

**MEMORANDUM
OF
UNDERSTANDING**

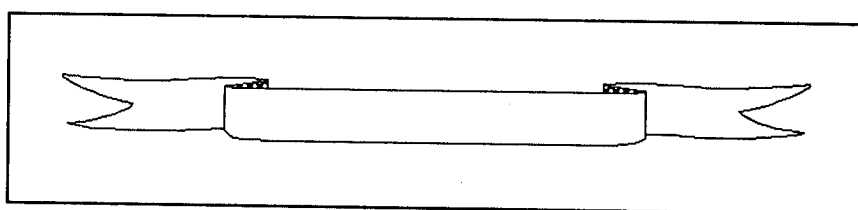
United Kingdom

Australia

**The Treasury
Securities & Investments
Board**

**Australian Securities
Commission**

**London
28th October 1992**



Memorandum of Understanding (MOU) between The Treasury and the Securities & Investments Board of the United Kingdom and the Australian Securities Commission

Introduction

1. The Commissioners of Her Majesty's Treasury (the Treasury) have responsibility for policy and legislation in the sphere of financial services and for the regulation of investment business under the UK Financial Services Act 1986, oversight of the Securities and Investments Board (SIB) and arrangements with overseas regulators for exchanging information. The Treasury liaises closely with other bodies and agencies, the UK Department of Trade and Industry in particular, which have responsibility for policy, legislation and enforcement in other areas relevant to the scope of this MoU.

The SIB is the designated agency under the Financial Services Act 1986. It is responsible for most of the financial services functions under that Act, including the oversight of the self-regulating organisations and investment exchanges and for making rules under which investment business is conducted in the UK. It has statutory powers of investigation.

The Australian Securities Commission (ASC) is the national corporate and securities regulator established under section 7 of the Australian Securities Commission Act 1989. The ASC is responsible for the administration and enforcement of the Corporations Law and the Australian Securities Commission Act 1989 which provide for the regulation of corporations and the securities and futures industry. The ASC's ability to exercise coercive powers on behalf of foreign regulators is governed by the Mutual Assistance in Business Regulation Act 1992.

In this MoU, "Authorities" means the ASC, the Treasury and the SIB.

2. The Treasury and the SIB on the one hand, and the ASC on the other, recognising the increasing international activity in the securities, futures and options markets and the corresponding need for mutual cooperation between the relevant national authorities, have reached the following understanding.

Principles

3. (a) The Authorities intend to ensure that the fullest mutual assistance is provided within the terms of the Memorandum of Understanding (MoU). The MoU does not modify or supersede any laws or regulations in force in, or applying to, the United Kingdom or Australia.

(b) The MoU does not create any enforceable rights.
4. The purpose of the MoU is to protect investors and to promote the integrity of the securities, futures and options markets by providing a framework for cooperation, including channels for communication, increased mutual understanding, the exchange of information and investigative assistance, to the extent permitted by laws and practices.
5. To the extent permitted by laws and practices, each Authority will use reasonable efforts to provide the other Authority with any information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the rules or laws of the other Authority.

Scope

6. The Authorities propose to ensure that mutual assistance is provided in the following areas:
- (a) insider trading, market manipulation and other fraudulent and manipulative practices in relation to companies, securities, futures contracts, options and collective investment schemes;
 - (b) enforcement of the laws and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options and collective investments;
 - (c) ensuring that only fit and proper persons are authorised or registered to conduct the business referred to in subparagraph (b) and promoting high standards of fair dealing and integrity in their conduct of that business;
 - (d) the disclosure of interests in the securities of companies;
 - (e) the duties of issuers of and offerors for securities to make full and fair disclosure of information relevant to investors;
 - (f) breaches of companies legislation.

Requests

7. The MoU does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that any procedures in place in the country of each Authority for the provision of such information are observed.

8. To facilitate assistance, the requesting Authority should specify:
 - (a) the information required (identity of persons, specific questions to be asked etc.);
 - (b) the purpose for which information is sought (including details of the rule or law which is suspected to have been breached);
 - (c) a description of the conduct or suspected conduct which gives rise to the request;
 - (d) the link between the suspected breach of rule or law and the regulatory functions of the requesting Authority;
 - (e) the relevance of the requested assistance to the suspected breach of rule or law;
 - (f) 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;
 - (g) any other matters specified by the laws and regulations in the country of the requested Authority.
9. Any document or other material provided in response to a request under the MoU and any copies thereof must be returned on request, to the extent permitted by law.
10. 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 the MoU. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be other assistance which can be given. In particular, the requested Authority will consider whether the request might be dealt with via channels for mutual assistance in criminal matters.

11. In deciding whether to accept or decline a request the requested Authority will take account of:
 - (a) matters specified by the laws and regulations in the country of the requested Authority;
 - (b) whether the request involves an assertion of jurisdiction not recognised by the country of the requested Authority and
 - (c) whether it would be contrary to the public interest to give the assistance sought.

12. The requested Authority may, as a condition of agreeing that assistance is given under the MoU, require the requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.

Confidentiality

13. The information supplied will be used solely for the purpose of:
 - (a) securing compliance with or enforcement of the rule or law specified in the request by initiating or assisting in criminal prosecution arising out of the breach of such law;

- (b) conducting or assisting in civil proceedings arising out of the breach of the rule or law specified in the request and brought by the Authorities or other law enforcement or regulatory bodies within the jurisdictions of the United Kingdom or Australia;
 - (c) taking regulatory action or imposing regulatory requirements within the areas set out in paragraph 6 above.
14. Each Authority will keep confidential to the extent permitted by law:
- (a) any request for information made under the MoU and any matters arising in the course of its operation unless such disclosure is necessary to carry out the request or the other Authority waives such confidentiality;
 - (b) any information passed under the MoU unless it is disclosed in furtherance of the purpose for which it was requested.
15. Unless the request provides otherwise, the confidentiality provisions of the MoU shall not prevent the Authorities from informing other law enforcement or regulatory bodies within the jurisdictions of the United Kingdom or Australia of the request or of passing information received pursuant to a request to such bodies, provided that:
- (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the areas set out in paragraph 6 above;
 - (b) the purpose of passing such information to such an

agency or body falls within the areas set out in paragraph 6; and

- (c) The requesting Authority has provided any undertaking in relation to the information requested which is required by the law of the country of the requested Authority.

Consultation

- 16. The signatories may consult informally, at any time, about a request or proposed request.
- 17. The Authorities may consult and may revise the terms of the MoU in the event of a substantial change in laws or practices affecting the operation of the MoU.

Termination

- 18. The Memorandum of Understanding shall continue to have effect unless terminated by any one of the Authorities by giving 30 days' advance written notice to the other Authorities that the understanding set out herein is no longer to have effect.

Contact Points

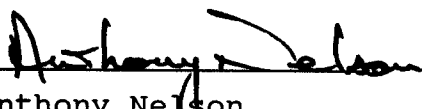
19. All communications between Authorities should be between the principal points of contact unless otherwise agreed.
20. The Head of Division 1, Securities and Investment Services Group is the principal point of contact in the Treasury.
21. The Group Director, Compliance and Enforcement, is the principal point of contact in the Securities and Investments Board.
22. The Director, Policy and International Relations, Office of the Chairman (Sydney), is the principal point of contact in the Australian Securities Commission.
23. Addresses for contact points are given in Annex A.

Entry Into Effect

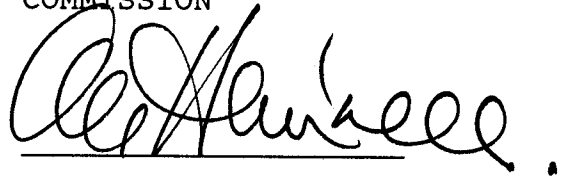
24. This MoU will be effective from the date of its signature by the Treasury, the Securities and Investments Board and the Australian Securities Commission.

SIGNED THIS 28 DAY OF OCTOBER 1992

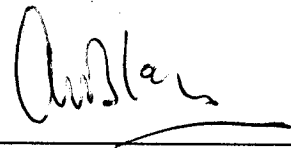
THE TREASURY


Anthony Nelson
Economic Secretary

AUSTRALIAN SECURITIES
COMMISSION


Anthony Hartnell
Chairman

SECURITIES AND
INVESTMENTS BOARD


Andrew Large
Chairman

CONTACT OFFICERS

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Fax: 44 71 215 3508

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Fax: 44 71 382 5906

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CONTACT OFFICERS

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