Tight rules for insiders rejected

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Investment banks have warned that proposals to tighten rules for the sounding out of investors before major transactions could raise costs and impose impossibly high standards.

As part of its draft regulatory guide on confidential information, the Australian Securities and Investments Commission flagged a number of changes in the way companies and their investment banks can deal with investors in the sensitive period before major transactions.

One of the most contentious proposals is that investment banks must keep a log of all investors contacted and that must be then lodged with ASIC within 48 hours of the soundings taking place.

ASIC argues this will make the sounding process more transparent and that investors would be deterred from misusing the confidential information because "their identity, along with the few other sounded investors, will have been provided to the regulator".

But the idea drew heavy fire from market participants complaining of the additional compliance burden from completing tasks for ASIC in addition to other required tasks within the context of an overnight trading halt.

One senior investment banker said the extra compliance burden would increase the cost and complexity of raising capital.

"It just seems a ridiculous response to an issue," the source said. "The whole idea of providing lists upon lists upon lists to companies and ASIC; I don't know anywhere that happens in the world."

The source said most banks and investors already took their confidentiality objections seriously.

"It is completely over the top," another banker said.

"They should just put people on notice that if there is any suspicion of insider trading they will demand the production of the logs. Otherwise they [ASIC] will be inundated with these things."

Another investment banker, who declined to be named, also raised concerns that the requirements could be difficult to fulfil in the time available in some transactions, but said the proposals would also lessen the risks of leaking.

"It certainly will be a deterrent," the investment banker said.

In the guide the securities regulator acknowledges that sounding potential investors was an important resource for companies but stressed it was vital tight controls surround the practice.

To lessen the risk of leaks ASIC also wants investment banks to only sound out investors where they have the permission of the company involved and then to approach only investors identified by the company.

Such soundings should also only take place when the market is closed or the stock is in a trading halt.

Under the regulator's proposal, bankers are to use a set script and receive in writing from the institution their consent to acting as insiders, meaning they cannot trade or tip the stock in question.

After jumping that hurdle the bankers must keep a log of all institutions they canvass, the time and date of the contact, and whether the institution was willing to become an insider.

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