

Australian Securities & Investments Commission

Memorandum of Understanding

between

Australian Securities and Investments Commission

and

**Australian Stock Exchange Limited
(ACN 008 624 691)**

PART ONE: BACKGROUND

1. ASIC and ASX have complementary roles in relation to the oversight of the market and CS facilities operated by ASX and the conduct of participants (in relation to the business they conduct in a market or clearing and settlement facility operated by ASX) and listed entities. Consequently there are significant areas in which the roles of ASIC and ASX overlap and it is in the interests of both parties to minimise duplication of activity and to set expectations in relation to the activity which will be undertaken by each. This MOU aims to promote cooperation, effective communication and mutual assistance between ASIC and ASX to facilitate the efficient discharge by each of their respective roles. This MOU sets out arrangements which ASIC and ASX have entered into with each other in furtherance of their statutory obligations and responsibilities.

2. ASIC is responsible for the administration of legislation regulating the financial system including the Act. ASIC's aims are identified in subsection 1(2) of the ASIC Act. Among other things, ASIC must strive to:
 - (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs and the efficiency and development of the economy;
 - (b) promote the confident and informed participation of investors and consumers in the financial system;
 - (c) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
 - (d) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.
3. ASIC has a role to monitor and enforce compliance by ASX with its various obligations as a holder of an Australian market licence and CS facility licences.
4. ASXL and its related companies, ACH and ASTC, hold licences under the Act.
5. ASXL holds an Australian market licence. The general obligations of market licensees are stipulated in section 792A of the Act and include:
 - (a) to the extent that it is reasonably practicable to do so, do all things necessary to ensure that the market is a fair, orderly and transparent market;
 - (b) comply with the conditions on the licence; and
 - (c) have adequate arrangements (whether they involve a self-regulatory structure or the appointment of an independent person or related entity) for supervising the market including arrangements for:
 - (i) handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the market operates in the way mentioned in paragraph (a);
 - (ii) monitoring the conduct of participants on, or in relation to, the market; and
 - (iii) enforcing compliance with the market's operating rules.
6. ACH and ASTC each hold Australian CS facility licences. The general obligations of CS facility licensees are stipulated in section 821A of the Act and include:
 - (a) to the extent that it is reasonably practicable to do so, do all things necessary to reduce systemic risk;
 - (b) to the extent that it is reasonably practicable to do so, do all things necessary to ensure that the facility's services are provided in a fair and effective way;
 - (c) comply with the conditions on the licence; and

- (d) have adequate arrangements (whether they involve a self-regulatory structure or the appointment of an independent person or related entity) for supervising the facility including arrangements for:
 - (i) handling conflicts between the commercial interests of the licensee and the need for the licensee to ensure that the facility's services are provided in a fair and effective way; and
 - (ii) enforcing compliance with the facility's operating rules.
7. This MOU is intended to be a statement of guiding principles covering the following aspects of the ASIC – ASX relationship:
- (a) the referral of cases of suspected significant contraventions of ASX's operating rules and of the Act, including misconduct by listed disclosing entities and participants;
 - (b) consultation between ASIC and ASX as to:
 - (i) the appropriate response to such cases and to other issues of mutual concern;
 - (ii) the most appropriate party to conduct the response; and
 - (iii) the assistance (if any) to be provided by the other party.
 - (c) ASIC and ASX keeping each other appropriately informed as to action being conducted (subject to legal constraints on information sharing);
 - (d) notification by each party of various matters in accordance with the statutory obligations of the parties;
 - (e) the facilitation of information sharing between ASIC and ASX for the purpose of each fulfilling its obligations and;
 - (f) agreement on joint strategic objectives and the identification of any areas of regulatory priority.
8. This MOU supersedes the following MOUs entered into by ASIC and ASX
- (a) Memorandum dated 18 December 1992 related to markets;
 - (b) Memorandum dated 5 November 1993 related to membership matters;
 - (c) Memorandum dated 23 September 1997 related to companies matters.
9. ASIC and ASX wish to work together to achieve the effective supervision and regulation of the markets and CS facilities operated by ASX. ASIC and ASX each have different roles and functions in the regulation of the markets and facilities. They each have different powers for monitoring and enforcement.
10. ASX has responsibility for monitoring and enforcing compliance by participants and listed disclosing entities with its operating rules. ASX also undertakes regular interaction with and education of participants and listed disclosing entities to promote compliance with the operating rules.
11. ASIC has responsibility for monitoring and enforcing the provisions of the Act. ASIC has a broad range of enforcement powers as provided in the Act and the ASIC Act. ASIC may take enforcement action for contraventions of the Act or the

ASIC Act, including administrative action, civil litigation or referral of a matter for prosecution.

12. ASIC and ASX recognise the desirability of avoiding unnecessary duplication of investigation and enforcement work and will therefore maintain a close working relationship to deal with relevant market issues. Where appropriate, each party will provide such other assistance as may be requested of it.
13. ASIC and ASX agree that they should each use the different tools and powers available to them in order to detect and respond to misconduct and/or breach of the operating rules in a coordinated and effective way and that they will coordinate the effective deployment of staff from each organisation when undertaking an enforcement response or strategic initiative.
14. ASIC and ASX also agree that they should form a central coordinating committee (the "National Coordination Committee") as a forum in which to exchange information and ensure that both parties are able to discharge their roles as efficiently as possible.

PART TWO: DEFINITIONS

15. For the purposes of this MOU:

"ACH" means Australian Clearing House Pty Limited.

"Act" means the Corporations Act 2001.

"ASIC" means the Australian Securities and Investments Commission (including any delegate of the Commission).

"ASIC Act" means the Australian Securities and Investments Commission Act 2001.

"ASTC" means ASX Settlement and Transfer Corporation Pty Limited.

"ASX" means, as the case requires, ASXL, ACH and ASTC, or one or more of them.

"ASXL" means Australian Stock Exchange Limited.

"Australian market licence" has the meaning set out in section 761A of the Act.

"CS facility licence" has the meaning set out in section 761A of the Act.

"listed disclosing entity" means an entity on the official list of ASX.

"month" means calendar month.

“*MOU*” means this Memorandum of Understanding

“*MOU Meetings*” are meetings of senior representatives of ASIC and ASX held every three months under paragraph 36 of this MOU.

“*National Coordination Committee*” is the committee of ASIC and ASX officers established under paragraph 37 of this MOU.

“*operating rules*” has the meaning set out in section 761A of the Act.

“*participant*” has the meaning set out in section 761A of the Act.

“*party*” means one of the parties to this MOU being either ASIC or ASX.

“*referral*” means the written notification by ASX to ASIC of a significant contravention of ASX’s operating rules or the Act in accordance with paragraphs 792B(2)(c) and 821B(2)(c) of the Act, as referred to in paragraph 16 of this MOU.

PART THREE: REFERRALS, NOTIFICATION, ASSISTANCE AND INFORMATION SHARING

16. Under paragraphs 792B(2)(c) and 821B(2)(c) of the Act, ASX is required to give written notice to ASIC as soon as practicable if it has reason to suspect that a person has committed, is committing or is about to commit a significant contravention of its operating rules or the Act. This written notice is a "referral". Such referrals will include:

- (a) the person’s name;
- (b) details of the contravention or impending contravention (including all information relevant to the contravention or impending contravention that is known to the ASX after its initial inquiries);
- (c) ASX’s reasons for the belief.

ASX will make any referral as soon as practicable and will not defer the making of any referral while it conducts enforcement action.

17. ASIC and ASX will agree on guidelines for the inclusion of information in referrals in addition to the information set out in paragraph 16 above. Those guidelines will seek to ensure the most efficient use of resources by both ASIC and ASX in making or reviewing a referral.

18. ASIC will review all referrals from ASX within a reasonable time and, where appropriate, may do the following:

- (a) In those cases where ASIC is satisfied that a significant contravention has occurred and where sufficient evidence exists, take enforcement action;

- (b) Decide not to take any specific enforcement action but record information relating to the matter in ASIC's confidential internal database so that it may be of assistance in the future;
- (c) Coordinate with ASX action in relation to a suspected impending significant contravention.

In each case, ASIC will provide timely advice to ASX as to whether ASIC proposes to take action in relation to the referral and, if not, the reasons for not taking action. ASIC will also provide timely advice of any issues relating to the content of the referral in order to promote discussion and to guide the scope of future referrals and the allocation of resources.

19. Where ASIC becomes aware of a matter which may indicate that a person has committed, is committing or is about to commit a significant contravention of ASX's operating rules, or which may warrant investigation or an enforcement response by the ASX, ASIC will, as soon as is practicable, provide written notice of the matter to the ASX, together with all available information and documentation to assist ASX. Such matters may include:
- (a) a suspected breach of the continuous disclosure requirements under the Listing Rules, for review and discussion with the relevant listed disclosing entity;
 - (b) a suspected breach of the Market and Settlement Rules, which may be more appropriately dealt with under ASX's disciplinary powers; with the following information to be included:
 - (i) name of the participant;
 - (ii) names of the individuals involved;
 - (iii) names of the clients affected (if any);
 - (iv) dates that the alleged misconduct occurred;
 - (v) meaningful description of the matter;
 - (vi) ASIC unit handling the matter; and
 - (vii) name of the ASIC case officer handling the matter.
20. ASX will review such notifications from ASIC within a reasonable time and, where appropriate, may do the following:
- (a) In those cases where ASX is satisfied that enforcement action is appropriate and where sufficient evidence exists, take enforcement action;
 - (b) Decide to discuss the matter with the participant or listed disclosing entity in order to encourage, in the case of the latter, further disclosure but not take any additional action; or
 - (c) Decide not to take any specific action but record information relating to the matter in a confidential internal database so that it may be of assistance in the future.

21. In the case of a referral to ASIC or the notification of a matter to ASX, both parties agree to undertake early discussion to:
- (a) assist ASIC or ASX to decide whether to investigate the matter and/or take enforcement action,
 - (b) determine which party should undertake any investigation or enforcement action; and
 - (c) identify any necessary information and assistance (including the provision of evidence, where appropriate) that can be provided by the other party.

Such discussion should take place at the first meeting of the National Coordination Committee after the referral or notification is received if it has not taken place earlier.

22. Under subsection 792B(3) of the Act, ASX is required to give a written report to ASIC if ASX becomes aware of a matter which ASX considers adversely affects, is adversely affecting or may adversely affect the ability of a participant in the market, who is a financial services licensee, to meet the participant's obligations as a financial services licensee or a matter, concerning a participant in the market who is a financial services licensee, that is of a kind prescribed by regulations. This written notice is a "report". Such reports will include:

- (a) the licensee's name;
- (b) all information relevant to the matter that is known to the ASX after its initial inquiries; and
- (c) ASX's reasons for making the report.

ASX will make any report as soon as practicable and will not defer the making of any report while it conducts enforcement action.

23. In addition to the making of referrals as set out above, ASX has other obligations under sections 792B and 821B of the Act to give written notice to ASIC as soon as it takes any kind of disciplinary action against a participant.
24. ASIC and ASX will agree guidelines for the content of notifications required under sections 792B and 821B.

PART FOUR: COMMUNICATION

25. In addition to referrals and notifications, ASIC and ASX will, where appropriate, share information. Sharing of information will usually take place by written communication or by communication at an MOU Meeting or National Coordination Committee Meeting that is documented in the minutes of the meeting. It is the responsibility of the party providing the information to ensure that any information sharing which occurs at an MOU Meeting or National Coordination Committee Meeting is documented in the minutes of that meeting. It

is agreed that information sharing should occur in the following circumstances, subject to legal restrictions or significant practical considerations:

- (a) Where ASIC receives complaints relating to ASX participants or their representatives and ASIC has reason to suspect that the complaints may give rise to matters which ASX might reasonably take into consideration in enforcement action;
- (b) Where a matter is the subject of a referral to ASIC or notification to ASX, and the party who is the recipient of the referral or notification takes enforcement action or decides not to pursue enforcement action;
- (c) Where one party becomes aware of information which is relevant to an enforcement action being conducted by the other party;
- (d) Where, through the conduct of an enforcement action, either party acquires or develops new knowledge of the interpretation or legal consequences of particular market behaviour or other knowledge which may be of assistance to the other party in current or future enforcement actions; and
- (e) Where either party has reason to believe that a listed disclosing entity may be insolvent.

In relation to the above, guidelines will be established, detailing how and when information will be provided and the nature and scope of this.

26. ASX will provide to ASIC a monthly list of waivers it has issued. The list will include: the name of the company or participant receiving the waiver; the date the waiver was granted; the operating rules waived; and a summary of the basis for granting the waiver.
27. ASIC and ASX also agree to engage in information sharing other than in formal meetings or by written communication – especially on matters which are likely to assist in the monitoring and surveillance of the markets, market participants and listed disclosing entities. This will include information which would not be the subject of a referral or notification but which may be of assistance to the other party in planning surveillance or monitoring activities. Without limiting the generality of the foregoing, general information sharing may occur in the following circumstances:
- (a) Where a party notices a sudden increase in complaints concerning a particular participant or entity;
 - (b) Where a party notices a sudden increase in a particular form of conduct which is not of the nature to result in a referral but which nonetheless may have an affect on market integrity or investor confidence;
 - (c) Where either party becomes aware of an event or state of affairs that may lead to a rise in misconduct.

In relation to the above, guidelines will be established, detailing how and when information will be provided and the nature and scope of this.

28. The enumeration above of matters which are the subject of referrals, formal information sharing, etc, in no way limits the parties' intention or ability to engage in communication and cooperation with respect to other matters, as appropriate and subject to legal constraints. For example, ASIC and ASX staff will consult informally as and when required in order to seek to enhance the efficiency and effectiveness of the supervision and regulation of the markets and CS facilities operated by ASX, participants on those markets and CS facilities, and entities listed on the markets.
29. ASIC and ASX will advise each other (from time to time) in writing of the name of the person or persons to act as the primary point(s) of contact for each agency. The initial points of contact are set out in Appendix A.

Limitations on Information Sharing

30. The provision of any information by ASIC or ASX to the other under this MOU is subject to any relevant legal considerations including, for example, legal professional privilege, natural justice, criminal contempt, confidentiality and, in the case of ASIC, the ASIC Act, including, in particular, section 127. It is acknowledged that information held by ASX and subject to confidentiality restrictions may require a formal notice from ASIC to facilitate production to ASIC.
31. ASIC has an obligation under section 127 of the ASIC Act to protect from unauthorised use or disclosure information given to it in confidence in or in connection with the performance of its functions or exercise of its powers. ASIC is authorised to disclose such information to the ASX under section 127(4FA) of the ASIC Act where the information is used for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under, the Act or the operating rules.
32. In some circumstances, including circumstances in which a person has provided ASIC with information in confidence, ASIC may be required to afford procedural fairness prior to releasing the information to ASX. The rules of procedural fairness may require that ASIC advise the person and seek their views concerning ASIC's intention to release the information to the market licensee as well as any conditions which may be attached to the release.
33. With respect to requests by ASX under section 127 for provision of information provided to ASIC in confidence, ASIC will endeavour to assist ASX in a timely way. To promote consistent turn-around times for responses, ASIC will provide ASX with guidance about how it will handle requests
34. Under subsection 1100A(2) of the Act, ASX has qualified privilege in respect of the giving of any information to ASIC in connection with the performance or exercise of ASIC's functions or powers under, or in relation to, Chapter 7 of the Act or regulations made under Chapter 7. Under subsection 1100(3) of the Act,

ASX is not liable for any action based on breach of confidence in relation to the giving of any such information to ASIC.

35. ASIC or ASX will not disclose any confidential information obtained pursuant to this MOU to a third party unless:
- (a) it has obtained the prior consent of the other party to disclosing the confidential information; or
 - (b) it is required, authorised or permitted by law to disclose the information; or
 - (c) the information is disclosed by ASIC to the responsible Minister; or
 - (d) the information is disclosed by ASIC, in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia.

In the case of paragraph (b), the party seeking to disclose will wherever practicable, notify the other party in sufficient time ahead of the intended disclosure so as to enable that party to take action to protect the release of the confidential information.

MOU Meetings

36. Senior representatives of ASIC and ASX will meet at least every three months to review:
- (a) any areas identified by either or both parties as current regulatory and enforcement priorities and joint strategies for addressing misconduct in any such priority areas, including discussion of the resourcing of those initiatives;
 - (b) the effectiveness and coordination of enforcement responses by ASIC and ASX;
 - (c) the effectiveness, level and timeliness of communication between the parties including referrals and formal information sharing; and
 - (d) the general operation of this MOU.

Discussion will focus on strategic, operational policy and systemic issues, rather than on specific referrals.

ASIC - ASX National Coordination Committee

37. The National Coordination Committee will be made up of one or more senior ASX managers, able to report on matters that involve listed disclosing entities (in particular, continuous disclosure issues), licensed participant malfeasance and surveillance/trading alerts, a senior officer from ASIC's Enforcement Directorate, an officer from ASIC's Markets Regulation area and, as appropriate in ASIC's view, an officer from ASIC's Financial Services Regulation Directorate.

38. The National Coordination Committee will meet fortnightly for the purpose of ensuring the most effective possible communication between ASIC and ASX and determining the most appropriate enforcement response to misconduct.
39. The following will be discussed at each National Coordination Committee Meeting:
- (a) Any relevant suspected contraventions of the Act and any significant contravention of the ASX operating rules identified since the previous meeting, whether or not such contravention is already the subject of a referral or notification;
 - (b) Whether action should be taken in response to the suspected contravention and, if so which party should take such action;
 - (c) Assistance and information which can be provided to the party taking action by the other party;
 - (d) Where the action to be pursued involves both parties, how such joint action will be managed;
 - (e) Developments in current matters which may have ramifications for the parties' general approach to a particular market activity or behaviour;
 - (f) The timing of any planned on-site reviews by ASX or any planned surveillance visits by ASIC in relation to participants; and
 - (g) Any concerns which have arisen in relation to the nature and content of referrals or notifications.
40. In relation to any matter discussed at a National Coordination Committee Meeting, it should be noted if the matter is a priority matter for either party or if it concerns misconduct of the type which has been identified at an MOU Meeting as a regulatory or enforcement priority.

PART FIVE: PUBLICITY

41. ASX and ASIC recognise the confidentiality and market sensitivity of information obtained in the course of conducting enforcement action. They further recognise that to publicise a referral or matter may jeopardise an investigation or enforcement action by either ASIC or ASX.
42. The parties also acknowledge that in a limited number of cases, either or both of the parties may have to deal with inquiries about a matter of high public profile. In such circumstances, where time permits, ASX will consult with ASIC before making public any information in relation to a current ASIC investigation or enforcement action or a possible future ASIC investigation or enforcement action. Without limitation, this includes any matter where:
- (a) a referral is made from ASX to ASIC; and
 - (b) ASIC has not communicated that it does not intend to conduct enforcement action in the matter.

43. Where a party makes a public statement relating to a matter in relation to which the other party has made a referral or given significant assistance, the first party will give public acknowledgment of the work done by the other party. When time permits, the wording of the acknowledgment will be settled with the other party before release.
44. Any publicity by ASIC in relation to a current ASIC investigation or enforcement action or a possible future ASIC investigation or enforcement action will be made in accordance with ASIC Policy Statement 47. Without limitation, this includes any matter where:
 - (a) a referral is made from ASX to ASIC; and
 - (b) ASIC has not communicated that it does not intend to conduct enforcement action in the matter.
45. The parties acknowledge that it will sometimes be necessary for ASX to make public information regarding an enforcement activity in order to prevent uninformed trading, or to justify a suspension of trading.
46. ASX will, from time to time, publish a summary of the number and type of referrals and reports made to ASIC.

PART SIX: ADMINISTRATION


Implementation and Review

47. This MOU is effective from 1st July 2004. ASIC and ASX will continue to monitor its operation through an annual review meeting.

Administrative Letters

48. This MOU may be supplemented by guidelines specifying agreed operating arrangements from time to time. These will include the guidelines foreshadowed in this MOU. A letter specifying such arrangements may be signed by:

- (a) The Executive Director or Deputy Executive Director of Policy and Markets Regulation, ASIC or ASIC's Director, Market Regulation, on behalf of ASIC;
- (b) the Chief Integrity Officer or General Manager, Supervision of ASXL on behalf of ASX.

SIGNED by  Dated this 30 day of June 2004.

For and on behalf of ASIC

SIGNED by  Dated this 30 day of June 2004.

For and on behalf of ASX

Appendix A

All referrals, information sharing and other communications from ASX to ASIC should be sent to ASIC's Markets Regulation area, which will co-ordinate ASIC action or response. Such correspondence should be addressed to:

Andrew Crain
Manager
Markets Regulation, Sydney
Australian Securities and Investments Commission
No.1 Martin Place, Sydney
DX 653 SYDNEY
andrew.crain@asic.gov.au

All referrals, information sharing and other communications from ASIC to ASX should be sent to ASX's Market Integrity area, which will co-ordinate ASX action or response. Such correspondence should be addressed to:

Susan Bray
General Manager Supervision
Market Integrity Division
Level 6, 20 Bridge Street
Sydney NSW 2000
DX 10427 Stock Exchange Sydney
susan.bray@asx.com.au