

MEMORANDUM OF UNDERSTANDING

THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND THE RESERVE BANK OF AUSTRALIA

Objective

1. This Memorandum of Understanding between the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) is intended to assist each agency in the performance of its regulatory responsibilities under the *Corporations Act 2001* in relation to clearing and settlement facilities.
2. The framework set out in this Memorandum of Understanding is also intended to promote transparency, help prevent unnecessary duplication of effort and minimise the regulatory burden on licensed facilities.

Responsibilities

3. The RBA has specific responsibilities under the *Corporations Act 2001* for setting financial stability standards, monitoring compliance with these standards and ensuring that licensed clearing and settlement facilities do all things reasonably practicable to reduce systemic risk.
4. ASIC has responsibility under the *Corporations Act 2001* for monitoring compliance with all other legislative obligations imposed on licensed clearing and settlement facilities. These include a requirement to provide financial services in a fair and effective manner, including by having arrangements in place to enforce compliance with operating rules and for resolving complaints from facility participants.
5. ASIC also has responsibility under the *Corporations Act 2001* for taking action to enforce compliance with all obligations imposed upon licensed clearing and settlement facilities.

Consultation

6. To promote effective and well-coordinated development of regulatory policy, ASIC and the RBA will inform each other when determining substantive issues of policy with respect to clearing and settlement facilities which may have an impact on the regulatory responsibilities of the other agency. Each will provide the other with the opportunity for consultation on the proposed policy prior to any public consultation period, and prior to the release of a finalised policy.

Formal Requests and Use of Powers

7. Where either ASIC or the RBA proposes to formally exercise any of its powers relating to licensed clearing and settlement facilities under the *Corporations Act 2001*, and this exercise may have an impact on the regulatory responsibilities of the other agency, it will:
 - notify the other agency of the proposed use of powers;
 - consult with the other agency on the proposed use of powers;
 - notify the other agency when the power is formally exercised; and
 - subject to any restrictions imposed by law, provide to the other agency any relevant documentation.
8. Under section 823E of the Act, ASIC may give a direction to a licensed clearing and settlement facility to take specific measures to comply with a financial stability standard or to take any other action to reduce systemic risk. It may do this on its own initiative, or following a request from the RBA.
9. ASIC anticipates that it would generally take such action at the request of the RBA, which has responsibility for assessing licensees' compliance with financial stability standards and their obligation to do all things reasonably practicable to reduce systemic risk.
10. ASIC and the RBA will agree on detailed protocols for the handling of requests under section 823E of the Act and exchanges of information in relation to any formal exercise of power.

Notification and Information Sharing

11. There are circumstances where ASIC or the RBA will receive or make notifications that are required under the Act. Subject to any restrictions imposed by law, ASIC and the RBA will inform each other of any notifications either makes or receives with respect to clearing and settlement facilities which may have an impact on the regulatory responsibilities of the other agency.
12. In addition to the exercise of formal powers and requests ASIC and the RBA will (subject to any restrictions imposed by law) share information that they believe would be of assistance to the other in undertaking its responsibilities under the Act.
13. Wherever possible, ASIC and the RBA will avoid separate collection of the same information and data from licensed clearing and settlement facilities.

14. Where ASIC or the RBA has been served with a compulsory notice which would require the disclosure to some third party of information obtained under this MOU, the agency will, prior to disclosure, notify the other agency in writing so as to enable the other agency to determine what action, if any, it should take.

Report to the Minister on Annual Assessment

15. Both ASIC and the RBA are required under the *Corporations Act 2001* to conduct an annual assessment of each clearing and settlement facility licensee's compliance with particular obligations under the Act and to prepare a report to the Minister on that assessment. Under the *Corporations Act 2001*, each agency is required to give a copy of that report to the other agency. Where such a report raises issues that may have an impact on the regulatory responsibilities of the other agency, each agency will provide for appropriate consultation with the other agency prior to finalisation of the report.

Coordination Meetings and Liaison

16. ASIC and the RBA will establish procedures to facilitate regular contact between officers of the organisations on routine operational matters.
17. ASIC and the RBA will hold meetings of senior officials at least every twelve months to discuss the coordination of matters relevant to the regulation of clearing and settlement facilities and the operation of this MOU.

DATED this day 18 March 2002

D Knott
Chairman
Australian Securities and Investments
Commission

IJ Macfarlane
Governor and Chairman
Payments System Board
Reserve Bank of Australia