

MEMORANDUM OF UNDERSTANDING

between

**THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

and

THE FINANCIAL REPORTING COUNCIL

PARTIES TO MEMORANDUM

This Memorandum records an understanding (MOU) reached between the Australian Securities and Investments Commission (ASIC) and the Financial Reporting Council (the FRC) to facilitate liaison, co-operation, assistance and the exchange of information between the agencies in accordance with the relevant statutory provisions.

1. PURPOSE

1.1 The agencies recognise that co-operation between them is desirable to discharge their respective functions and maximise the effectiveness of their powers.

1.2 The agencies agree to assist each other in exchange of information and notification of matters within the framework of this MOU and consistent with all relevant laws.

2. FRC

2.1 The FRC is an independent statutory body established by the *Australian Securities and Investments Commission Act 1989* and is continued in existence by the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.

2.2 The FRC is responsible for auditing and accounting standard setting, and the monitoring and assessing of auditor independence arrangements and audit related disclosure.

3. ASIC

3.1 ASIC was established by the *Australian Securities and Investments Commission Act 1989* and is continued in existence by the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*. It is responsible for the administration and enforcement of the *Corporations Act 2001* and other relevant legislation.

3.2 Specifically and for the purposes of this MOU, ASIC is responsible for surveillance, investigation and enforcement of the financial reporting and audit requirements of the *Corporations Act 2001*, including:

1. compliance by Australian auditors with the audit quality and auditor independence requirements of the Corporations Act and the auditing standards.
2. compliance by companies, registered schemes and disclosing entities with the audit-related disclosure requirements of the Corporations Act and the accounting standards.

4. INFORMATION SHARING

4.1 ASIC and the FRC will each, subject to any restrictions imposed by law, share information that they believe would be of assistance to the other in undertaking their respective responsibilities under the law.

4.2 ASIC and the FRC recognise that each agency may from time to time request the other to provide to it information relevant to the exercise by the requesting agency of its powers under the law. If such a request is made, the agency receiving the request will use its best endeavours to provide the requested information in a timely manner, subject to any relevant legal and operational considerations and any conditions or caveats that the providing agency might place upon the use or disclosure of the information, such as claims of legal professional privilege.

4.3 ASIC and the FRC also recognise that each agency will, in the course of exercising its powers, periodically come into possession of information which would, if provided to the other agency, be likely to assist that other agency in administering the laws for which it is responsible. ASIC and the FRC agree, subject to the requirements of sections 127 and 237 of the *ASIC Act* and the Information Privacy Principles in the *Privacy Act 1988*, to use reasonable endeavours to notify the other agency on a timely basis of the existence of information which the agency holding it judges to be relevant to the regulation or enforcement of auditor independence requirements, notwithstanding that it may not have received a request from the other agency for such information.

Specific reports to be provided

4.5 The FRC will report to ASIC any suspected breaches of the law relating to auditor independence that it discovers in the course of carrying out its functions.

4.6 Reports from the FRC will be made in writing and provided to an Authorised Officer of ASIC (Appendix A). ASIC will consider each such report from the FRC in accordance with its standard assessment procedures.

4.7 ASIC will provide reports, at least annually, to the FRC, identifying:

- (a) issues noted by ASIC in relation to the systems and processes used by Australian auditors to ensure compliance with auditor independence requirements and that ASIC believe may be relevant to the FRC's function to monitor and assess the nature and overall adequacy of these systems and processes;
- (b) issues noted by ASIC in relation to the overall compliance by companies, registered schemes and disclosing entities with the audit-related disclosure requirements of the Corporations Act and the accounting standards; and

- (c) issues noted by ASIC in relation to any enforcement activity which are relevant to the FRC's function to monitor and assess the auditor independence arrangements and audit related disclosure.

4.8 Reports from ASIC will be made in writing and provided to an Authorised Officer of the FRC (Appendix A).

5. CONFIDENTIALITY

5.1 Under section 237(1) of the *ASIC Act*, the FRC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence. Under section 237(2) of the *ASIC Act*, disclosure of such information is taken to be authorised if required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory, or made to ASIC for the purposes of its performance of its functions.

5.2 Under section 127(1) of the *ASIC Act*, ASIC must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in or in connection with the performance of its functions or the exercise of its powers, or that is protected information. Under sections 127(2) and 127(4)(a) of the *ASIC Act*, disclosure of such information is taken to be authorised if required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory, or where the Chairperson of ASIC (or his delegate) is satisfied that the particular information will enable or assist an agency within the meaning of the *Freedom of Information Act 1982* to perform or exercise any of its functions or powers. The FRC is such an agency.

5.3 Where either agency receives notification of the existence of confidential information under clause 4.3 above, and determines that it requires access to that information, it will make a request in accordance with the principles and procedures set out below. The request will be considered and determined by the other agency in accordance with those principles and procedures.

Requests for confidential information

5.4 ASIC and the FRC will each use their best endeavours to provide relevant information in a timely manner in response to requests for confidential information, subject to any relevant legal and operational considerations and any conditions or caveats that the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege.

5.5 ASIC and the FRC acknowledge that in general, the agency that receives the request for confidential information is obliged to comply with the rules of procedural fairness.

5.6 Requests by the FRC to ASIC for confidential information will be made in writing by an Authorised Officer of the FRC (Appendix A) to an Authorised Officer of ASIC (Appendix A).

5.7 Requests by ASIC to the FRC for confidential information will be made in writing by an Authorised Officer of ASIC (Appendix A) to an Authorised Officer of the FRC (Appendix A).

6. USE OF CONFIDENTIAL INFORMATION

6.1 When either agency receives information from the other in accordance with this MOU, the receiving agency will take all reasonable steps to ensure that such information is only used or disclosed for the purpose for which it was obtained, or as otherwise authorised by the agency providing the information.

6.2 On occasion an agency providing information to the other under this MOU may require that the information be disclosed only to individuals holding designated offices within the receiving agency.

6.3 Where either ASIC or FRC 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.

6.4 Without limiting the generality of clause 6.1 of this MOU, the agencies will comply with the Information Privacy Principles set out in the *Privacy Act*.

7. CONSULTATION ON POLICY

7.1 To promote effective and well-coordinated development of regulatory policy, ASIC and the FRC will inform each other when determining substantive issues of policy with respect to the regulation of auditor independence issues 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.

8. LIAISON BETWEEN AGENCIES

8.1 To promote co-operation between ASIC and the FRC, regular liaison meetings will be held between the agencies with regard to operational and policy matters. These liaison meetings should occur at least every 6 months, or as the agencies from time to time agree.

8.2 The agencies will establish procedures to facilitate regular contact between officers of the agencies on routine operational matters.

8.3 In order to ensure effective liaison, the agencies may exchange lists of contact officers.

9. DISPUTES

9.1 Where there is disagreement over any matter related to issues in this MOU, the agencies will seek to resolve the issue by negotiation at operational level. If these negotiations fail, the matters will be referred to the Chairman of ASIC and the Chairman of the FRC.

10. REVIEW OF THIS MOU

10.1 The agencies will keep the operation of this MOU under periodic review and will consult with each other with a view to improving its operation and resolving any matters which may arise.

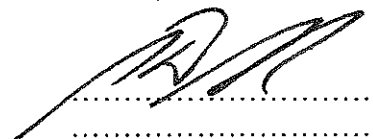
11. AMENDMENTS

11.1 This MOU may be modified or amended by written agreement between the parties. If it becomes apparent that it is necessary or desirable to amend or add to this MOU, ASIC and the FRC will each use their best endeavours to agree upon appropriate amendments or alterations as soon as possible thereafter.

12. TERMINATION

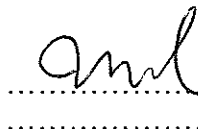
12.1 ASIC or the FRC must give written notice to the other of its intention to terminate this agreement. The agreement will terminate 30 days after the date upon which the notice was given.

This MOU is dated 1st day of May 2008 and incorporates amendments to this date from the original MOU dated 30th day of June 2004 .



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Tony D'Aloisio
Chairman
Australian Securities and Investments Commission



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Jeffrey Lucy
Chairman
Financial Reporting Council

APPENDIX A

AUTHORISED OFFICERS FOR THE PURPOSE OF REQUESTING AND PROVIDING ACCESS TO INFORMATION

Requests for confidential ASIC information should be addressed to:

Chief Accountant
or
Director, National Audit and Insolvency Group.

Requests for confidential FRC information should be addressed to:

FRC Secretary.

Persons occupying these positions in ASIC and FRC are authorised to give information to an authorised officer of the other agency.

