



ASIC

Australian Securities & Investments Commission

The single market for financial services in the EU and its impact on globalisation

A presentation by Jeffrey Lucy, Deputy Chairman, ASIC to the European Australian Business Council Luncheon and Conference, 3 November 2003, Sydney.

Introduction

You may be wondering where Australia, a country of approximately 20 million people located 17,000 km from Europe, fits into the theme for today's conference - "the single market for financial services in the European Union and its impact on globalisation". The world, not the least, Europe and Asia (Australia), is a much different place to what it was five years ago. Europe and Asia have been marked by rapid growth and change and this poses great challenges, and opportunities for both regions.

Power relations have changed. There are new challenges to sovereign states. Globalisation has created pressures and uncertainties including new and emerging cross border issues – movements of people, trade and commerce, and the environment. I believe that Europe and Asia have benefited greatly from globalisation. Innovations in technology and communications have reduced the tyranny of distance and new markets have flourished. Asia is now closer to established markets in Europe and North America.

Yet, there remains great apprehension about the impact of globalisation.

In the midst of our rapidly changing world, Australia has been committed to a key role in the Asia region. We are recognised in Asia, and beyond, for our vibrant economy, relevance and our strategic value. From a regulatory perspective, our approach to globalisation will remain pragmatic, flexible and realistic.

There are four Commonwealth government bodies that regulate Australia's financial system: ASIC, APRA, ACCC and the Reserve Bank of Australia.

- ASIC has responsibility for market integrity and consumer protection across the financial system;
- APRA has responsibility for prudential supervision and statistical collections in the financial sector;
- ACCC has responsibility for promoting competition, fair trading and consumer protection; and
- The Reserve Bank has responsibility for monetary policy and for overall stability in the financial system, including the payments system and systems for clearing and settlement of transactions in financial instruments.

The ASIC Act requires us to uphold the law uniformly, effectively and quickly; to promote confident and informed participation by investors and consumers in the financial system; and to improve the performance of the financial system and entities within it.

Australia's financial market has become increasingly globalised over the last two decades.

Over the past five years, the value of funds invested offshore by Australian funds managers has increased from \$53 billion to \$127 billion. With the proportion of funds invested abroad rising from 10% in the 80s to about 20% in the 00s.

Globalisation has also been marked by a rapid growth in the number of foreign financial service providers, dual listings and cross border market operations. Some of our largest listed companies are now dual entities in Australia and London, such as BHP-Billiton, Rio Tinto and Brambles. As of 30 June 2003, there were 67 foreign companies listed on the Australian Stock Exchange (ASX) holding 31% of the ASX's total market capitalisation. 127 Australian companies have dual listings; 72 of which are listed in Europe.

As at 30 September 2003 the ASX was ranked 8th in the world in the MSCI World Index. This represents a weighting of 2.08

The ASX has also developed a cross-border trading link with Singapore Exchange Limited (SGX), that is designed to facilitate efficient trading and settlement, and holding of SGX securities by Australian investors and ASX securities held by Singaporean investors. The linkage involves an electronic co-trading and clearing arrangement so brokers can trade selected securities listed in the other exchange.

In addition, the ASX has created the Trans Tasman 100 Index (an aggregated measure of the top 100 listed companies in Australia and New Zealand), and the ASX Asia Index (an aggregate measure of 30 listed companies that are principally based and operate in Asia). These indexes allow for more relevant comparison of companies at a regional level and acknowledge that many companies operate in more than one state.

Regulatory challenges

The globalisation of financial markets has directly challenged ASIC's ability to achieve its over-riding regulatory objective to protect investors, promote market integrity, and reduce systemic risk in a cross border regulatory environment.

Globalisation has also challenged traditional notions of regulation and enforcement and ASIC's jurisdiction. It has created an environment where national regulatory

regimes with different laws and market development co-exist with international financial markets. Administering and enforcing national laws against foreign companies is often limited and difficult because of the principle of state sovereignty, which provides that a state has exclusive and supreme power within its national borders.

The growth in cross border trade and commerce has led to the erosion of traditional principles of sovereignty. Globalisation has challenged regulators to seek new mechanisms to deal with cross border regulatory issues. So what can regulators do in our rapidly evolving world? Put simply, there are at least three options:

- Encouraging regulatory competition between financial centres, in the hope that regulatory standards will converge to an acceptable global standard.
- Increasing cross border cooperation, convergence and comity.
- Establishing a single global markets regulator or regulatory system.

ASIC has embraced the option to increase cross border cooperation, convergence and comity. We have developed a set of principles designed to further cooperation with overseas regulators and harmonise our regulatory standards. Our approach has been to adopt a cooperative model of regulation that recognises equivalent foreign regulatory regimes. But I will discuss Australia's domestic initiatives later.

To achieve a cooperative model of regulation, regulators must firstly react and respond by adopting a more international perspective.

One practical means by which ASIC is adopting a more international focus is through its work as a member of IOSCO. Let me talk a little about the IOSCO framework.

As a member of IOSCO, ASIC has strongly supported the development by IOSCO of its Objectives and Principles of Securities Regulation, the Multi-lateral Memorandum

of Understanding and IOSCO initiatives to set international standards for accounting, auditing and disclosure.

Objectives and Principles of Securities Regulation

In September 1998 IOSCO published a set of “Objectives and Principles of Securities Regulation”. The 30 principles are necessarily fairly general in their terms, having regard to the need to apply them to 180 different jurisdictions. They are an attempt to set out what IOSCO considers to be the basic components of an effective regulatory system.

The principles are important because they contribute to the means by which regulators deal with globalisation; they provide higher standards of regulation across all member jurisdictions; they improve the level of cooperation between regulators; and provide a greater opportunity for regulation of foreign jurisdictions in domestic regulatory arrangements.

ASIC, through our membership of IOSCO's Technical Committee assisted with the development of the IOSCO principles. We are endeavouring to ensure that these principles are fully implemented within the Australian regulatory system.

Multilateral Memorandum of Understanding

As you may be aware, the IOSCO Multilateral Memorandum of Understanding (IOSCO MOU) was adopted in May last year to enhance international cooperation between securities regulators. While bilateral arrangements have been the norm, this multilateral approach is a first for securities regulators and sets a new international benchmark for cooperation. ASIC was one of the first members to sign the IOSCO MOU. Today, 24 members have successfully completed the rigorous screening process and have signed the MOU, including signatories from France, Germany, Italy, Turkey, Poland, Spain and the UK. There are currently another 16 applicants at various stages of the vetting process. We hope that other IOSCO members will be in a position to join us soon.

At the 28th Annual Conference in Seoul last month, IOSCO endorsed two Statements of Principles adopted by the Technical Committee in October 2002, relating to auditor oversight and auditor independence. . The Technical Committee has also participated in discussions with the International Federation of Accountants (IFAC) to help develop international auditing standards, including the establishment of a Public Interest Oversight Board (PIOB).

These initiatives are designed to achieve convergence to facilitate cross border offerings and listings and encourages regulators to address broader issues of consistent interpretation, application and enforcement of accounting standards.

As I mentioned before, Australia has undertaken a number of initiatives to further cooperation with overseas regulators.

ASIC has developed a set of Principles for cross border financial services regulation (November 2002) to make the Australian regulatory regime work better in a cross border environment. The principles are based upon the IOSCO Objectives and Principles for Securities Regulation. Indeed ASIC's principles stipulate that an equivalent regulatory regime must be consistent with the IOSCO Objectives and Principles for Securities Regulation.

ASIC's principles seek to give the fullest possible recognition to foreign regulatory regimes that are sufficiently equivalent to the Australian regime, in relation to the degree of investor protection, market integrity and reduction of systemic risk that they achieve. An overseas regulatory authority would need to adhere to the regulatory philosophy outlined in the principles to be regarded as sufficiently equivalent to the Australian regime.

On 9 September 2003, ASIC released a Policy Statement in respect of our discretionary power to licence wholesale foreign financial service providers. The

policy is based on our principles for cross border financial services regulation. The policy outlines when ASIC will grant relief under the Corporations Act from the requirement to hold an Australian Financial Services Licence.

Conclusion

Cooperation between jurisdictions is essential, through organisations like IOSCO and between regulatory organisations.

Countries must work towards establishing a greater degree of equivalence in their regulatory systems, broadly defined, but not by weakening the domestic regulatory systems of countries with more developed and stringent degrees of regulation.