

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY (APRA)

AND

**THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
(ASIC)**

1. Objective

- 1.1 This memorandum of understanding (MOU) sets out a framework for co-operation between APRA and ASIC (the agencies) in areas of common interest where co-operation is essential for the effective and efficient performance of their respective financial regulation functions.
- 1.2 The agencies agree that consistent with their separate roles they will co-operate where it is within their administrative powers to reduce duplication and compliance costs and achieve effective enforcement and compliance outcomes.
- 1.3 This MOU is not intended to create binding obligations on either agency and each agency has the right to vary its terms at any time by agreement following consultation with the other agency.

2. Responsibilities

- 2.1 APRA is responsible for the prudential supervision for banks, life and general insurance companies and superannuation funds. If the State and Territory Governments agree, APRA will also be responsible for the prudential supervision of building societies, credit unions and friendly societies. In performing its functions to protect the interest of depositors, policyholders and fund members APRA is required to balance financial safety with efficiency, competition, contestability and competitive neutrality.
- 2.2 ASIC is responsible for the administration and enforcement of the national scheme laws, being laws of the Commonwealth and the States in relation to Australian companies, securities, managed investments and futures markets; and for monitoring and promoting market integrity and consumer protection in relation to the Australian financial system, the provision of financial services and the payment system.

3. Regulatory Policy Development

- 3.1 Changes in regulatory policy or regulatory decisions on particular matters by either agency may have implications for the other agency. Each agency therefore will notify the other of any proposed changes in regulatory policy or regulatory decisions likely to impact on the responsibilities of the other and provide the other with the opportunity to comment on any proposed changes.
- 3.2 Where implementation of regulatory policy or regulatory decisions by either agency has implications for the other agency, each agency will notify the other where such implementation is likely to impact on the responsibilities of the other.
- 3.3 The agencies agree that, where appropriate, it is desirable for them to consult with each other in relation to policy statements and media releases, which are being formulated and which may be of interest to or have an effect on each agency. Where appropriate, the agencies may consider whether to issue a policy statement or media release on a joint basis, having regard to the subject matter of the release, the policy objectives of each regulator and the objectives of this agreement.

4. Mutual Assistance

- 4.1 The agencies recognise that it is important that they co-operate to promote confidence in the financial system and the confident and informed participation of all stakeholders in that system.
- 4.2. The agencies agree to provide each other with mutual assistance in relation to the exchange of information, appropriate referral of matters and cooperation in regulation, compliance, and enforcement within the framework of this agreement and which is consistent with all relevant laws.

5. Co-ordination Committee

- 5.1 A joint Co-ordination Committee will be established to facilitate close co-operation between APRA and ASIC. The Committee will operate according to a Charter and be responsible for ensuring the appropriate arrangements are in place for matters such as co-ordinating information sharing, joint inspections or task forces, referral of cases and enforcement action or major supervisory intervention. It will also co-ordinate operational matters such as administrative arrangements to avoid duplication, statistical collections, joint research work or training or industry consultation, and participation in international fora.
- 5.2 It is envisaged that liaison in respect of routine operational matters will occur on an “as needed” basis between appropriate staff of the two agencies.

6. Information Sharing

- 6.1 Full and timely exchange of information is a crucial element in co-ordination between APRA and ASIC.
- 6.2 APRA gathers a wide range of information on the entities which it prudentially supervises. ASIC gathers a wide range of information in its role in monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.
- 6.3 The agencies agree that, subject to legislative provisions, information available to one agency, which is relevant to the responsibilities of the other agency, will be shared as requested. Each agency will provide relevant information to the other on a best endeavours basis, with due regard to the urgency of doing so. This will be subject to any relevant legal and operational considerations and any conditions which the provider of the information might place upon the use or disclosure of the information, such as claims of legal professional privilege.
- 6.4 When exchanging confidential information, APRA and ASIC acknowledge the confidentiality and secrecy requirements of the Acts under which each agency operates. The agency providing information has the right to specify the level of confidentiality attached to the information it provides to the other, in order to protect that information from unauthorised use, or disclosure. The agency receiving the information will take all reasonable steps to ensure such information is only used or disclosed for the purpose for which it was obtained.
- 6.5 Each agency agrees not to disclose any confidential information obtained pursuant to this agreement to a third party unless it has obtained the prior consent of the agency which has provided the confidential information.
- 6.6 Subject to appropriate cost sharing, each agency may arrange for information relevant to its responsibilities to be collected from financial entities by the other agency.

7. Unsolicited Assistance

- 7.1 Each agency recognises that in the course of carrying out its functions and exercising its powers, it will come into possession of information which would, if provided to the other agency, be likely to assist that other agency in administering or enforcing the particular laws for which it is responsible.
- 7.2 Each agency agrees, subject to legal restrictions, to use its best endeavours to notify the other agency with due regard to the urgency of doing so of the existence of any information of a kind referred to above, notwithstanding that it may not have received a request from the other agency for such information.

8. Cost of Provision of Information

- 8.1 In general, the agency which receives a request for information shall bear the cost incurred by it in locating and providing the information to the agency who

requests the information.

- 8.2 If it appears to the agency that receives the request that it will incur substantial costs in responding to the request, it may make representations to that effect to the requesting agency and the parties may negotiate a cost-sharing arrangement in relation to the provision of that information.

9. International Representation

- 9.1 The agencies will co-operate to ensure that Australia has appropriate representation in regional and international regulatory fora and training initiatives. In some circumstances there will be joint representation but where only one agency is represented it will consult with the other agency as needed before and after the particular gathering.

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Australian Securities and Investments
Commission

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