



ASIC

Australian Securities & Investments Commission

ASIC's forward agenda

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Introduction

Good afternoon.

It's a pleasure to be speaking here today about ASIC's Forward Agenda.

This is a particularly opportune time to speak to a forum such as the American Chamber of Commerce in Australia. The relationship between Australia and the United States is more profound than ever and, in the wake of the global financial crisis (GFC), a process of regulatory reassessment and change is well under way in both countries (although more so in the United States, as Australia's regulatory system is acknowledged to have fared better during the GFC).

Our financial and business ties are longstanding and deep-rooted, and you don't have to look very far to find them:

- There are currently 3561 Australian companies with US parent companies and 669 US companies registered as foreign companies operating in Australia. Their market capitalisation makes them important contributors to Australia's economy.
- The United States is one of the most important sources of foreign investment (and capital) into Australia and the top destination for Australian investment abroad. The facts back this up:¹
 - In the calendar year 2009, the United States accounted for more than half (59% or A\$94 billion) of total foreign investment flows into Australia. This is up significantly on 2008 figures where the United States accounted for just 18.2% of total foreign investment into Australia.
 - Australia has also been a strong source of capital flows into the United States. In 2009 Australians invested A\$74.5 billion in the United States (up from A\$53.3bn in 2008), which represented more than 70% of all Australian investment abroad (up from 50% in 2008).
 - Despite valuation effects (changes in the exchange rate and asset prices), Australian residents held over A\$400 billion worth of US assets at the end of 2009. This accounted for 36% of all Australian investment abroad at the end of that year.

Against this background, ASIC has developed a close working relationship with the US Securities Exchange Commission (SEC) and other US

¹ Australian Bureau of Statistics 2008 and 2009, *International Investment Position, Australia: Supplementary Statistics*, ABS Cat no. 5352.0, ABS, Canberra.

regulators, particularly on cooperation of cross-jurisdiction enforcement and supervisory matters.

Our working relationship with the SEC is supported by a memorandum of understanding (MOU), in place since 1993 and updated in 2008. We also have an MOU with the Commodity Futures Trading Commission (CFTC), in place since 1994, and on 18 June this year we entered into an MOU with the US Financial Industry Regulatory Authority (FINRA). FINRA supervises the market operators and exchanges in the United States.

ASIC's MOU with FINRA will promote and support greater cooperation between the two regulators and will enhance the supervision of financial markets in both countries. This is particularly important in light of ASIC taking over market supervision responsibilities from ASX.

There are a number of recent examples of our cooperation with US regulatory agencies on enforcement matters:

- In April, ASIC commenced proceedings seeking orders to disqualify the unlicensed operators of 14 unregistered offshore managed investment funds operating in Australia. ASIC's case is that the funds promised no-risk returns of 3–4% and more than 700 Australians invested \$42 million in them since 2002. ASIC's investigation, which was assisted by the CFTC, found that investors' funds were dispersed to various offshore accounts and some were used as a Ponzi scheme. ASIC alleges that only a portion of the investors' funds were actually invested and, contrary to the promises made, the funds were used to engage in high risk commodities, futures and options trading in the United States.²
- In related action, the CFTC has charged a Chicago-based registered Introducing Broker and Commodity Trading Advisor and its principal with destroying records and failing to diligently supervise employees.³

We also work to reduce regulatory barriers and assist capital flows between the two countries. For example:

- 250 US entities providing financial services to wholesale clients in Australia have been granted relief from the requirement to hold an Australian financial services (AFS) licence under Australian law.
- We have also granted some technical relief from Corporations Act prospectus requirements to US companies raising capital in Australia. This has allowed Australian investors to participate in offers which may not have otherwise been available to them.

² Media Release (10-74MR) *ASIC acts against unregistered offshore fund operators targeting Australian investors and self managed superannuation funds* (Thursday 8 April 2010). <<http://www.asic.gov.au/mr>>

³ Release: PR5861-10 *CFTC Charges Three Chicago Defendants with Destroying Records and Failing to Diligently Supervise Employees* (27 July 2010). <<http://www.cftc.gov/PressRoom/PressReleases/pr5861-10.html>>

In addition, in 2008 the Australian Government, ASIC and the SEC entered into a mutual recognition agreement that provides a framework to consider regulatory exemptions that would permit eligible US and Australian stock exchanges and broker dealers to operate in both jurisdictions, without the need for these entities to be separately regulated (in certain respects) in both countries (i.e. they would not be subject to dual regulation). This should have benefits in reduced costs and facilitate capital flows but relief would not be at the cost of retail investor protection.

Further work is required to fully implement this arrangement and discussions are on hold because of other regulatory priorities for the SEC in the United States.

These are just some of the examples which illustrate why we are committed to maintaining and improving our relationship with regulatory bodies in the United States.

ASIC is also committed to keeping its own house in good order in Australia, and to maintaining and strengthening our reputation as one of the world's most efficient and effective regulators—points which I will turn to now as I cover our forward agenda.

I should note, however, that with the result of the federal election still not known, the Government continues in caretaker mode and ASIC will continue to do its work in line with the 'caretaker conventions'.

The first point I will make about ASIC's forward agenda for the next couple of years is that, for the most part, we will continue to do what we have been doing because it has been working well. Let me expand on this point by advancing three propositions.

First, ASIC is a regulatory oversight body and not a guarantor of last resort against risk and corporate failure.

It's important to make this point as sometimes there are expectations of ASIC that go beyond our regulatory remit.

ASIC is a national body and has a very wide mandate in securities and investments regulation and financial consumer protection.

We provide regulatory oversight, but that doesn't mean we take the risk out of investing or out of financial products and services.

It is sometimes suggested that ASIC should prevent losses or failures. However, it is worth remembering that the Corporations Act, the principal piece of legislation for which ASIC is responsible, arose out of the Campbell Committee and Wallis Inquiry. These committees were heavily influenced

by the group of economic theories known as the 'Efficient Markets Hypothesis'.

The underlying philosophy of these theories (and hence of the Corporations Act) is to allow markets to operate with a minimum of interference—to allow risk and to allow investors to price risk.

ASIC's role in this regime is limited and can be likened to a road traffic authority or police force. We oversee the system. But, unfortunately accidents can still happen. Unlicensed drivers can be on the road. When accidents do happen, we turn up at the scene, clear the mess, care for the injured and punish wrongdoers (including those unlicensed drivers). ASIC also examines the scene of the accident and makes or recommends changes to Government (through Treasury) to improve road safety. We might decide to recommend an extra set of traffic lights, for instance.

We also look for roads where accidents can happen and try and fix them ahead of time and we are constantly looking (through a wide range of surveillance work) for unlicensed drivers. But it is not the intention of the Corporations Act, and ASIC is not resourced, to be on every road and at every intersection.

ASIC is very much an oversight line of defence. The primary line of defence comes from the law and policy makers and the gatekeepers (e.g. Board and auditors) and investors and their judgements on risk. Retail investors, financial consumers and creditors need to be careful to assess risk and make informed choices.

The second proposition is that ASIC maintains a clear set of priorities and continues to show strong results in meeting those priorities.

ASIC's broad oversight responsibilities can be grouped into two parts. The first part is real economy and financial markets infrastructure. The second part is to regulate financial markets behaviour, where our work is guided by the following four clear priorities:

- to assist and protect retail investors and financial consumers;
- to build confidence in the integrity of our financial markets;
- to facilitate international capital flows in and out of Australia; and
- to manage the domestic and international implications of the GFC.

Let me share some of the results we are achieving in our financial markets work.⁴ You can find more detail on our website⁵ and in our Annual Reports.

Our deterrence and recovery work

We have six deterrence teams focused on enforcement work. As at 1 July 2010 they had on foot 296 investigations and 427 actions. This contrasts to 268 investigations and 398 actions a year earlier. We concluded 156 matters last year and have, overall, a litigation success rate of 91%.

In collaboration with the Commonwealth Director of Public Prosecutions (CDPP), ASIC completed 23 criminal proceedings in 2009–10, with 22 people convicted, including 12 jailed. We completed 30 civil proceedings and assisted to obtain more than \$287 million in recoveries, costs and fines, with \$15.5 million in assets frozen for investors and creditors.

Major litigation

Our success rate in major cases is not as high as the overall 91% rate I have just quoted. We have currently before the courts, cases on appeal such as James Hardie (won at first instance) and Fortescue (lost at first instance). We also have before the courts, cases such as AWB, Centro and Westpoint.

Major litigation is necessarily complex and by its very nature, litigation can be won or lost. What is important for ASIC, however, is that the cases it brings are carefully thought through and we make clear to the market why the case (and its expenditure and potential impact on those involved) is in the public interest (e.g. to clarify or improve standards of behaviour). In more recent times, we have been careful to articulate the public interest considerations when commencing proceedings.

In addition to the cases mentioned we have a number of major investigations on foot (e.g. Storm Financial) and our forward program will continue to focus on these investigations, the major cases I have mentioned and other major cases which may arise.

Market integrity

Over the past 18 months, ASIC has placed significant resources into maintaining and improving confidence in the integrity of our markets—specifically, to target insider trading and market manipulation.

We currently have 68 enforcement matters relating to market integrity and, since 1 January 2009, we have had 20 significant outcomes, including three

⁴ I recently detailed ASIC's achievements in a speech I gave to the Australia–Israel Chamber of Commerce. See Tony D'Aloisio, *Implications of a fast changing regulatory landscape*, speech to Australia–Israel Chamber of Commerce, Brisbane, 21 July 2010. <<http://www.asic.gov.au/publications>>

⁵ ASIC media releases and advisories are available at <http://www.asic.gov/mr>.

convictions for insider trading, four convictions for market manipulation and eight brokers banned for market misconduct.

We currently have nine criminal matters pending before the courts.

This focus on insider trading and market manipulation will continue (with emphasis on deterrence) and remains very much part of our forward agenda.

Facilitating capital flows and raising of capital

ASIC's oversight role extends to, and will continue as part of the forward program to focus on:

- Product Disclosure Statements (PDSs) and their review. For example, we recently completed and published results on PDSs for contracts for difference (CFDs) and suggested areas for improvement;⁶
- improving disclosure in unlisted markets—for example, our 'if not, why not' disclosure for debentures, property trusts and mortgage trusts; and
- facilitating new corporate debt raisings with short-form disclosures.

Assisting and protecting retail investors

Our work in this area ranges from enforcement to financial literacy. We focus on both deterring illegal behaviour and assisting retail investors and financial consumers to make informed choices.

Let me illustrate with some examples:

- **On guidance.** We have distributed over 37,000 copies of our *Investing between the flags* booklet, which provides important guidance to retail investors, and we have received great feedback.

We have received over two million visits to our FIDO website in the past year, which includes guidance on many complex products. The website shows investors how to compare products and outlines real market scenarios to help them make choices that are appropriate to their circumstances.

- **On compensation.** Where retail investors have lost their money through collapses, ASIC has made recovering losses a key priority. Through the efforts of ASIC and liquidators:
 - Westpoint investors will see a potential return to date of some \$100 million of the \$388 million capital invested and we have a number of actions still before the courts; and

⁶ Report 205 *Contracts for difference and retail investors* (REP 205), July 2010. <<http://www.asic.gov.au/reports>>

- Opes Prime creditors will see some \$250 million in compensation. ASIC's role was to assist in facilitating mediation and punishing wrongdoing.⁷

Our work for SMEs

Our work also extends to small to medium companies. Some examples include:

- **Insolvent trading.** ASIC has a strong corporate insolvency program. We have worked with insolvency practitioners involved in both major and smaller corporate failures.

In the last year we have visited in excess of 150 companies as part of our National Insolvent Trading Program, which identifies companies nearing insolvency and encourages them to take early action. More than 20% of all companies reviewed by ASIC in the year were subsequently placed into some form of external administration.

- **Phoenix trading.** We are and will continue to be active in discouraging phoenix trading (e.g. we will continue to take action as we did recently in the Somerville case).

To give you a feel for our achievements and results, for the month of August (just passed) ASIC made some 11 announcements. Here is what some of these announcements covered:

- Mega ICBC undertakes compliance review at ASIC's request⁸
- Former Streetwise director (Bangaru) found guilty on 13 charges⁹
- ASIC obtains orders winding up Gold Coast investment companies¹⁰
- Trustee of self managed super fund sentenced on ASIC charges¹¹
- Stuart Ariff arrested on ASIC charges¹²
- Former Chartwell secretary jailed on ASIC charges¹³
- Receivers appointed to unregistered property schemes¹⁴

My third proposition is that ASIC's achievements or results in relation to these priorities are making a real and positive difference in maintaining confidence in the integrity of our financial markets. In doing so, ASIC is providing the

⁷ ASIC Advisory (09-135AD) *Opes Prime schemes of arrangement approved* (4 August 2009).

⁸ ASIC Advisory (10-182AD) *Mega ICBC undertakes compliance review at ASIC's request* (30 August 2010).

⁹ ASIC Advisory (10-181AD) *Former Streetwise director found guilty* (25 August 2010).

¹⁰ ASIC Advisory (10-179AD) *ASIC obtains orders winding up Gold Coast investment companies* (24 August 2010).

¹¹ ASIC Advisory (10-178AD) *Trustee of self managed super fund sentenced on ASIC charges* (24 August 2010).

¹² ASIC Advisory (10-177AD) *Stuart Ariff arrested on ASIC charges* (23 August 2010).

¹³ ASIC Advisory (10-176AD) *Former Chartwell secretary jailed on ASIC charges* (19 August 2010).

¹⁴ ASIC Advisory (10-170AD) *Receivers appointed to unregistered property schemes following ASIC action* (5 August 2010).

community with a real dividend from its investment in ASIC.

A lot of our work is aimed at lifting standards of behaviour—something that is not easy to measure.

Nevertheless, we conducted a base survey about two years ago with our extensive range of stakeholders and we will run a similar survey later this year. In that way, we will get a measure from our stakeholders on how we are improving standards of behaviour in key areas.

Let me share some anecdotal evidence that acknowledges the good work ASIC has been doing.

First internationally, ASIC is perceived as a leader in its peer groups and its reputation has been enhanced by the way Australia responded to the GFC. As a measure of the respect we have earned from the international regulatory community, ASIC was asked to jointly chair the International Organization of Securities Commissions (IOSCO) Taskforce on Unregulated Markets and to chair the Joint Forum.

Domestically, we stay close to the market and seek feedback. Recently we did a 'health check' on how we are faring and, as I said, we will follow this up with a more extensive survey later this calendar year.

Things that were seen to be working well included that ASIC had:

- a clear increase in external orientation and responsiveness;
- a stronger top team;
- unprecedented levels of access and engagement; and
- substantive contributions both domestically and internationally.

While we are not yet getting 10 out of 10, there is significant confidence in ASIC across our many stakeholders and, internationally, we are becoming a benchmark regulator.

To reiterate, my first point on our forward agenda is that we will continue to focus on what we have been doing because it has been working well (or 'business as usual' if you like).

In addition, however, there are six more specific issues in our forward agenda that I would like to briefly cover. These are over and above 'business as usual' and should give you a better understanding of where we are committing resources and why.

First, the national regulation of credit.

On 1 July, ASIC became the national regulator for consumer credit and finance broking, taking over from the states and territories. This means that home loans, personal loans, credit cards, consumer leases, pre-arranged overdrafts and line of credit accounts, among other products and services, are now regulated under Commonwealth legislation and administered by ASIC.

In preparing for credit regulation, our ear has been to the ground. We have worked with industry and other stakeholders, sought feedback and worked hard to make the system relevant and practical. We've issued 11 regulatory guides and nine information sheets to help businesses understand their obligations.

Over 14,700 credit businesses have registered with ASIC and we have already issued 132 licences, with over 400 credit licence applications received.

We have also developed 15 factsheets and a credit booklet for consumers to complement the information provided to industry.

Going forward, our focus is on smoothly transitioning the industry to the new credit regime and ensuring our oversight of the industry is effective. Over the next 12 months we will be:

- policing the boundary to ensure people aren't operating outside the licensing system, either intentionally or inadvertently;
- undertaking verification surveillances to make sure the information in licence applications is accurate;
- reviewing practices at the fringe of the market to ensure compliance with the new responsible lending obligations when they come into force;
- working with industry on the application of responsible lending obligations to credit card applications and credit card limit increases;
- undertaking risk-based compliance reviews of credit businesses; and

- finalising guidance on mortgage early exit fees and working with industry to ensure compliance.

Secondly, the settling in of market supervision

On 1 August, ASIC assumed responsibility from ASX for the supervision of trading on Australia's licensed equity and derivatives markets. Throughout the process, our objective has been to manage a seamless transfer of supervisory responsibilities.

ASIC has handled the transition well.

We have built and trained a quality Market & Participant Supervision team, developed an integrated market surveillance system, and rolled out a relationship management model to understand what is happening within each participant's business and within the market in general.

As we transition to the new framework, we have said that we will approach our market supervision in a way which is consistent with the approach previously adopted by ASX. Over time, and as market structures evolve, we expect that our approach will be refined.

Over the next 12 months, we will focus on:

- broker profiling—that is, conducting risk-based assessments of market participants to review their business models, key areas of risk and ensuring they have adequate controls to manage those risks;
- conducting reviews of behaviour and processes across the broker community. Themes we will cover include areas such as participants' internal supervisory arrangements, management and compliance culture, unauthorised securities trading and the treatment of sophisticated investors in an excluded offer;
- assessing further the potential for disruptive algorithms in Australia's markets;
- assessing further the potential for market manipulation, particularly marking the close, gaming the opening and closing auctions, layering including bait and switch as well as pump and dump. As I said earlier, we will also focus on insider trading, where we will be looking beyond equities to derivatives, CFDs and other over-the-counter trades.

Thirdly, we are preparing for competition for market services.

Prior to the election, the Government announced its support for competition between markets for trading in listed shares in Australia.¹⁵

If this support is continued by the incoming Government, competition for trading services will create new challenges for ASIC. We are therefore giving much thought to how the Australian market might evolve.

If competition is pursued, our objective will be to consult with the market on the structure, technology and regulatory framework for effective competition.

Fourthly, we will continue to improve the way we handle major litigation and investigations.

I mentioned major cases earlier and our approach to them. There are a couple of additional points to make here.

First, as part of our strategic review in 2008, ASIC made significant changes to its handling of major litigation including:

- creating smaller deterrence teams with more senior practitioners;
- establishing ASIC's Chief Legal Office to review and be involved in important strategic and tactical (legal) issues;
- clarifying the decision-making process for cases, particularly for strategic and public interest considerations;
- advising the market early on why a particular case is being taken on and its public interest significance;
- working more closely with the CDPP on criminal matters; and
- selective use of external law firms if we feel the additional expertise is needed.

From the results I mentioned earlier, we are seeing the benefits of these changes.

Secondly, we have reviewed judicial comments in the way we handle and run major cases. We received criticism at first instance in AWB although we won on all points on appeal. We also received criticism in OneTel on the width of that case and we have reviewed our processes and approach to see how we can better narrow issues.

¹⁵ The Hon. Chris Bowen MP, Media Release, 31 March 2010. <<http://www.chrisbowen.net/media-centre/media-releases.do?newsId=3016>>

However, commercial transactions are complex and ASIC cannot allow complexity to be a reason for not running a case. For example, Storm Financial is one of the most complex cases I have come across in my 30 years of experience, much of which was as a commercial lawyer. It involves the individual circumstances of more than 3000 investors making multiple investments over many years.

One of the things we are doing to manage these complex cases is to seek to mediate them early (as we did in Opes Prime and Westpoint and are seeking to do in Storm). This minimises costs. However, let me be clear—no matter how complex, if we need to run the case because it is in the public interest to do so, we will.

Fifthly, our teams are looking at improving intelligence collection to improve our strike rate in identifying potential road hazards (using the road traffic analogy) before accidents occur.

As I said earlier, as an oversight body we often turn up at the scene of an accident. We cannot be at every intersection. However, we are working at making sure we use available intelligence from the market and, through selective risk-based surveillance, try to identify potential hazards for retail investors earlier.

A good example of this is the improvements we've made in the use of complaints and breach reports made to ASIC. Often complaints can be an indication of a broader problem and we are making better use of this intelligence. Another example is the extensive use we now make of 'risk-based surveillance'.

As I indicated earlier, however, we are not a guarantor of last resort and that is why we complement this work with investor and consumer education, to put retail investors and financial consumers in a better position to make informed choices and assess risk.

Finally, our forward program includes continued participation in international regulatory developments.

Now this is a large topic in itself but it is an important one and worth spending a little time on.

ASIC continues to play a major role in the development of better regulatory measures through forums including IOSCO and the Joint Forum. This complements the work of APRA and RBA on the Basel Committee, the Financial Stability Board, and the International Accounting Standards Board. Our work is to do with securities and investments, with prudential matters the responsibility of APRA and the RBA.

Our collaborative work through these groups and others has helped inform our approach to domestic regulatory issues and our direct input to Treasury, which is the Government's policy adviser in these areas.

We have learned much from working with our international counterparts in the wake of the GFC, and are confident that the new measures implemented so far in Australia on securities and investments have improved transparency and accountability.

Two examples are in the areas of short selling and credit ratings agencies.

- **Short selling.** In late 2008 Australia banned naked short selling. For covered short selling we provided a 'circuit breaker' (banning) for a period which was progressively removed as market confidence improved. The Government followed this action with new rules for the reporting of short sale transactions and of short positions. It continued the ban on naked short selling with limited exceptions (e.g. a short sale resulting from the exercise of exchange-traded options).
- **CRAs.** The GFC also highlighted issues with the use and quality of ratings issued by credit rating agencies (CRAs). In Australia, CRAs have been required to hold an AFS licence since the beginning of this year. They have been required to comply with the IOSCO Code of Conduct for CRAs since July. This is a crucial step forward in restoring confidence in the ratings process.

There are a number of other areas where IOSCO has completed work which could lead to further changes.

The proposed regulation of securitisation and hedge funds and developments in derivatives are three key examples:

- **Securitisation.** In September 2009, IOSCO released guidance which goes to things such as 'skin in the game' and improved disclosure for investors. ASIC (with Treasury and APRA) continues to work with industry to determine whether and to what extent retention requirements and disclosure standards for securitisation may be appropriate to our markets. In the United States and Europe, a 5% skin in the game requirement is being introduced (on the 'buy' side in Europe and on the 'sell' side in the United States).

The IOSCO guidance should enable investors to better assess creditworthiness and credit risk.

- **Hedge funds.** IOSCO has also recommended high-level principles for the supervision of hedge funds, including the monitoring of hedge funds and their counterparties to detect systemic risks.

Hedge funds provide benefits to financial markets, but for regulators they pose two key risks: leverage or credit risk which can systemically impact on banks; and market-related risks which, through aggressive sell-downs, can impact on confidence in securities markets.

- **Derivatives.** In the area of OTC derivatives (credit default swaps and so on), the G20 and IOSCO and other bodies are moving towards:
 - pushing the clearing of OTC derivatives trades through a central counterparty (CCP) where possible;
 - encouraging exchange-trading of derivatives; and
 - higher capital requirements for non-centrally cleared contracts.

Just how Australia responds in these three areas will, of course, be matters for government policy. What we can say, however, is that the changes proposed by IOSCO, if adopted, will be very much at the margin for Australia (because of our regulatory system) rather than fundamental. For example, our existing managed investment scheme (MIS) regime does a lot of the work sought to be done by the proposed IOSCO response for hedge funds.

There are a number of other issues being discussed by IOSCO which are still in the formative stage but would, if finalised and then adopted by countries, have significant impact.

IOSCO's work is now turning to whether more fundamental reform is needed now that it has responded to the more immediate issues out of the GFC. Let me outline two such issues that IOSCO is beginning to debate:

- **Suitability duty.** The first is whether a 'suitability duty', if you like, should be imposed on product manufacturers and distributors. In theory, the aim of a 'suitability duty' would be to curb the sale of highly sophisticated or risky financial products to unsophisticated investors and, in effect, prevent retail investors from getting in over their heads. Related to that is whether or not certain products should be available (because of risk) to the retail sector.
- **Point of sale disclosure.** The second issue to mention is the distinction between the sophisticated and unsophisticated investor in the context of disclosure requirements. We have this distinction in our law. What has highlighted this as an issue is that most of the losses from the GFC were at the wholesale or sophisticated investor level. A question IOSCO is assessing is whether the distinction should be maintained or changed.

And finally, on this sixth specific subject of our forward agenda, any discussion on international regulation of investments and securities needs to also look at the

domestic laws of our major investment partners. These laws can impact on Australian companies operating in those jurisdictions.

In July, for instance, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 into law. The Act makes sweeping changes in a number of areas including regulatory architecture and the regulation of banks, credit ratings agencies, hedge funds and OTC derivatives markets. The detail of these changes will be worked through by regulators in coming months as they draft over 300 sets of rules.

We will need to understand the impact this approach in the United States, and other reforms in the European Union, may have for Australian businesses operating in those markets. We will also need to assess the arbitrage risks to our markets that may arise from these differences. Let me give two examples.

- **CRAs in the European Union.** There is a concern, for example, that the EU's approach to the regulation of CRAs could be an issue for firms using ratings by Australian-licensed CRAs to market products and raise funds in Europe. From 1 June 2011, ratings issued by Australian-licensed CRAs will only be accepted for use in the EU if the European Commission determines that Australian CRA regulation is equivalent to the EU's CRA regulation. An assessment of Australia's CRA regulatory regime is underway, with the Committee of European Securities Regulators (CESR) expected to provide its advice on equivalence later this year.
- **Derivatives in United States.** The move in the United States towards the clearing of OTC derivative transactions by central counterparties (CCPs) or the reporting of OTC trades to trade repositories could also have implications for Australian counterparties in the near future. At present there are no Australian CCPs centrally clearing OTC derivatives, and it is unclear whether Australian counterparties will be able to meet entry and ongoing requirements to participate in offshore CCPs. Whether and how the Dodd-Frank requirements in the United States will apply to Australian market participants will be an issue. This will be made clearer when the SEC and CFTC develop the supporting rules over the next 12 to 18 months.

You will see, simply from the complexity and nature of the international issues, why they need to be one of the six matters in our forward agenda.¹⁶

¹⁶ Developments on the international regulatory front are outlined further in a speech I recently gave to the Financial Services Council Annual Conference. See Tony D' Aloisio, *Developments in the global regulatory system*, speech to Financial Services Council Annual Conference, Melbourne, 12 August 2010. <<http://www.asic.gov.au/publications>>

Conclusion

Let me conclude by drawing together ASIC's forward program.

The two key planks for the next couple of years are:

- firstly, to continue what we have been doing—the sorts of things I have outlined today; and
- secondly, to progress the six more specific matters (credit, market surveillance, market competition, improving our approach in major litigation, better intelligence to identify potential hazards and continued involvement in international developments).

Importantly, in doing those things, we will continue to invest in consultation and communication with our stakeholders through such avenues as our External Advisory Panel, the Regional Liaison meetings and consumer and financial literacy bodies.

As I said earlier, the community's investment in ASIC is providing solid returns. We are achieving real results which go to improving confidence in the integrity of our markets.

Thank you and I am happy to take questions (subject to the caveat that we are still in 'caretaker' mode).