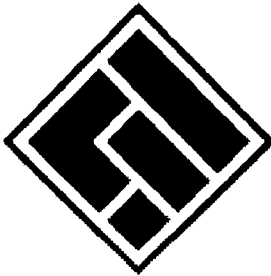


**DATED 24 JUNE 2002**

**MEMORANDUM  
OF  
UNDERSTANDING**

**AUSTRALIA**



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**Australian Securities &  
Investments Commission**

**UNITED KINGDOM**



**Financial Services  
Authority**

Financial Services Authority  
General Counsel's Division  
10th Floor  
25 The North Colonnade  
Canary Wharf  
London E14 5HS  
Phone: (44)(0) 20 7676 1000  
Fax: 44 (0) 20 7676 0031

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## Memorandum of Understanding (“MoU”)

between

**Australian Securities and  
Investments Commission  
 (“ASIC”)**

**and**

**Financial Services Authority  
 (“FSA”)**

### Recitals

A. ASIC is the Australian national financial services regulator. It administers the following legislation:

- Corporations Act 2001;
- Australian Securities and Investments Commission Act 2001;
- Insurance (Agents and Brokers) Act 1984;
- Insurance Contracts Act 1984; and
- Superannuation (Resolution of Complaints) Act 1993.

B. ASIC also exercises consumer protection related regulatory functions under the following legislation:

- Superannuation Industry (Supervision) Act 1993;
- Retirement Savings Accounts Act 1997;
- Life Insurance Act 1995; and
- Insurance Act 1973.

C. ASIC is not responsible for:

- prudential functions under the legislation in Recital B above (these are exercised by the Australian Prudential Regulation Authority);
- authorising deposit-taking institutions (the province of the Reserve Bank of Australia); or
- the primary regulation of the provision of credit (the responsibility of State fair trading and consumer affairs bodies), however ASIC’s general consumer

protection powers contained in Part 2 Division 2 of the ASIC Act do apply to credit.

- D. ASIC's ability to exercise coercive powers on behalf of foreign regulators is governed by the Mutual Assistance in Business Regulation Act 1992. In criminal matters, where a prosecution is contemplated or has commenced, ASIC's ability to assist foreign regulators by seeking the authorisation of the Commonwealth Attorney-General to exercise coercive powers, is governed by the Mutual Assistance in Criminal Matters Act 1987 (Commonwealth).
- E. The FSA is the United Kingdom's national financial services and markets regulator under the Financial Services and Markets Act 2000 ("FSMA").
- F. The FSA administers FSMA, which provides among other things for the authorisation and prudential and conduct of business supervision of financial services, financial service providers, financial products and financial markets. In its capacity as the competent authority under Part VI of FSMA (i.e. the UK Listing Authority), the FSA is responsible for regulating listed issuers and their corporate advisers.
- G. The FSA's ability to exercise its investigative and information-gathering powers on behalf of foreign regulators is provided for in FSMA, in particular, section 169.
- H. ASIC and the FSA wish to enter into this MOU to provide a framework for co-operation, including channels for communication, increased mutual understanding, and the exchange of information and investigative assistance, to the extent permitted by applicable laws, regulations and requirements. ASIC and the FSA believe such co-operation will enable them to more effectively perform their functions.
- I. ASIC was formerly named the Australian Securities Commission and the FSA was formerly named the Securities and Investments Board, and under those names the parties, together with Her Majesty's Treasury entered into an MoU in London on 28 October 1992 ("the 1992 MoU").
- J. This MoU is intended to replace the 1992 MoU with a broadly similar arrangement, taking into account:
- subsequent changes to the names and responsibilities of the parties;

- changes in applicable legislation, including European legislation;
  - other changes in the international environment, including the increasing importance of international co-operation with respect to money laundering (in particular relating to possible terrorist activity), market abuse, electronic commerce, and other aspects of financial regulation.
- K. The parties acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

## Operative Part

### Interpretation

1. In this MoU, unless the context requires otherwise:
  - “administering” an applicable law, regulation or requirement includes enforcing the same;
  - “applicable laws, regulations and requirements” means any law, regulation or requirement applicable in Australia and/or in the United Kingdom, and where the context permits includes:
    - (a) relevant European legislation that has not yet been transposed into UK domestic law;
    - (b) any law, regulation or requirement applicable in a part of Australia or the United Kingdom; and
    - (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;
  - “Authority” means ASIC or the FSA;
  - “permitted onward recipient” means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;
  - “person” means a natural person, legal entity, partnership or unincorporated association;
  - “requested Authority” means an Authority to whom a request is made under this MoU;
  - “requesting Authority” means an Authority making a request under this MoU.

### Purpose

2. The purpose of this MoU is to assist the Authorities to carry out their functions more effectively by providing a framework for co-operation, including channels for communication, increased mutual understanding, and the exchange of information and investigative assistance, to the extent permitted by applicable laws, regulations and requirements.

## **Principles**

3. The Authorities intend to provide the fullest mutual assistance to one another within the terms of this MoU. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Australia or the United Kingdom. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.

## **Provision of Unsolicited Information**

4. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made. If the providing Authority so specifies, the conditions of this MoU will apply to information so provided.
5. To the extent permitted by applicable laws, regulations and requirements, each Authority will use reasonable efforts on a timely basis to provide the other Authority with any information that is in its possession or discovered which:
  - (a) gives rise to a suspicion of a breach, or anticipated breach, of the applicable laws, regulations and requirements of the other Authority; or
  - (b) will be likely to assist in administering the laws, regulations or requirements of the other Authority, if provided to the other Authority.
6. Without limiting paragraph 5 above, each Authority will use reasonable efforts to inform the other of:
  - (a) material developments or supervisory concerns relating to the operations of cross-border establishments or groups;
  - (b) major changes in its national regulatory system, in particular bearing on the activities of such establishments or groups;
  - (c) material administrative or judicial sanctions imposed against such establishments or groups;



- (d) direct contacts between the Authority and financial service providers regulated by the other Authority.

### **Types of Assistance**

- 7. In response to requests for assistance, each Authority will use reasonable efforts to provide mutual assistance to the other, subject to its laws and overall policy, including:
  - (a) providing information in the possession of the requested Authority;
  - (b) confirming or verifying information provided to it for that purpose by the requesting Authority;
  - (c) exchanging information on or discussing issues of mutual interest, such as alternative dispute resolution;
  - (d) obtaining specified information and documents from persons;
  - (e) questioning or taking testimony of persons designated by the requesting Authority;
  - (f) conducting inspections or examinations of financial services providers or arranging for the same; and
  - (g) permitting the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority pursuant to paragraphs (e) - (f) above.

### **Ability to obtain information voluntarily not affected**

- 8. This MoU does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, subject to any applicable laws, regulations and requirements of the jurisdiction where the information is sought being observed.

### **Requests for Information and Other Assistance**

- 9. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business

days. To facilitate assistance, the requesting Authority should specify in any written request:

- (a) the information or other assistance requested (identity of persons, specific questions to be asked etc.);
- (b) if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
- (c) the purpose for which the information or other assistance is sought;
- (d) to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
- (e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of **Appendix 2**; and
- (f) any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

### **Contact Points and Special Procedures**

- 10. For matters relating to this MoU as a whole or agency-wide issues, contact between the Authorities should be between the contact points in **Appendix 1**.
- 11. Requests should be directed to the contact points set out in **Appendix 2** (for actual or possible enforcement action other than enforcement action relating to listing rules), **Appendix 3** (for actual or possible enforcement action relating to listing rules) and **Appendix 4** (for supervision or other matters according to sector). If it is not clear to whom a request should be directed, the request should be directed to the contact point in **Appendix 1**.
- 12. Any further procedures set out in an Appendix will govern requests relevant to the subject matter of that Appendix.

## Assessing Requests

13. Each request will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
14. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:
  - (a) whether the request conforms with this MoU;
  - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
  - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
  - (d) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Authority's jurisdiction to give the assistance sought;
  - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the further matter set out in clause 2 of **Appendix 2**; and
  - (f) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness).
15. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 14 in the discretion of the requested Authority.

## Costs

16. The requested Authority may, as a condition of agreeing to give assistance under this MoU, require the requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required if the cost of fulfilling a request is likely to be substantial or if a substantial imbalance has arisen in the cumulative costs incurred.

## Confidentiality

17. Information supplied under this MoU will be used or disclosed by a recipient Authority, or person in receipt of such information from a recipient Authority, only for the purpose indicated in the table, or any purpose reasonably ancillary thereto. Consent in writing of the supplying Authority must be obtained for any other use or disclosure by the recipient Authority or third party.

Type of information	Permitted purpose
(a) Information constituted by or contained in a request	Assessing and fulfilling the request
(b) Information supplied pursuant to a request	The purpose specified in the request
(c) Unsolicited information	Administering the applicable laws, regulations and requirements of the recipient Authority and any other purpose specified by the supplying Authority in connection with the information

18. The recipient Authority will notify the supplying Authority of any legally enforceable demand for information supplied under this MoU it receives, and will assert such appropriate legal exemptions or privileges with respect to that information as may be available. The recipient Authority will consult with the supplying Authority before complying with any such demand unless this is not practicable for reasons of urgency.

19. Subject to paragraph 17 and any legally enforceable demand as mentioned in paragraph 18, information supplied under this MoU will be kept confidential.
20. Any document or other material provided in response to a request under this MoU and any copies thereof should be returned on request, to the extent permitted by law. Other documents disclosing the contents of such material should also be returned upon request, to the extent permitted by law and subject to legitimate record management considerations.

### **Consultation**

21. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
22. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the requesting and the requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

### **Term**

23. This MoU takes effect from the date of its signature by ASIC and the FSA and will continue to have effect until terminated by either of the Authorities giving at least 30 days' advance written notice to the other Authority.
24. Termination of this MoU does not affect obligations under this MoU relating to confidentiality of information, which shall continue to have effect.

### **Amendment**

25. This MoU may be amended by agreement in writing signed by the respective Chairmen of the Authorities or, in the case of the contact points or addresses described in the Appendices, by the contact person listed in **Appendix 1** providing written notice of the amendment to their corresponding contact person in that Appendix.

**Termination of 1992 MoU**

26. As between ASIC and the FSA, the 1992 MoU is terminated with effect from the day on which this MoU takes effect, except to the extent to which it contains obligations relating to confidentiality of information, which shall continue to have effect.

**Executed by the Parties:**

**For ASIC**



David Knott, Chairman

Date: 24 June 2002

**For the FSA**



Howard Davies, Chairman

Date: 24 / 6 / 02

## Appendix 1: Agency-Wide Contact Details

ASIC: Executive Director, International Relations

National Office, Sydney

Level 24

No 1 Martin Place

GPO Box 4866

Sydney NSW 1042

AUSTRALIA

Telephone: 61-7- 3867 4709

Facsimile: 61-2- 9911 2634

FSA: Director, Enforcement

Financial Services Authority

9<sup>th</sup> Floor

25 The North Colonnade

London E14 5HS

UNITED KINGDOM

Telephone: 44-20-767 61396

Facsimile: 44-20-767 61397

## **Appendix 2: Enforcement Matters (other than Listing Rules Enforcement Matters)**

### **Contact details**

ASIC: The Executive Director, International Relations referred to in Appendix 1

FSA: Director, Enforcement

Financial Services Authority

9<sup>th</sup> Floor

25 The North Colonnade

London E14 5HS

UNITED KINGDOM

Telephone: 44-20-767 61396

Facsimile: 44-20-767 61397

### **Further details to be contained in requests for assistance**

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be contained in the request referred to in paragraph 9 of this MoU:
  - (a) a description of the conduct or suspected conduct which gives rise to the request;
  - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
  - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority;
  - (d) the relevance of the requested assistance to the specified rule or law; and
  - (e) whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the country of the requesting Authority



should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

### **Further ground for denial of request**

2. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further matter may be taken into account by the requested Authority in determining whether to fulfil the request in whole or in part:

whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach the subject-matter of the request.

### **Requests to Sit in**

3. If, following a request from the requesting Authority, the requested Authority conducts an interview of any person, the requested Authority may permit a representative of the requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the requested Authority. Requests for such assistance directed to the FSA should conform with the FSA's published guidance in Annex 2G of Chapter 2 of its Enforcement Manual<sup>1</sup>.

### **Joint Investigations**

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.
5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority

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<sup>1</sup> at [www.fsa.gov.uk/handbook/](http://www.fsa.gov.uk/handbook/)

to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.

6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to ASIC for a joint investigation should be made, through the Office of International Relations, to the Executive Director, Enforcement. Suggestions to the FSA should be made to the Director, Enforcement.

### **Rights of persons preserved**

8. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

## **Appendix 3: Listing Rules Enforcement Matters**

### **Contact details**

ASIC: The Executive Director, International Relations referred to in Appendix 1

FSA: Director, United Kingdom Listing Authority

Financial Services Authority

5<sup>th</sup> Floor

25 The North Colonnade

London E14 5HS

UNITED KINGDOM

Telephone: 44-20-7943 0770

Facsimile: 44-20-7943 0771

### **Role of Exchanges with regard to Enforcement of Listing Rules**

1. The parties acknowledge the different roles played by the investment exchanges and regulatory authorities in the respective jurisdictions with regard to the enforcement of listing rules (including continuing disclosure obligations).
2. In the United Kingdom, enforcement of listing rules is a matter for the FSA in its capacity as the competent authority under Part VI of FSMA (ie, as the UK Listing Authority).
3. In Australia, enforcement of listing rules is primarily a matter for the investment exchange concerned, but ASIC has a role in ensuring that broad disclosure standards are upheld, and in taking enforcement and other regulatory action in relation to breaches of those standards.
4. If a matter is directed to ASIC that ought properly be directed to an investment exchange, ASIC will use reasonable efforts to bring this to the attention of the FSA representative making the request in a timely fashion, so that the matter can be dealt with expeditiously, together, where possible, with a contact name in the relevant investment exchange.

**Other Enforcement Appendix Provisions**

5. The provisions of **Appendix 2** apply to requests for assistance relating to actual or possible enforcement action in relation to listing rules.

## **Appendix 4: Supervision Matters**

### **Part 1 - Investment Firms Supervision Matters (including pensions and superannuation providers)**

#### **Contact details**

ASIC: The Executive Director, International Relations referred to in Appendix 1

FSA: Director, Investment Firms Division

Financial Services Authority

11<sup>th</sup> Floor

25 The North Colonnade

London E14 5HS

UNITED KINGDOM

Telephone: 44-20-7676 4600

Facsimile: 44-20-7676 4601

#### **Role of APRA**

1. The parties acknowledge the important role played by the Australian Prudential Regulatory Authority (“APRA”), which supervises the prudential aspect of superannuation providers.
2. If a matter is directed to ASIC which ought properly to be directed to APRA, ASIC will use reasonable efforts to bring this to the attention of the FSA representative making the request in a timely fashion, so that the matter can be dealt with expeditiously, together, where possible, with a contact name in APRA.

### **Part 2 - Markets Supervision Matters**

#### **Contact details**

ASIC: The Executive Director, International Relations referred to in Appendix 1

FSA: Director, Markets and Exchanges  
Financial Services Authority  
6<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7676 5900  
Facsimile: 44-20-7676 9729

### **Supervision of recognised overseas investment exchanges and overseas clearing houses (“ROIEs” and “ROCHs”)**

1. As at the date of this MoU the FSA recognises:
  - (a) two Australian entities as ROIEs, being the Sydney Futures Exchange Ltd and the SFE Corporation Limited; and
  - (b) no Australian entities as ROCHs.
2. Pursuant to the requirements for recognition of ROIEs, each ROIE is required to inform the FSA promptly upon the occurrence of specified events, and to provide an annual return, as set out in the part of the FSA Handbook named REC<sup>2</sup>.
3. The FSA would expect to be able to seek confirmation on at least an annual basis for each Australian ROIE and ROCH that there are no outstanding supervisory issues as between that body and ASIC.

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<sup>2</sup> at [www.fsa.gov.uk/handbook](http://www.fsa.gov.uk/handbook)

### **Part 3 - Insurance Supervision Matters (including friendly societies)**

#### **Contact details**

ASIC: The Executive Director, International Relations referred to in Appendix 1

FSA: Director, Major Financial Groups Division

Financial Services Authority

6<sup>th</sup> Floor

25 The North Colonnade

London E14 5HS

UNITED KINGDOM

Telephone: 44-20-7676 1500

Facsimile: 44-20-7676 9760

#### **Role of APRA**

1. The parties acknowledge the important role played by the Australian Prudential Regulatory Authority (“APRA”), which supervises the prudential aspect of insurance companies.
2. If a matter is directed to ASIC which ought properly to be directed to APRA, ASIC will use reasonable efforts to bring this to the attention of the FSA representative making the request in a timely fashion, so that the matter can be dealt with expeditiously, together, where possible, with a contact name in APRA.

### **Part 4 - Deposit-taking Supervision Matters**

#### **Contact details**

ASIC: The Executive Director, International Relations referred to in Appendix 1

FSA: Director, Deposit Takers  
Financial Services Authority  
14<sup>th</sup> Floor  
25 The North Colonnade  
London E14 5HS  
UNITED KINGDOM  
Telephone: 44-20-7676 0900  
Facsimile: 44-20-7676 0901

### **Role of other regulators**

1. The parties acknowledge the important role played by other Australian regulators with respect to the supervision of Australian authorised deposit-taking institutions (“DTIs”):
  - (a) the Reserve Bank of Australia, which authorises DTIs;
  - (b) the Australian Prudential Regulatory Authority, which supervises the prudential aspect of authorised DTIs; and
  - (c) the State and Territory offices of consumer affairs or fair trading, which administer consumer credit legislation.
2. If a matter is directed to ASIC which ought properly to be directed to one of the above regulators, ASIC will use reasonable efforts to bring this to the attention of the FSA representative making the request in a timely fashion, so that the matter can be dealt with expeditiously, together, where possible, with a contact name in the relevant regulatory body.