



# **THE GLOBALISATION OF THE SECURITIES MARKET**

**ALAN CAMERON, AM  
CHAIRMAN  
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

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## **Introduction**

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International financial markets have, over the last two decades, been transferred by a number of key developments which, for regulators, have posed significant challenges to their traditional notions of jurisdiction, regulation and enforcement.

The most notable of these developments is the rise of Electronic Commerce, catalysed by the globalisation of financial markets. E-commerce has become a fundamental regulatory issue of the late 90's due to the magnitude of financial transactions that are now being conducted over the internet.

To quantify this magnitude; the number of Australian households, with internet access has grown from 4 percent in 1996 to over 13 percent in late 1998, and over one third of households now own a home computer.

The aim of this paper is to provide a brief overview of ASIC's regulatory responses to these developments and outline some of its recent initiatives relating to the financial services industry. This evening I will briefly discuss:

- The Global Market;
- The growth of E-Commerce;
- Current international regulatory activity;
- Regional initiatives; and
- International enforcement.

## **The Global Market**

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The globalisation of the securities market is reflected in a number of ways including:

1. the growth of cross-border and cross exchange securities transactions;
2. the number of secondary listings of companies on overseas exchanges;
3. the emergence of multinational securities firms servicing the business from offices across the world; and
4. the increasing number of strategic alliances and other connections between regulated financial markets in different parts of the world.

The global financial market now crosses borders and jurisdictional zones, directly and via the Internet. Advances in information technology and the effect of electronic commerce will fundamentally change the basis of competition between markets for different financial products. This increase in competition will require the development of entirely new strategies for doing business.

The increasing internationalisation of markets and the increasingly global nature of companies themselves, is exemplified by the number of foreign listings on the Stock

Exchange. As of March 1999, the ASX was a secondary listing for 74 foreign companies and was the home exchange for 130 companies also listed on other stock exchanges around the globe.

I will discuss the other issues in turn, but will start with some reflections on the exchange alliances issue, if only because of its topicality in light of the rejection by the ACCC of the proposed merger between the ASX and the SFE. Needless to say I do not intend to canvass the merits of the ACCC's decision; one clear outcome of the Wallis report was that they should retain the responsibility for competition regulation in the securities market, while we assumed the consumer protection role for the financial sector. My remarks are therefore not to be read as an implicit or explicit criticism of the ACCC's ruling, finally concluded last Friday.

I want in any event to focus not only the domestic mergers, although there are plenty of them underway - in the US with NASDAQ and the American Stock Exchange, in Hong Kong and Singapore in our region. My concern today is with the growing trend towards cross border alliances, the most prominent of which is the London Frankfurt alliance announced in September last year, and now expanded to include almost all the major markets of Western Europe. It seems to me that these alliances have not yet led to any seamless cross border trading platform of the kind which may have been expected by some when they were announced, but of course it may have been misreading the intentions of their promoters to have assumed that that was the plan.

Certainly such a cross border marketplace poses some regulatory challenges - who is the regulator of such a market, and under what regulations? We have some experience here of these issues. The SFE owns the NZ FOE, and has done for some years. By agreement between the regulators in each country, screens of both exchanges are placed in each country and can be used for trading directly; but the products are the domestic products and are not the same in any sense. Nevertheless the co-operative model of regulation answers those questions so as to allow the cross border trading to occur. It will not be sufficient to allow a transnational market, however. Until we do have those answers, the dream of a global, or even a cross border market, will remain just that. Some country would have to give up part of its national sovereignty to the regulator of another country, or a transnational regulator be responsible to more than one national government, to permit a market to operate in some sense "within" its jurisdiction but outside its regulatory scope.

Has that ever happened? Yes; and I am not talking about Australia! - although I do not need to remind you that it is less than 10 years since our states by agreement handed the regulation of our markets to a single regulator responsible to another parliament. I am talking about the West African Monetary Union, which regrettably is not a sufficiently similar market to provide much relevant or useful experience for us. There are at least 2 major issues with which regulators, and perhaps governments will need to deal before long. There is first the challenges of whether and how to regulate the so-called ECNs, or electronic communication networks, by which buyers and sellers of securities are introduced to each other by non traditional market operators. The second is the desire of the major traditional markets to compete by offering to open up their markets to international participation.

## Electronic Commerce

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The past decade has seen the explosive growth in new products, new technology and cross border financial activity. Cyberspace has now become a powerful forum for the conduct of business. Electronic commerce is often considered to be a vast unregulated marketplace, with a number of advantages over other marketing media, including speed of access, relatively low cost and immediacy of response.

Electronic commerce is not limited to the Internet - it covers a range of transactions and messages communicated electronically. It encompasses the provision of information, products and services via computer networks, electronic mail and bulletin boards, computer disks and CD-ROMS and facsimile, and support for any kind of business transaction over a digital infrastructure.

The use of the Internet has demonstrated, even within a jurisdiction that electronic communication and interactivity may not fit neatly within the parameters of statutes, regulations and directives originally intended for a telephone and paper based environment.

The Internet provides for instantaneous cross-border communication and interactivity, which challenges the traditional notions of jurisdiction and territoriality. However, the qualities that make the Internet a valuable tool for investors and the securities industry may render it a convenient tool to perpetrate securities fraud and other violations. Further, the facilitation, through the use of the Internet, of day trading has in fact opened up a range of frequently unsophisticated people to what they assume are high returns at low risk - a phenomenon we all should know, is highly unlikely.

And, of course, there is the story of which I was reminded by a speech of Arthur Levitt, US SEC Chairman:

“For some, however, this revolution may be too much to handle. I recently read about a French trader who sold 10,000 bond contracts on the Paris Futures Exchange - without even knowing it. This trader accidentally leaned his elbow on the F12 button and within a few minutes sold \$1.3 billion contracts. The contract price fell and buyers moved in. The firm ended up losing what it would only describe as several million dollars.

So, if you take anything away from my speech today it's this: watch your elbows around the F12 button.”

Given that e-commerce is developing in an international context, there will be an obvious need for widely accepted standards. These standards will be needed to govern the technology itself, the software it utilises, the manner in which the information is presented, and the legal environment which will apply to transactions undertaken. We have started these standards, but they are a long way from being complete.

In terms of electronic enforcement, ASIC has begun to experiment with automatically integrating information from our enforcement database, our company records database and information gathered by Internet Robots. The information will be captured and analysed within our new Data Warehouse providing a largely automated information and surveillance system.

### **(a) ASIC's view on E-Commerce**

The present law and regulatory structure in Australia does not yet fully accommodate electronic commerce, in the sense that there is a viable, legally secure replacement for paper. As a regulator, ASIC decided some time ago that it had two viable options: to maintain a passive role in monitoring and adapting overseas developments in the Australian context; or adopt a more active role in promoting the debate on the issues and responding to current commercial developments.

ASIC decided on the latter, whilst recognising that the market does not expect, or need, the regulator to tell it what course it ought to follow. Our challenge is to encourage and facilitate, to ensure that regulation does not unduly inhibit the exciting opportunity offered by electronic commerce, but also that consumers and others can have confidence in taking up these opportunities and can make informed choices. We aim to maintain the natural tension between promoting consumer confidence in the integrity of the marketplace and its institutions through its regulatory activities, and at the same time, facilitating business by encouraging innovation and providing useful services to the market.

ASIC is taking proactive steps to facilitate electronic commerce. Some of our current projects include:

- organising and participating in workshops with representatives of financial services industries in order to better understand where they “are at” in terms of business communication and business to consumer communication. We have asked industry to identify any roadblocks in the Law or in the ASIC policy and are formulating business plans and policy based on the feedback received from the workshops;
- consideration of the most appropriate ways to facilitate multi-media offerings of all of the wide range of financial products; and
- participation in an advisory body, along with the ACCC, to the National Office for the Information Economy (NOIE) about maintenance of an enforcement capacity in an electronic environment.

### **(b) What is ASIC doing with regard to E-Commerce**

ASIC is a major collector and supplier of information and services such as company incorporations. So what are we doing?

A number of electronic searches are already available on our website, including:

- basic company searches (free);
- registers of licensed advisers, dealer, and banned directors (free); and
- personal name searches.

Our latest development is E-Registers, an interactive web-based service that allows you to view and update your company register details directly with ASIC.

Companies and lodgment agents such as accountants and legal firms can also lodge some documents with ASIC electronically, and by June this year, around one quarter of all companies incorporated that month were incorporated, and paid for, electronically. (Around 100,000 companies are incorporated annually).

### **(c) ASIC Internet Policy**

ASIC has published a policy proposal on regulation of Internet communications relating to securities which is available from our home page. This policy is consistent with IOSCO guidelines.

- Under this proposal, ASIC will not seek to regulate Internet offers of securities where the offer:
  - is not targeted to persons in Australia; and
  - indicates that the offer is not targeted to persons in Australia (such statements are sometimes called “jurisdictional disclaimers”).
- In assessing whether the offer is targeted to persons in Australia, ASIC will consider whether:
  - the website contains precautions reasonably designed to guard against sales to persons in Australia;
  - the offer is written in a manner that makes it appear that it is aimed at persons in Australia;
  - the offer is distributed by other means in Australia;
  - the offer is directed or “pushed” to persons who the offeror should reasonably know reside in Australia.

If the offer in fact generates significant sales in Australia, ASIC will likely regard that fact as indicating that the offer was targeted at Australian investors.

## Current International Regulatory Activity

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### IOSCO

ASIC is a leading member of the International Organisation of Securities Commissions (IOSCO). The member of IOSCO include securities and futures regulators from almost 100 jurisdictions together with affiliate members such as exchanges and industry associations. ASIC is a member of the Executive Committee and the Technical Committee of IOSCO and is also a member of the Asia-Pacific Regional Committee.

#### (a) Principles of Securities Regulation

In September 1998, IOSCO published a set of Objectives and Principles of Securities Regulation (available on the IOSCO website at [www.iosco.org](http://www.iosco.org)). The Principles set out practices for securities regulation which IOSCO considers form the basis for effective securities regulation while recognising that the manner in which different jurisdictions carry out regulation may vary. IOSCO has set up a Task Force on the Implementation of the IOSCO principles which is presently considering a process for assessing compliance with the principles amongst IOSCO members. The task force is also liaising with the International Financial Institutions (World Bank, IMF etc) in their use of the Principles. ASIC is a member of this task force.

#### (b) IOSCO Internet Policy

The Technical Committee of IOSCO created an “Internet Task Force” to advise on the increasing use of electronic commerce in transactions.

In September 1998 IOSCO published a Technical Committee report entitled “*Securities Activity on the Internet*”.

This report states that securities regulations and regulators around the world exist to pursue 3 key aims, namely:

- the protection of investors;
- ensuring that securities markets are fair, efficient and transparent; and
- the reduction of systemic risk.

Some argue that it is not possible to enforce these regulations in a world where commerce is routinely conducted over the Internet. IOSCO does not agree with that view. Rather, IOSCO believes that the fundamental principles of securities regulation can, and should, apply to securities activity on the Internet. These principles do not change based on the medium used.

The report discusses the many benefits of using the Internet for conducting securities business, especially the availability of information at a low cost. The report therefore states

that regulators should not unnecessarily impede the legitimate use of the Internet by market participants.

IOSCO members believe that it is important to promote transparency and consistency in regulation of the Internet.

The report recommends that regulators and self regulatory organisations should provide guidance to alert market participants and markets as to how their existing registration, licensing and other regulatory requirements apply to offers and advertisements conducted on the Internet.

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The challenge is to apply the existing principles of securities regulation in a sensible way to this new medium.

## **IOSCO International Standards**

The Technical Committee of IOSCO has recently completed or has work in progress on a range of other matters which are likely to significantly influence the international approach to regulation of securities markets. These include:

- the possible adoption of international accounting standards for cross border reporting purposes;
- standards for cross border initial public offers and listing of equity securities;
- cross border screen based trading;
- global securities lending;
- improvement and harmonisation of standards for regulated exchanges and clearing houses; and
- implications of the Internet for securities exchanges.

ASIC is an active participant in much of this work. In regard to international accounting standards, it is noted that the CLERP Bill sets out a framework for, amongst other things, the potential harmonisation of Australian standards with international standards.

## **Other International Standards**

### **(a) Basel Core Principles of Effective Banking Supervision:**

These principles were drawn up in close collaboration with the supervisory authorities in 15 emerging market countries and have benefited from broad consultation with many international supervisory authorities.

These standards address the preconditions for effective banking supervision, licensing and structure, prudential regulations and requirements, methods of ongoing banking supervision, information requirements, formal powers of supervisors and cross-border banking.

The principles are intended to serve as a basic reference for supervisory and other public authorities worldwide to apply in the supervision of all banks within their jurisdiction.

### **(b) IAIS Core Principles**

The Principles are intended to assist Member and non-Member governments in their efforts to evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries, and to provide guidance and suggestions for stock exchanges, investors, corporations, and other parties that have a role in the process of developing good corporate governance.

These standards are to act as international non-binding benchmarks which, if adopted, will increase the comparability of countries who have adopted the standards.

## **Joint Forum**

The emergence of financial conglomerates and the blurring of distinctions between the activities of firms in each financial sector has heightened the need for cooperative efforts to improve the effectiveness of supervisory methods and approaches. The Joint Forum on Financial Conglomerates was established in early 1996 by IOSCO, the BASEL Committee and the International Association of Insurance Supervisors (IAIS), to address the major supervisory issues relating to financial conglomerates that operate on an international basis. Its role is now being extended to deal more generally with cross sectoral issues and other matters of mutual interest to the parent bodies (and accordingly it has been renamed the Joint Forum).

The Joint Forum is comprised of bank, insurance and securities supervisors representing each supervisory constituency. Thirteen countries are represented on the Joint Forum.

ASIC is an active participant in the work of the Joint Forum. I currently chair the Joint Forum. In addition, an ASIC officer is a member of the Forum; and ASIC, together with the Basel Committee provide a secretariat for the Forum. APRA also participates in the work of the Joint Forum.

## **Regional Initiatives**

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ASIC plays an active role in promoting and contributing to training initiatives in our region, both on its own behalf, and as a participant in initiatives sponsored by international organisations such as APEC, the Asian Development Bank and IOSCO. In particular, ASIC is represented on the Advisory Group developing and implementing an APEC financial regulators training initiative. This initiative aims to strengthen training processes in securities regulatory authorities; develop national training programs, by developing model curricula for securities regulators training, and coordinate regional and international training programs for financial supervisors.

In addition, ASIC continues to run a week-long residential Summer School each year. The ASIC Summer School is a postgraduate level, intensive forum for overseas Australian market and regulatory participants. Overseas participants are mainly drawn from the Asia-Pacific region and (to a smaller extent) from further afield. Each year the School is organised around a topical theme which allows for the discussion and analysis of Australian market, regulatory and financial issues in the context of broader regional and international debates. For example, the 1999 ASIC Summer School focused on the current debates about the need to strengthen the infrastructure of domestic and global financial markets in the light of recent regional and international financial market volatility.

ASIC participated in a recent OECD Round Table on Securities Markets Reforms in the face of the Asian Crises.

## **Influences on Domestic Regulatory Approaches**

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The global nature of the financial markets mean that effective regulatory responses must often best be developed in an international context. This is particularly the case when the regulation seeks to impose requirements on firms and institutions which themselves have presences or bodies in many jurisdictions, and are able to move their operations easily between regulatory regimes.

Some examples where ASIC's domestic regulatory policy reflect international influences of this kind include the following:

- *Foreign Securities Prospectus Relief (PS 72)*: ASIC will exercise its discretionary powers to facilitate some offering in the Australian market of securities issued by foreign companies. This includes allowing the use of foreign prospectuses provided that they are accompanied by any additional information necessary to meet local disclosure requirements.
- *Offer of Securities on the Internet (PS 141)*: This is the ASIC policy, discussed above, which seeks to identify those securities offered on the Internet that are aimed at Australian investors. This approach is consistent with that taken by securities regulators in other jurisdictions and avoids the practical difficulties of seeking to regulate all offers

placed on the Internet on a global basis that may potentially be accessed by Australian investors.

- *Market Stabilisation:* Consistent with the practice in major overseas jurisdictions, ASIC has permitted persons involved in significant initial public offerings to engage in market stabilisation activities whereby if necessary they acquire the securities on the secondary market for a short period after the initial quotation of the securities (and thereby provide price support). This practice helps ensure the success of major floats.
- *Multi Jurisdictional Takeover Bids:* ASIC has recently exercised its discretionary powers to facilitate a takeover offer for certain “stapled” securities consisting of a share of an Australian company and a share in a United States company. This was necessary to overcome problems arising from different requirements under applicable Australian and United States law.

## **International Enforcement**

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ASIC recognises that it has become increasingly difficult to draw distinct lines between players and services in the financial services industry, and from an enforcement perspective, greater coordination and cooperation of regulatory efforts is essential, both domestically and internationally.

The increasing globalisation of markets and securities has led to a sharp increase in ASIC matters with a foreign component.

Similarly, overseas regulators have increasingly found that their cases have some link to Australia and Australians through Australian investors, companies, directors, banks, brokers, advisers, agents and accountants.

Existing legislation, policy and procedures such as the *Mutual Assistance in Business Regulation Act*, the *Mutual Assistance in Criminal Matters Act*, section 127 of the ASIC Law, Policy Statements, memorandum of understanding and ASIC’s relationship with the AFP provide the apparatus to meet these demands.

### **Information Sharing and International Investigative Assistance**

ASIC has the power to share information in its possession with Australian exchanges, with agencies of a foreign government and potentially with overseas exchanges (s127 ASIC Law). The *Mutual Assistance in Business Regulation Act 1992* (MABRA) gives ASIC power to obtain information and evidence on behalf of foreign regulators.

A recent example of MABRA in operation involved a request from the United States. Having failed to obtain voluntary assistance from a technical expert in a market disclosure investigation involving a mining company, the SEC sought assistance under MABRA. Authorisation was granted by the Attorney-General and our Director of International

Relations conducted a taped interview with a witness in Sydney while 2 SEC officers asked questions by telephone from Washington.

ASIC has entered into Memoranda of Understanding with 20 foreign regulators to provide a framework for the exchange of information.

ASX and the SFE are both signatories to the Declaration on Co-operation and Supervision of International Futures Markets and Clearing Organisations. The SFE is also a signatory to the International Information Sharing Memorandum of Understanding and Agreement.

### **IOSCO Enforcement Working Party**

ASIC is a member of IOSCO's Working Party on Enforcement and Exchange of Information. A current mandate of the Working Party is cooperation between law enforcement authorities and regulators. This mandate seeks to improve and maintain legitimate assistance and information flow between agencies.

## **Conclusion**

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ASIC is an active participant in current international initiatives relating to the regulation of securities and futures markets. Increasingly, ASIC is taking account of the fact, and advising Government that its, and Australia's regulatory and domestic activities take place in an international and not just domestic framework.

Additionally, financial markets cannot be satisfactorily regulated without recognising the cross sector issues. Matters involving not only securities and futures, but also banks, insurance and other financial products and markets must be taken into account in developing regulatory policies. The Wallis inquiry into the financial system and the subsequent reorganisation of regulatory structures in Australia in 1998 was in part driven by the Government's recognition of this integration of financial products.

New international frameworks, such as the Financial Stability Forum, are providing an important forum by which both the international and cross-sectoral issues in financial regulation can be considered. In addition, regional frameworks and institutions such as APEC and the Asian Development bank continue to have significance in developing effective financial regulation.