

DECLARATION ON COOPERATION AND SUPERVISION OF CROSS-BORDER INVESTMENT MANAGEMENT ACTIVITY

**Signed by Mr David Knott, Chairman for the Australian
Securities and Investments Commission and
Mr Andrew Sheng, Chairman for the Hong Kong
Securities and Futures Commission**

26 June 2003

The Australian Securities and Investments Commission, an independent Commonwealth government body established pursuant to the Australian Securities and Investments Commission Act 1989 (and continued in existence by the Australian Securities and Investments Commission Act 2001), and the Hong Kong Securities and Futures Commission, an independent agency established pursuant to the Securities and Futures Commission Ordinance of 1989,

Sharing the goal of promoting investor protection;

Observing the growth of global securities markets and cross-border investment management activity and the continuous development and innovation in financial products and activities in the investment management arena; and

Believing that, in light of these developments it is appropriate to formalize and streamline mechanisms that currently exist and are operating for sharing information where an Authority is located in one jurisdiction and a Dual Registrant is located in another,

hereby make the following Declaration:

1. DECLARATION

1.1 For the purposes of the Declaration:

- (a) “Associated Persons” means persons and entities affiliated or associated with, or doing business relating to the investment management activities of, Dual Registrants and subject to the supervision of the Authorities;
- (b) “Authority” means the Australian Securities and Investments Commission (ASIC) or the Securities and Futures Commission (SFC);
- (c) “Books and Records” means documents, books, records and other information, in electronic or physical form, about Dual Registrants;
- (d) “Collective Investment Schemes” includes all mutual funds, unit trusts and other forms of collective investment schemes that are contemplated under the SFC’s Code on Unit Trusts and Mutual Funds, Code on Real Estate Investment Trusts and such other codes that may be issued by the SFC as may be mutually agreed upon by both Authorities to be covered by this Declaration (as may be updated from time to time);
- (e) “Compliance Plan” means a compliance plan prepared by the Dual Registrants for collective investment schemes applying for authorization by the SFC, which shall follow the format and requirements laid down by the Corporations Act 2001 for managed investment schemes investing in financial assets, securities and other similar instruments;
- (f) “Corporations Act 2001” means Act No. 50 of 2001 of the Parliament of Australia to make provision in relation to corporations and financial products and services, and for other purposes;
- (g) “Dual Registrants” means those Investment Management Persons who satisfy both of the following tests:

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- they are licensed by ASIC to operate registered management investment schemes in accordance with laws related to managed investment schemes, or they operate or manage managed investment schemes under an exemption under section 601QA of the Corporations Act 2001, or they are licensed by the SFC to manage collective investment schemes; and
 - they operate, manage or offer, or propose to operate, manage or offer, funds in the other jurisdiction;
- (h) “Host Authority” means the Authority in whose jurisdiction a Dual Registrant is originally licensed or exempted;
- (i) “Inspecting Authority” means the Authority performing an On-Site Inspection;
- (j) “Inspection Report” means a report, prepared by an Authority, summarising the results of a review or examination of a Dual Registrant;
- (k) “Investment Management Persons” (IMP) means investment fund managers, fund administrators, fund trustees, investment companies and investment funds, subject to the respective laws and regulatory requirements of Australia or Hong Kong (where applicable), and their Associated Persons;
- (l) “Managed Investment Schemes” means collective investment schemes as defined by the relevant Australian legislation (Section 9 - Corporations Act 2001 or such other successive or equivalent legislation);
- (m) “On-Site Inspection” means any review or examination by the Authorities or any of their delegates, at the premises of a Dual Registrant, of the Books and Records or premises of the Dual Registrant;

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- (n) “Risk Score” means the scores assigned to a Dual Registrant according to the regulatory risk level categorized by ASIC for the purpose of its on-going supervision and monitoring pursuant to laws in Australia relating to Managed Investment Schemes.

2. SCOPE OF SUPERVISORY COOPERATION

- 2.1 The Authorities intend to provide each other with the fullest possible cooperation in assisting in the enforcement of their respective laws and regulatory requirements governing Dual Registrants. Such co-operation will be provided to the extent permitted by the applicable laws and regulations in the jurisdiction of the respective Authority. It is anticipated that such cooperation will include assistance in the oversight of Investment Management Persons located in the jurisdiction of a Host Authority and subject to the regulatory oversight of the other Authority.
- 2.2 The Authorities shall ensure that cooperation is both timely and comprehensive and each Authority will favorably consider requests for regulatory assistance from the other Authority, irrespective as to whether the affected consumers are, in the main, resident in the jurisdiction of the other Authority.
- 2.3 Assistance under this Declaration may include:
- (a) exchanging information concerning Dual Registrants; and
 - (b) assisting in the conduct of On-Site Inspections of Dual Registrants.
- 2.4 The Authorities intend to keep each other advised of significant changes in the laws and regulatory requirements relevant to their cooperation under this Declaration. Nothing in this Declaration limits, expands or affects the respective jurisdictions of the Authorities.
- 2.5 To facilitate cooperation under this Declaration, the Authorities hereby designate contact persons as set forth in Attachment A.

3. **EXCHANGE OF INFORMATION**

- 3.1 The Authorities intend to provide each other an updated list of the names of Dual Registrants on a regular basis.
- 3.2 Each authority intends to notify the other on a timely basis of any enquiries, surveillance, investigations or enforcement action resulting in a significant outcome and which is taken in regard to a Dual Registrant, and keep the other party informed on a timely basis of any significant developments, without advance request.
- 3.3 Each Authority will inform the other Authority of any exemptions or conditions specific to the Dual Registrant that apply in relation to the licensing of a Dual Registrant.
- 3.4 The Authorities intend to provide each other, on a routine basis and without advance request, copies of Inspection Reports of Dual Registrants.
- 3.5 Each Authority intends to provide to the other, upon request and consistent with the laws and regulatory requirements which govern it, assistance in obtaining information concerning the contents of public and non-public Books and Records relating to a Dual Registrant. Such assistance may include:
 - (a) cooperation and consultation in reviewing, interpreting and analyzing such Books and Records and Inspection Reports; and
 - (b) obtaining information from the officers, directors, and other personnel of Dual Registrants.
- 3.6 ASIC intends to provide the SFC with the initial Risk Score of Dual Registrants and thereafter, ASIC intends to inform the SFC of the reason(s) for any adverse and significant changes to the Risk Score of Dual Registrants in a timely manner without advance request by the SFC.

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- 3.7 Each Authority intends, upon request and consistent with the laws and regulatory requirements which govern it, to provide other information located in its jurisdiction that may be relevant to the other Authority's review, examination or determination regarding the registration, authorisation or licensing status of a Dual Registrant.
- 3.8 To the extent permitted by applicable laws and practices, each Authority will use reasonable efforts to ensure that the other Authority is provided with any relevant information discovered which gives rise to a suspicion of a breach, or anticipated breach, of the laws or regulatory requirements in the other jurisdiction by a Dual Registrant.

4. INSPECTIONS

- 4.1 The Authorities intend to provide each other with the fullest mutual assistance regarding On-Site Inspections, subject to any laws or regulatory requirements in force at the relevant time. Where practicable, reasonable notice, as mutually agreed upon by both Authorities, shall be given to the Host Authority regarding the Inspecting Authority's intent to perform an On-Site Inspection and the commencement date of the inspection.
- 4.2 In its discretion, the Host Authority may accompany the Inspecting Authority during the On-Site Inspection. Such assistance may include, without limitation:
- (a) compiling, reviewing, interpreting and analyzing Books and Records;
 - (b) interpreting and understanding the internal controls and other procedures of a Dual Registrant; and
 - (c) obtaining such other information as may be relevant to the On-Site Inspection.

5. APPLICABILITY OF MOU

- 5.1 This Declaration is being made within the framework of the Memorandum of Understanding, dated 8 October 2001 (the “MOU”) between the Australian Securities and Investments Commission and the Securities and Futures Commission, and nothing contained herein modifies or amends the MOU.
- 5.2 Materials and information provided under the MOU are to be kept confidential and governed by the provisions of paragraphs 22, 23, 24, 25 and 26 of the M OU.

6. CONSULTATIONS

- 6.1 The Authorities intend to engage in regular consultations regarding investment management activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation.

SIGNED THIS 26th day of June 2003

On behalf of the ASIC:

On behalf of the SFC:

.....
Mr David Knott
Chairman

.....
Mr Andrew Sheng
Chairman

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ATTACHMENT A

The ASIC designates as its contact persons:

Mr Greg Tanzer
Executive Director
International Relations
Tel: (61) 7 3867 4704
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Mr Sean Hughes
Director
Regulatory Operations
Financial Services Regulation
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The SFC designates as its contact persons:

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Director, Investment Products Department
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