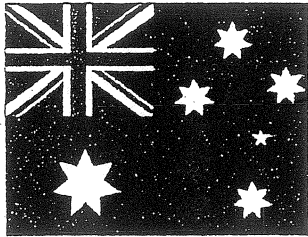
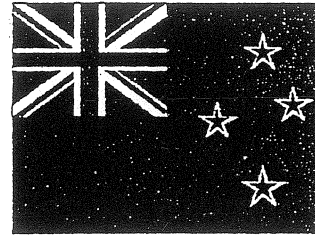


Memorandum of Understanding



Australia

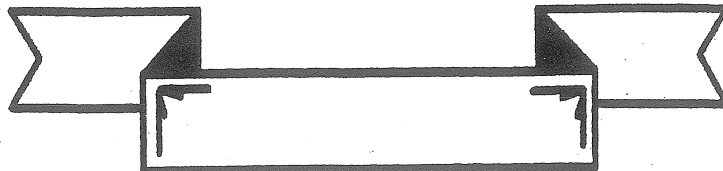


New Zealand

Australian Securities
Commission

Securities Commission

Sydney
1 August, 1994



Memorandum of Understanding (MoU) between the Australian Securities Commission and the Securities Commission of New Zealand.

Introduction

1. 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 industries. The ASC's ability to exercise coercive powers on behalf of foreign regulators is governed by the *Mutual Assistance in Business Regulation Act* 1992.
2. The Securities Commission (NZSC) is established as a body corporate by section 9 of the *Securities Act* 1978. NZSC is responsible for keeping under review practices relating to securities and for exercising securities jurisdiction in particular cases. The NZSC's ability to exercise powers to obtain evidence on behalf of overseas securities commissions or similar bodies is governed by section 10(ca) and section 18A of the *Securities Act* 1978.
3. Mindful of the objectives of the Australia New Zealand Closer Economic Relations Trade Agreement, and the specific measures agreed in the Memorandum of Understanding on Harmonisation of Business Law concluded by Australia and New Zealand in July 1988, the ASC and the NZSC have reached the following understanding.

Definitions

4. For the purpose of this MoU:
 - (a) "Authority" means the ASC and the NZSC.

- (b) "investor" means a person who has, holds or places an order to obtain an interest in securities;
- (c) "issuer" means a person who issues, proposes to issue or promotes any security;
- (d) "laws and regulations" means provisions of the laws and regulations or any rule or policy applicable in Australia and in New Zealand;
- (e) "person" means a natural person, legal entity, partnership or unincorporated association;
- (f) "requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding;
- (g) "requesting Authority" means an Authority making a request under this Memorandum of Understanding;
- (h) "securities" means:
 - (i) any share, stock, bond, note, debenture, interest in a collective investment scheme or any instrument similar to shares, stocks, bonds, notes, debentures, interest in a collective investment scheme;
 - (ii) any contract or right giving the right to subscribe, buy, sell or acquire by conversion any instrument mentioned in (i) above;
 - (iii) any exchange contract, futures contract, options contract, or any financial instrument based on instruments mentioned in (i) above;
 - (iv) any index contract based on instruments mentioned in (i) above; or
 - (v) any exchange contract, commodities futures contract or any commodity futures option contract;
- (i) "securities business" means any business which engages in the purchasing, selling, transferring, clearing or settling securities; receiving and keeping securities on deposit; collecting, executing or transmitting orders given by

investors concerning the purchase or sale of securities; engaging on the basis of principal or agent, in the management of individual or collective securities portfolios or accounts; or advising on these matters.

Principles

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

(b) The MoU does not create any enforceable rights.
6. The purpose of the MoU is to enhance the efficiency and fairness of the securities and futures markets by providing a framework for cooperation, including channels for communication and the exchange of information and investigative assistance to the extent permitted by the laws and practices of Australia and of New Zealand.
7. To the extent permitted by the laws and practices of Australia and of New Zealand, 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's jurisdiction.

Scope

8. 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 securities;

- (b) enforcement of the laws and regulations relating to securities business;
- (c) ensuring that participants in securities business promote high standards of fair dealing and integrity in their conduct of that business;
- (d) the disclosure of interests in the securities of issuers;
- (e) the duties of issuers of and offerors for securities to make full and fair disclosure of information material to investors; and
- (f) breaches of companies legislation.

Requests

9. 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.
10. To facilitate assistance, the requesting Authority should specify:
 - (a) the information required (identity of the persons, specific questions to be asked etc.);
 - (b) the purpose for which the information is being sought;
 - (c) a description of the conduct, suspected or anticipated conduct which gives rise to the request;
 - (d) the link between the suspected or anticipated breach of rule or law and the regulatory functions of the requesting Authority;
 - (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; and

(f) any other matters specified by the laws and regulations in the country of the requested Authority.

11. 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.

12. 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. Where a request cannot be accepted completely, the requested Authority will consider whether any other assistance can be given. In particular, the requested Authority shall consider whether the request might be dealt with via channels for mutual assistance in criminal matters.

13. 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.

14. Unless otherwise agreed to by the requested Authority 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 the breach or suspected breach of such law;
- (b) conducting or assisting in civil proceedings including proceedings in the nature of civil proceedings arising out of the breach, suspected or anticipated 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 Australia or New Zealand; or
- (c) taking regulatory action or imposing regulatory requirements within the areas set out above.

15. 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; and
- (b) any information passed under the MoU unless it is disclosed in furtherance of the purpose for which it was requested.

16. Unless the request provides otherwise, the confidentiality provisions of the MoU shall not prevent the Authorities from informing another law enforcement or regulatory body within the jurisdictions of Australia or New Zealand of the request or the passing of information or of the information received pursuant to a request to such bodies, provided that:

- (a) that agency or body is responsible for prosecuting, regulating or enforcing rules or laws falling within the areas set out in clause 14 above;
- (b) that the purpose of passing that information to that agency or body falls within the areas set out in clause 14 above;
- (c) the information is provided on the understanding that it may not be used or disclosed by the agency or body except for that purpose; and

- (d) 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

17. The Authorities may consult informally, at any time, about a request or proposed request.
18. The Authorities may consult and may revise the terms of the MoU upon mutual agreement.

Termination

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

Contact Points

20. Any communications between the Authorities should be between the principal points of contact unless otherwise agreed.
21. The Head of International Relations is the principal point of contact in the ASC.

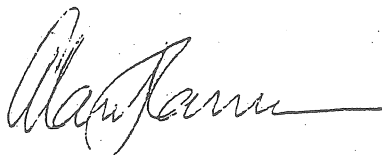
22. The Senior Executive (Compliance) is the principal point of contact in the NZSC.

23. Addresses for contact points are given in Annexure A

Entry into Effect

24. This MoU will be effective from the date of its signature by the ASC and NZSC.

Signed this 1st day of August, 1994 in Sydney



Alan Cameron
Chairman
Australian Securities Commission



Peter McKenzie
Chairman
Securities Commission

ANNEXURE A

Contact Points

Head of International Relations
Office of the Chairman, Sydney
Australian Securities Commission
Level 9
Norwich House
6 - 10 O'Connell Street
Sydney NSW 2000
AUSTRALIA

Postal Address:
G.P.O. Box 4866
Sydney NSW 2001
AUSTRALIA

Telephone: 61 2 911 2075
Facsimile: 61 2 911 2634

Senior Executive (Compliance)
Securities Commission
12th Floor
Reserve Bank Building
No. 2 The Terrace
Wellington
NEW ZEALAND

Postal Address:
P.O. Box 1179
Wellington 1
NEW ZEALAND

Telephone: 64 4 472 9830
Facsimile: 64 4 472 8076