclose them on their website as promised.

If the ASX compelled companies to reveal this sort of detail then the market would be better informed and those of us trying to wage a public debate would be better placed in trying to enforce accountability and transparency and to test the accuracy of their public statements.

Sadly, this sort of information too often forms part of the 95 per cent that the public will never know. ✤

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