

COUNCIL OF  
FINANCIAL  
REGULATORS

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# 1. COUNCIL OF FINANCIAL REGULATORS

The Council of Financial Regulators is the co-ordinating body for Australia's main financial regulatory agencies: the Reserve Bank of Australia (RBA), which chairs the Council; the Australian Prudential Regulation Authority (APRA); and the Australian Securities and Investments Commission (ASIC).

The Council's role is to contribute to the efficiency and effectiveness of financial regulation by providing a high-level forum for co-operation and collaboration among its members. It operates as an informal body in which members are able to share information and views, discuss regulatory reforms or issues where responsibilities overlap and, if the need arises, co-ordinate responses to potential threats to financial stability. These arrangements provide a flexible, low-cost approach to co-ordination among the main financial regulatory agencies. The Council is non-statutory and has no regulatory functions separate from those of its members.

Membership of the Council comprises two representatives – the chief executive and a senior representative – from each of the three regulatory agencies. The Chairman is the Governor of the RBA, and the RBA provides the Council Secretariat. The Council met for the first time in May 1998 and currently meets about once every quarter.<sup>1</sup> The Council's charter and administrative arrangements are shown in the box below and in Appendix A.

The future structure and role of the Council is currently under review. The Report of the HIH Royal Commission, released in April 2003, recommended changes in the governance arrangements for APRA that will have implications for the co-ordination of activities and exchange of information between the three regulatory agencies. These changes are discussed in Chapter 2. In this context, the Treasurer has announced the Government's commitment to enhance the status and role of the Council.<sup>2</sup> Membership will be extended to include the Commonwealth Treasury. This new Council will be ideally placed to ensure that there are appropriate arrangements between the members for co-ordinating their activities in response to pressures. It will also advise the Government on the adequacy of Australia's financial system regulatory architecture in light of ongoing developments.

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1 The Council is the successor to an earlier co-ordinating body, the Council of Financial Supervisors, which met between 1992 and 1998.

2 APRA Amendment Bill 2003, Second Reading Speech, 28 May 2003.

## **Council Charter**

The Council of Financial Regulators aims to facilitate co-operation and collaboration among its members, the main regulators of the Australian financial system – the Reserve Bank of Australia, the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission. Its ultimate objective is to contribute to the efficiency and effectiveness of regulation.

The Council provides a forum for:

- sharing information and views among its members, and liaison with other regulators and agencies;
- harmonising regulatory and reporting requirements, paying close attention to the need to keep regulatory costs to a minimum;
- identifying important issues and trends in the financial system, including the impact of technological developments; and
- co-ordinating regulatory responses to actual or potential instances of financial instability, and helping to resolve any issues where members' responsibilities overlap.

## **Council Activities in 2002**

The Council's activities in 2002 were set against the backdrop of continued difficulties in the external economic environment. Hopes of a robust and sustained recovery in the global economy faded in the second half of the year, while geopolitical uncertainties over Iraq and the Korean peninsula added to the mood of pessimism in financial markets. The weak economic conditions and substantial declines in equity prices tested the global financial system, which has been buffeted by some major shocks in recent years, but the system has proven resilient.

The Australian financial system remained in strong condition, underpinned by the continued expansion of the Australian economy. Nonetheless, efforts to further strengthen the regulatory architecture continued in 2002. Importantly, a new prudential framework for the general insurance industry came into effect in July 2002, and in October 2002 the Government announced a range of measures aimed at enhancing the prudential framework governing superannuation. The involvement of Council members in financial sector reform is outlined in Chapter 2.

During 2002, a particular issue for the Council, which touched on the responsibilities of each member, was the continued strong growth in lending for housing. This issue is discussed in Chapter 3. Council members also continued their involvement in various

international groupings and initiatives designed to strengthen the international financial architecture. A major focus of these initiatives in 2002 was the reform of corporate governance, accounting and disclosure standards in the wake of some high-profile corporate collapses in the United States and elsewhere. The involvement of Council members in international reform efforts is also discussed in Chapter 3.

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## 2. AUSTRALIA'S FINANCIAL REGULATORY FRAMEWORK

### Summary of Framework

Australia's financial regulatory framework – the main elements of which were introduced on 1 July 1998 in response to the recommendations of the Financial System Inquiry (the Wallis Committee) – consists of three agencies, each with specific functional responsibilities:

- the Australian Prudential Regulation Authority (APRA), which has responsibility for prudential supervision;
- the Australian Securities and Investments Commission (ASIC), which has responsibility for market integrity and consumer protection across the financial system; and
- the Reserve Bank of Australia (RBA), which has responsibility for monetary policy, overall financial system stability and regulation of the payments system.

The **Australian Prudential Regulation Authority** is an integrated prudential regulator responsible for deposit-taking institutions (banks, building societies and credit unions) as well as friendly societies, life and general insurance and superannuation.<sup>3</sup> APRA is charged with developing prudential policies that balance financial safety and efficiency, competition, contestability and competitive neutrality.

Deposit-taking institutions are regulated by APRA under a single licensing regime and are all covered by the same “depositor protection” provisions of the *Banking Act 1959*. This legislation gives APRA the power to act in the interests of depositors, including the power to revoke licences, to make prudential standards or issue enforceable directions, to appoint an investigator or statutory manager to an authorised deposit-taking institution (ADI) in difficulty or take control of the institution itself. If the difficulties prove intractable, APRA can apply to the courts to wind-up the ADI.

Under the “depositor protection” provisions of the *Banking Act 1959*, depositors have first claim to the assets of an ADI in a wind-up. To support depositors' interests, all ADIs are required to hold assets in Australia at least equal to their deposit liabilities in Australia. These arrangements, however, do not confer any form of guarantee of depositors' funds, and depositors have no recourse to APRA or the Government.

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3 APRA regulates the compliance of superannuation funds with the prudential regulation and retirement income provisions of the *Superannuation Industry (Supervision) Act 1993*, while ASIC has responsibility for the other provisions. The Australian Taxation Office has responsibility for the regulation of excluded funds (which have less than five members).

As in the case of ADIs, where the financial weakness of a life company, general insurer, friendly society or superannuation fund could have a detrimental effect on the interests of members and policyholders, APRA may intervene in the management of the troubled entity. In the case of superannuation, the Minister for Revenue and Assistant Treasurer can, on public interest grounds, compensate members of a fund for losses due to fraudulent conduct or theft if the public interest requires it. The assistance can be funded either from Consolidated Revenue or by levying other funds within the industry. Again, however, members' and policyholders' entitlements are not guaranteed by either APRA or the Government.

The **Australian Securities and Investments Commission** administers and enforces a range of legislative provisions relating to financial markets, financial sector intermediaries and financial products, including investments, insurance, superannuation and deposit-taking activities (but not lending). ASIC's aim is to protect markets and consumers from manipulation, deception and unfair practices and, more generally, to promote confident participation in the financial system by investors and consumers. With this in mind, ASIC seeks to promote honesty and fairness in company affairs and securities and futures markets through adequate and timely disclosure of market information. In addition, ASIC:

- develops policy and guidance about the laws that it administers;
- licenses and monitors compliance by participants in the financial system; and
- provides comprehensive and accurate information on companies and corporate activity.

As part of its consumer protection role, ASIC monitors and assesses compliance with the *Code of Banking Practice*, the *Credit Union Code of Practice*, the *Building Society Code of Practice* and the *Electronic Funds Transfer Code of Practice* and supervises a number of industry-based alternative dispute resolution schemes.

ASIC also implements the provisions of the *Financial Services Reform Act 2001* (FSR Act), which introduced a streamlined regulatory regime for market integrity and consumer protection across the financial services industry. These new arrangements came into force on 11 March 2002, with a two-year transition period.

The FSR Act provides for a harmonised licensing, disclosure and conduct framework for financial service providers, and a single statutory regime for financial product disclosure. At the same time, the framework allows for flexible treatment of different financial products where appropriate (eg basic deposit products will be subject to less intensive regulation than more complex investment products).

The multiple routes to licensing of securities and futures exchanges, and of clearing and settlement systems, have been replaced by a single licensing regime for an Australian

financial market and for a clearing and settlement facility. Under the new arrangements, licensees have primary responsibility for the operation of markets and of clearing and settlement facilities; “the responsible Minister” has overall responsibility for licensing such entities. ASIC is empowered to advise the Minister on licensing matters and is also required to undertake assessments of the compliance of market and facility licensees with their legislative obligations, and to take enforcement action where necessary.

The **Reserve Bank of Australia** has responsibility for monetary policy and for overall financial system stability. The RBA has no obligation to protect the interests of bank depositors or other creditors of banks; rather, its task is to deal with threats to financial stability that have the potential to spill over to economic activity and consumer and investor confidence. In the event of such threats, the RBA retains its discretionary role of “lender of last resort” for emergency liquidity support. If it were to provide such support, the RBA’s preference would be to make funds available to the market as a whole through its domestic market operations. In certain circumstances, however, the RBA would be prepared to lend directly to a financial institution facing liquidity difficulties. The institution would have to be one supervised by APRA; would have to be solvent; and the failure to make its payments would have to pose a threat to overall financial system stability. APRA’s judgement about the fundamental soundness of a financial institution in distress would be critical to any RBA support.

The RBA, under the auspices of its Payments System Board, also has a mandate to promote safety, competition and efficiency in the Australian payments system, and has the backing of strong regulatory powers. If the RBA, for example, assesses there is scope to improve access to, or the efficiency or safety of, a particular payment system, it can “designate” that system as being subject to its regulation. It may then, in the public interest, impose an access regime on that system and/or set standards for efficiency or safety. The Government envisaged that these powers would be exercised within a broad co-regulatory approach, with safeguards for private sector operators. The RBA also remains responsible for conducting Exchange Settlement Accounts for participants in the payments system.

Under the new regulatory arrangements of the FSR Act, the RBA has responsibility for ensuring that clearing and settlement facilities conduct their affairs in a way that is consistent with overall financial system stability. As part of this role, the RBA has the power to set and monitor compliance with financial stability standards for clearing and settlement facilities. ASIC has responsibility for all other matters relating to these facilities, such as those covering corporate governance, market integrity and investor protection, and for enforcing compliance with the RBA’s standards if this becomes necessary. The RBA and ASIC signed a Memorandum of Understanding (MOU) in March 2002 that sets out a framework for co-operation between the two agencies in relation to licensed clearing and settlement facilities. The MOU is intended to

promote transparency, help prevent unnecessary duplication of effort and minimise the regulatory burden on facilities; it covers information sharing, notification and other arrangements intended to achieve these aims.

The RBA issued draft financial stability standards for clearing and settlement facilities for public comment in November 2002 and released its final standards in May 2003.

Annual Reports and Internet sites of the individual Council members (see page 28) contain further details about their responsibilities and activities.

## **Developments in the Regulatory Framework**

APRA has now completed a significant overhaul of the prudential standards for the **general insurance** industry. The reforms include significantly increased capital requirements, a strengthening of reinsurance arrangements and promotion of appropriate risk management strategies and processes. The reforms also introduce a stronger “fit and proper” regime for the management of insurers and for their auditors and actuaries.

Most general insurance companies successfully met the requirements of the new regime and were re-authorised. APRA’s re-authorisation process involved a rigorous assessment of each general insurer’s situation, business practices and plans. As of July 2002, ten general insurers were in run-off (ie they were no longer writing new policies or renewing existing policies) as a result of the re-authorisation process. Another 15 general insurers transferred their liabilities and exited the market; however, most of these exits were a result of existing insurance groups adjusting their corporate structures.

Progress in reforming the regulatory framework for **superannuation** gained momentum in 2002. An important input was the review undertaken by the Superannuation Working Group, established by the Federal Government, whose Report, *Options for Improving the Safety of Superannuation*, was released in March 2002 after a process of public consultation. The Group found that the current prudential regime, which had remained largely intact since the *Superannuation Industry (Supervision) Act 1993* was introduced, was generally sound, but the Group recommended changes to modernise the regime and enable APRA to undertake preventative action rather than enforcement action after a breach has occurred.

In its response to the Group’s recommendations, and to a separate review undertaken by the Productivity Commission, the Government announced in October 2002 that it would introduce a number of reforms to the prudential framework governing superannuation. The principal reform is a universal licensing regime, under which all trustees of APRA-regulated superannuation funds, approved deposit funds and pooled superannuation trusts will be required to be licensed by APRA and to comply with the

licensing requirements on an ongoing basis. Trustees will be required to prepare and submit to APRA a risk management strategy for themselves and a risk management plan for each fund or trust they operate.

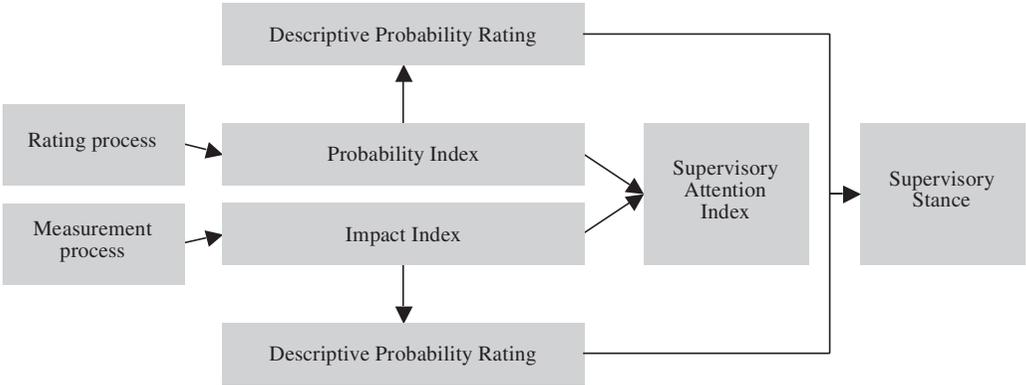
In order to obtain a licence, trustees will be required to demonstrate that they have the capacity, competency and means to operate a superannuation business. Trustees must, for instance, have adequate resources in place, including financial, technological and human resources, as well as appropriate risk management processes. Trustees will have to meet fit and proper requirements and minimum standards of competency. They must also demonstrate that they have adequate outsourcing arrangements and adequate levels of insurance such as professional indemnity insurance. The new licensing regime leaves unchanged the capital requirements for trustees of public offer entities; no capital requirements will apply to trustees of non-public offer entities.

A draft Bill to amend the *Superannuation Industry (Supervision) Act 1993* to give effect to the new licensing and prudential arrangements was released in June 2003. The details of the prudential requirements will be contained in operating standards, which APRA has commenced drafting for industry consultation. The reforms are expected to come into effect from April 2004, with licensing to be undertaken over a two-year period starting on 1 January 2004.

Another important development in strengthening the prudential supervision of superannuation was a revision of the reporting framework for superannuation entities. The revised reporting forms consolidate the reporting requirements of APRA and the Australian Bureau of Statistics (ABS); they also widen the range of prudential data collected and align the reporting requirements more closely to Australian accounting standards. The additional information collected will assist APRA to supervise superannuation funds and trustees more effectively, and to identify funds that may be experiencing problems or that are not being managed in a prudent manner. The revisions to reporting requirements will be given legal effect through Reporting Standards determined under the *Financial Sector (Collection of Data) Act 2001*. Industry consultation on the requirements has taken place during the first half of 2003, and the new reporting framework will apply largely for financial years ending on or after 30 June 2004.

To enhance its **prudential supervision processes** and also guide the optimal deployment of its resources, APRA has developed a Probability and Impact Rating System (PAIRS). PAIRS is a consistent risk assessment tool that integrates risk of potential failure and its potential impact into a single measure of overall supervisory concern. PAIRS operates in conjunction with a Supervisory Oversight and Response System (SOARS), under which the PAIRS measure of supervisory concern is translated into an appropriate supervisory stance: “normal”, “oversight”, “mandated

improvement” or “restructure”. PAIRS draws on international best practice and builds on and harmonises the approaches of APRA’s predecessor bodies. The building blocks for assessing probability of failure are based on the types of risks incurred by financial institutions, and those for assessing potential impact are based on institution size. Quantitative assessments of probability and impact are combined to determine a Supervisory Attention Index while, in parallel, qualitative factors determine Supervisory Stance.



PAIRS was implemented in October 2002. Over the following six months, 15 per cent of entities, covering 78 per cent of financial system assets, were rated at least once. In due course, APRA intends to advise each rated institution of its rating but ratings will not be disclosed publicly.

APRA released revised prudential standards for the **supervision of ADI conglomerates** in November 2002. The revised standards, effective from 1 July 2003, relate to capital adequacy, large exposures and associations with related entities. On capital adequacy, the main change is the application of requirements to the full conglomerate group incorporating all associated entities, allowing more sophisticated methods to be applied, including the use of internal models. These will only apply to prescribed conglomerate groups where insurance or other non-banking activities form a large part of their activities, justifying a more complex supervisory treatment. The new standards on large exposures and associations with related entities will further reduce concentrations of risk in ADIs’ lending and investment activities, both to independent third parties and intra-group. The new intra-group limits will more effectively constrain the potential for risks in an ADI’s non-banking subsidiaries to impact on the ADI. Recognising that some ADIs have existing relationships that do not fully comply with these requirements and will take some time to unwind, APRA is agreeing transitional arrangements with individual ADIs to allow these adjustments to be made in an orderly manner.

A further strengthening of Australia's **financial architecture** is envisaged in the latest of the Government's Corporate Law Economic Reform Program proposals (the CLERP 9 Paper) – *Corporate Disclosure: Strengthening the Financial Reporting Framework* – that were released for public comment in September 2002. Some of the key proposals in the CLERP 9 Paper are a response to the recommendations of the Ramsay Report, which reviewed the independence and regulation of auditors. However, the CLERP 9 Paper also addresses issues regarding the financial reporting obligations on corporations. While noting that Australian corporate governance regulation and practice are recognised internationally as being of high quality, the CLERP 9 Paper seeks improvement in various areas in light of recent examples of unacceptable corporate behaviour, both in Australia and overseas.

Some of the key proposals in the CLERP 9 Paper aimed at ensuring the effectiveness and quality of the audit process are:

- expanding the responsibilities of the Financial Reporting Council to include oversight of auditing standard-setting arrangements and auditor independence requirements;
- amending the *Corporations Act 2001* to include provisions relating specifically to auditor independence;
- the compulsory rotation of audit partners every five years; and
- a requirement that all companies included in the All Ordinaries share price index (the top 500 listed companies) have an audit committee.

In relation to the independence of analysts, the CLERP 9 Paper recommends that ASIC, following consultations with stakeholders, provide guidance by means of a policy statement on the level and manner of disclosure required under the general duty on financial services licensees to ensure that financial services are provided efficiently, honestly and fairly.

The CLERP 9 Paper also recommends changes to the continuous disclosure framework to enhance the adequate and timely disclosure of information, including increases in monetary penalties and the introduction of new powers for ASIC to issue infringement notices in relation to contraventions of the continuous disclosure requirements. Finally, the CLERP 9 Paper recommends that Australia adopt accounting standards issued by the International Accounting Standards Board (IASB) for reporting entities for accounting periods beginning on or after 1 January 2005.

For its part, ASIC welcomed the initiatives in the CLERP 9 Paper. ASIC set out its views on the proposals in a submission in November 2002.<sup>4</sup>

In 2002, ASIC commenced implementing the most ambitious reforms to financial services regulation. ASIC installed a new electronic licensing system so an expected 7,000 organisations can apply for new Australian financial services licences on-line. ASIC also provided extensive policy and operational guidance to assist the financial services industry in the transition to the new regime.

In releasing the Report of the HIH Royal Commission in April 2003, the Treasurer noted that the Government would be considering the corporate governance and financial reporting recommendations from the Commissioner in preparing the legislation to enact the CLERP 9 proposals.

In August 2002, the RBA announced reforms to **credit card schemes** in Australia designed to promote greater efficiency, transparency and competition in the Australian payments system. The reforms apply to the credit card schemes operated in Australia by Bankcard, MasterCard and Visa, which were formally “designated” by the Reserve Bank as payment systems subject to its regulation under the *Payment Systems (Regulation) Act 1998*. The reform measures involve:

- the adoption of an objective, transparent and cost-based benchmark which will be used as a basis for determining interchange fees in credit card schemes. Interchange fees are the fees paid to financial institutions which issue credit cards by financial institutions which provide services to merchants;
- the end of the restriction imposed by credit card schemes which prevents merchants from passing through to cardholders the costs of accepting credit cards; and
- the end of the restriction imposed by credit card schemes which limits the entry of new competitors into the schemes. Specialist credit card institutions authorised and supervised by APRA will be eligible to apply to participate in the credit card schemes.

The first of these reform measures, the ending of the restriction on merchants passing through credit card costs, came into effect on 1 January 2003; the other reform measures come into effect in the second half of 2003. The reforms are currently the subject of legal challenge.

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4 ASIC’s public submission is available on its website (see page 28).

## **Co-ordination between Council Members**

Australia's financial regulatory structure includes mechanisms to ensure effective co-ordination and co-operation between the three regulatory agencies. These mechanisms aim to provide full and timely exchange of information, the avoidance of duplication and a clear delineation of responsibilities, particularly when dealing with matters such as a financial disturbance.

The liaison framework, which is overseen by the Council itself, is a multi-tiered one. The highest level has involved a structure of overlapping Board representation. The legislation has provided for both the RBA (two members) and ASIC (one member) to have representation on the APRA Board and for APRA (one member) to have representation on the Payments System Board. However, the Report of the HIH Royal Commission questioned the participation of RBA and ASIC representatives on the APRA Board from the viewpoint of the governance of APRA and effective co-ordination of activities between the agencies. The Commissioner recommended that APRA's non-executive Board be replaced with an executive group. The Government accepted this recommendation and from 1 July 2003 appointed a full-time executive group comprising three members to exercise APRA's responsibilities. This change will place even greater emphasis on the information exchange and co-ordination functions of the Council.

At the operational level, co-operation arrangements have been set out in three Memoranda of Understanding (MOUs) signed between the RBA and APRA, between APRA and ASIC and, more recently, between the RBA and ASIC. The MOUs cover such matters as information-sharing, prompt notification of any regulatory decisions likely to impact on the other agency's area of responsibility and consultation arrangements in the event of financial disturbances. The first two MOUs also establish bilateral Co-ordination Committees that aim, among other things, to avoid overlaps and gaps in regulatory coverage.

The three MOUs are reproduced in Appendix B.

Council members co-operate on a range of non-routine and routine issues. One important matter has been the implementation of enhanced statistical reporting by Australian financial institutions. These statistics are central to APRA's own responsibilities; they are also important, in aggregate form, to the RBA in pursuit of its monetary policy and financial stability objectives, and to the ABS in the production of economic data. APRA has completed the development of a new computer system (Direct to APRA or D2A) to collect, analyse and store data from regulated entities and, during 2002, it continued the roll-out of new statistical reporting forms. Banks migrated to the new forms during the first half of the year and general insurers followed shortly after. The superannuation industry is expected to commence reporting on the new forms during 2004. APRA,

the RBA and the ABS form a tripartite committee to facilitate ongoing co-operation on statistical issues, including any changes to reporting requirements to meet industry and international standards.

Building on a review in 2001, liaison arrangements between ASIC and APRA seek to achieve effective regulatory co-operation and to enhance the linkages between the different organisational structures in each agency. Regular liaison meetings are held every two months, with ad hoc meetings arranged to deal with specific operational matters as and when they arise.

Operational level liaison groups continue to focus on areas of common interest such as enforcement, compliance and disclosure, and jointly regulated entities in the insurance and superannuation sectors. The two agencies aim to share relevant findings of on-site reviews and surveillance where such information could assist the other in carrying out its supervisory functions. The agencies have, through close operational interaction, identified certain compliance deficiencies and have met jointly with industry to address these concerns.

ASIC and APRA are also committed to co-operating in the implementation of the FSR Act, particularly for those entities regulated by both agencies. The agencies have continued to meet to deal with issues arising during the transition period under the Act.

The ASIC/APRA Enforcement Referrals Protocols provide a summary of operational procedures for referral of existing, or anticipated, enforcement matters between APRA and ASIC. These Protocols also provide for regular meetings on general enforcement issues, with case-specific liaison occurring as necessary.

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### **3. MAJOR ISSUES FOR THE COUNCIL IN 2002**

#### **The Global Environment**

After weathering a series of unprecedented shocks in the latter part of 2001, the resilience of the global financial system was again tested in 2002, as signs of an apparent recovery in the global economy waned in the second half of the year and sentiment in global financial markets deteriorated. The Council continues to pay close attention to the impact of global developments on the stability of the Australian financial system.

At the beginning of 2002, a sense of optimism about global prospects had begun to emerge on indications that the US economy, which had dipped briefly into recession the previous year, might be on the road to recovery. That optimism, however, proved short-lived as doubts surfaced over the durability of the US recovery, particularly in view of concerns about the underlying health of the US business sector. Revelations of corporate malfeasance in the wake of some high-profile corporate collapses, such as Enron and WorldCom, also undermined confidence. The global economy lost momentum towards the end of 2002, and this slowdown has continued into 2003. Geopolitical uncertainties over Iraq and the Korean peninsula at times weighed heavily on market sentiment, reflected in renewed weakness in equity prices and falls in bond yields.

Despite these developments, the global financial system continued to prove resilient, although the difficult environment revealed strains in some areas. Japanese banks struggled to repair their balance sheets after more than a decade of anaemic domestic growth and the legacy of high levels of non-performing loans. The larger German banks also performed poorly, a consequence of persistent economic weakness in Europe and structural impediments to profitability.

The global insurance industry came under renewed pressure during 2002, with exposures to falling equity markets compounding an already difficult business environment. General insurance companies have faced some substantial payouts in recent years and, although these costs are being partly recouped through higher premiums, many large global insurers saw their share prices marked down significantly. In some countries, problems facing life insurance companies were exacerbated by the difficulty of maintaining guaranteed nominal returns in an environment of low interest rates and weak equity markets.

## Domestic Issues

Despite the difficult external environment, the Australian financial system has remained in strong condition. Its stability has been underpinned by the continued expansion of the Australian economy and by the absence of structural weaknesses that have created financial stresses in some other countries.

During 2002, one domestic issue to which the Council devoted particular attention was the continued strong growth in lending to households, particularly for housing. This has been associated with substantial and widespread increases in house prices. Consequently, the ratio of household debt to household disposable incomes had reached 125 per cent by the end of 2002, in the upper part of the range of other comparable countries. Over recent years, there has been a strong increase in demand for credit by property investors. Lending for investor housing now accounts for some 30 per cent of outstanding housing loans compared to less than 20 per cent a decade ago.

The RBA highlighted the growth of household debt and its implications in its regular *Statement on Monetary Policy*, its appearances before Parliamentary committees, in speeches by the Governor and Deputy Governor and in articles in its *Bulletin*.

The RBA noted that both demand and supply factors have been at work. On the demand side, the adjustment to a low inflation/low interest rate environment over the past decade or so has increased the affordability of housing finance for a wider range of households. A number of developments have acted to increase the supply of housing finance, including financial deregulation and the associated increase in competition in the lending market, spurred also by the entry of specialist mortgage managers; product innovation; and the development of securitisation markets. Some developments have specifically encouraged increased investor activity. In the mid 1990s, banks removed the premium they charged on investor housing loans and the advent of new products such as split-purpose loans, deposit bonds and home equity loans have made finance for investor housing more readily available.

The RBA has cautioned that the exceptionally fast increase in borrowing for investor housing has clearly increased risk and that the accompanying rapid expansion in apartment building shows all the signs of a seriously over-extended market. However, reflecting the general health of the housing sector, the overall financial condition of ADIs in Australia remains strong. The financial soundness indicators, which the RBA monitors – including asset quality, capitalisation, profitability and market valuation – suggest that a rise in household debt does not pose a significant danger of a financial crisis, such as occurred in the early 1990s after the build-up in corporate debt. The concern would be for a sharp jump in mortgage default rates that triggered a more substantial market correction – a scenario more likely to be associated with a deterioration in employment conditions and/or a sharp rise in interest rates.

One particular development that has boosted competition in the housing market – for both owner-occupiers and investors – has been the substantial growth in the use of mortgage brokers. During 2002, both APRA and ASIC investigated aspects of this development. For prudential purposes, APRA undertook a survey of ADIs to gauge practices regarding the use of mortgage brokers. The survey showed that mortgage-brokered loans represented about 23 per cent of all ADI housing loans, with this percentage very likely to increase. While largely comfortable that ADI risk practices associated with lending are sound, APRA will be working with ADIs to develop and implement best practice risk management regarding the use of brokers. This includes, among other things, broker accreditation procedures, independent loan review and appropriate tracking systems. A fuller analysis of the survey is available on APRA’s website (see page 28).

A report on the mortgage brokering industry – prepared by the Consumer Credit Legal Centre and released by ASIC in March 2003 – focused on issues facing consumers when using mortgage brokers. These issues included the poor quality of advice (with the increased costs of the inappropriate loans that might result); inadequate disclosure of fees, commissions and incentives; inconsistent documentation from brokers; consumer uncertainty about the nature and price of the service; and in a small number of cases, fraudulent activity such as manipulating loan applications. As a result, ASIC developed a guide to using a mortgage broker, which is available on its consumer website [www.fido.asic.gov.au](http://www.fido.asic.gov.au), and will develop an on-line “mortgage calculator” to help consumers understand the costs of home loans.

Another aspect of the housing market investigated by APRA in 2002 was the use of mortgage insurance by ADIs. ADIs are able partly to insulate themselves from the risk of residential mortgage defaults by requiring certain borrowers – those with high loan-to-valuation ratios – to take out mortgage insurance. As part of its research into stress-testing the mortgage books of lending institutions, APRA reviewed the claims experience of the (then) three major mortgage insurance providers in the market. Recent default/loss experience in housing lending has been very benign and this, coupled with strong growth in residential property values in major urban areas, has led to a very low rate of claims.

It remains APRA’s opinion that compliance by lending institutions with the conditions of mortgage insurance policies could be improved, and APRA intends to structure supervisory programs to highlight this. APRA’s assessment is that, given the low rate of claims, mortgage insurers over the past few years had paid a number of claims essentially as a relationship decision. However, in an environment in which default rates were increasing sharply, the more lenient attitude of mortgage insurers could change quite quickly, and this could undermine the effectiveness of the insurance

cover. It should be noted that mortgage insurance providers do not necessarily share APRA's view.

On a separate domestic issue, ASIC in December 2001 announced a new project to foster better disclosure of fees and charges in product disclosure statements for investment products. The first stage in the project was to engage Professor Ian Ramsay to prepare an options paper on how ASIC, industry and consumer groups could work together to produce effective disclosure of fees and charges for investment products. ASIC released the Ramsay Report, *Disclosure of fees and charges in managed investments, review of current Australian requirements and options for reform*, in September 2002. The report contains an overview of approaches to disclosure of fees and charges in Australia and a number of other jurisdictions, and options for improving the quality and comparability of disclosure. In consultation with industry and consumer representatives, ASIC is developing standards covering a number of aspects of the Report's recommendations that appear to have general acceptance among key stakeholders. These include:

- use of common terminology;
- standardised descriptions of fees;
- disclosure of purpose of fees;
- improved disclosure of entry/contribution and exit/withdrawal fees; and
- improved disclosure of fees paid to advisers.

The model proposed a "see at a glance" table format for the disclosure of all significant fees and charges. This should also assist consumers to make comparisons of fee structures between investment-linked products.

## **Reform of Financial Architecture**

Over recent years, the collapse of Enron and WorldCom and other large corporate failures, including in Australia, have highlighted the need to strengthen the basic foundations of markets through sound practices of corporate governance, improved accounting standards and audit quality and more effective regulatory oversight. The ability of accounting and auditing standards and practices to deliver accurate and reliable published financial information that is disclosed to markets in a timely fashion is fundamental to good corporate governance, and pursuit of improvements in these areas has been a central focus of reform proposals. Council members participate in a wide range of international groupings dealing with these and other reform issues.

Reform of corporate governance is being pursued within individual countries and at the global level, as part of the development of international standards for good practice in sound financial systems. In the United States, for example, landmark legislation in

the form of the *Sarbanes-Oxley Act* was passed in July 2002. This Act substantially strengthens the law surrounding audit processes and corporate governance in the United States, including by:

- significantly toughening disclosure requirements, especially regarding off-balance sheet exposures;
- increasing the independence of audit committees and promoting more independence between audit firms and their clients; and
- discouraging improper behaviour by increasing custodial and financial penalties.

At the global level, the Technical Committee of the International Organisation of Securities Commissions (IOSCO), chaired by the Chairman of ASIC, issued a series of principles in October 2002 to guide securities regulators in dealing with three critical areas: audit independence; audit oversight; and the role of corporate governance and ongoing disclosure.<sup>5</sup> Under the CLERP 9 proposals discussed in Chapter 2, Australia would basically comply with the IOSCO principles. While CLERP 9 will require only the top 500 listed companies to have an audit committee, ASIC has suggested in its submission on CLERP 9 that consideration be given to alternative mechanisms that could be employed by small companies to achieve the same outcome as an independent audit committee.

The international harmonisation of accounting standards is a related reform initiative that is gathering momentum. In October 2002, the Financial Accounting Standards Board (FASB) of the United States and the International Accounting Standards Board (IASB) announced the issue of a memorandum of understanding (“the Norwalk Agreement”) that marks a significant step towards formalising their commitment to the convergence of US and international accounting standards. The Norwalk Agreement aims to make reporting standards fully compatible as soon as practicable. In particular, the FASB and IASB expect to issue an exposure draft to address some, and perhaps all, of certain differences identified between the regimes by the latter part of 2003. However, it is recognised that some differences may remain beyond that time, and the accounting bodies are looking to remove or reduce those remaining by 1 January 2005 through co-ordination of their future work programs.

In Australia’s case, the Government concluded in its 1999 report, *Making Transparency Transparent: An Assessment*, that Australia substantially adhered to the OECD’s (non-binding) principles of corporate governance. Australia’s corporate governance framework consists of a “matrix” of legislation (mainly the Corporations Law), accounting standards that have the force of law, listing rules of the Australian Stock Exchange (ASX) and voluntary self-regulatory codes of practice.

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5 The principles are available on IOSCO’s website ([www.iosco.org](http://www.iosco.org)).

Nonetheless, recent events have highlighted the need for continuing improvement in relation to corporate governance issues. In this light, ASIC in 2002 conducted its largest-ever accounting surveillance project, directed to areas of accounting abuse of the type uncovered in the United States. The project gave a high priority to the treatment of capitalised and deferred expenses, recognition of revenue and recognition of controlled entities and assets. The surveillance related to the full-year financial reports of selected listed companies for the financial year ended 30 June 2002. ASIC noted that, while it had no reason to believe that abuses such as those recently uncovered in the United States were prevalent in Australia, a targeted surveillance of these issues would assist to maintain confidence in the reliability of public company financial reporting in the Australian market.

The two major corporate governance initiatives underway in Australia are the CLERP 9 reforms, discussed in Chapter 2, and the Corporate Governance Council (CGC), convened in August 2002 by the ASX. The CGC is made up of 21 business and investor groups and is chaired by an ASX representative. The CGC has the task of developing, on the basis of consultation with the business community, a set of best practice corporate governance principles for the guidance of Australian listed companies.

The CGC issued a final set of principles and best practice recommendations on corporate governance in March 2003. Broadly speaking, the CGC's 10 essential principles require companies to respect the rights of shareholders; make timely and balanced disclosure; safeguard the integrity of financial reporting; recognise and manage risk; lay solid foundations for management and oversight; promote ethical and responsible decision-making; structure the board to add value; encourage enhanced performance; remunerate fairly and responsibly; and recognise the legal rights of stakeholders. The ASX has amended Listing Rules so as to require listed entities to adopt these principles or to disclose to their shareholders why they have not done so. Standards developed by the CGC are issued as a "co-branded" statement by all the parties involved in their development and, as such, carry a strong endorsement of expected practice by companies.

## **International Co-operation**

The Council acts as forum for sharing information and co-ordinating the participation of its members in various reform initiatives, which are directed at strengthening the resilience of the international financial system.

One of the key international groupings is the Financial Stability Forum, which was established in 1999. The Forum provides for the regular exchange of high-level views on potential vulnerabilities in the international financial system and helps to prioritise the reform efforts that are underway at any one time. The Forum's membership consists

mainly of senior representatives from those national authorities that are responsible for maintaining stability in significant financial centres; it also includes representatives from international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The Governor of the RBA represents Australia, and the Chairman of ASIC, as Chairman of IOSCO's Technical Committee, has been representing IOSCO since September 2002.

Amongst a range of recent activities, the Forum has been seeking to reinforce international crisis management arrangements. It has improved crisis contacts among its members and has been involved in field-testing methods for managing the failure of a large and complex financial institution. The Forum has also supported international efforts to combat terrorist financing and has commissioned a compendium of recent corporate governance initiatives in its constituent countries.

The Forum also discusses current developments in financial markets and the global economy. Over the past year, these discussions have centred on the performance of key financial sectors, such as the insurance and reinsurance industries, which have been adversely affected by the weakness of the global economy and the sharp decline in equity markets. The Forum also reviewed the growing use of credit derivatives by both the banking and insurance sectors and urged speedy action to identify and close the information gaps that seemed to exist in credit risk transfer markets.

A Working Group on Credit Risk Transfer, established by the Committee on the Global Financial System at the Bank for International Settlements, also investigated credit risk transfer instruments. The RBA participated in this Working Group, which released its report in January 2003.

A second international grouping with which Australia is associated is the G20, which was also established in 1999. The G20 brings together representatives of a cross-section of systemically significant economies, and of the IMF and World Bank; the aim is to promote sustainable and equitable economic growth through international co-operation.<sup>6</sup> The Ministerial meeting, attended by the Treasurer and the Governor of the RBA, is held annually while Deputies' meetings are held twice yearly.

The G20's primary focus over the past year has been to examine members' experiences with globalisation and market reform, in order to develop a better understanding of the benefits and costs involved. G20 members finalised individual case studies outlining their experiences with globalisation and, building on this work, the RBA and the Australian Treasury co-hosted a conference on "Globalisation, Living Standards and Inequality: Recent Progress and Continuing Challenges" in Sydney in May 2002. G20

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6 Members include the G7 countries plus Argentina, Australia, Brazil, China, India, Indonesia, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey and the European Union.

members agreed that the benefits of globalisation can be maximised and the risks mitigated through appropriate domestic policies, strong domestic institutions and enhanced international co-operation. The G20 agenda also included work on combating the financing of terrorism, crisis prevention and resolution, measures to improve the effectiveness of international development assistance, and other policies to promote higher global economic growth and prosperity.

APRA remains active in various international fora, including those directed at developing the international supervisory framework. In particular, APRA contributes to the work of the Basel Committee on Banking Supervision. APRA is a member of the Basel Committee's Core Principles Liaison Group (CPLG), which is the main vehicle for establishing links between G10 and non-G10 countries. As well as developing, and providing guidance for implementing, the Core Principles for Effective Banking Supervision, the CPLG provides a forum for banking supervisors to discuss other issues of interest. Topics discussed during the year included loan classification and provisioning, the impact of proposed new international accounting standards, supervision of foreign currency positions and the need to balance supervisory independence and accountability.

Non-G10 members of the CPLG have established a Capital Working Group, which focuses on the development of the new Basel Capital Accord (Basel II). The Capital Working Group provides a forum for non-G10 countries to discuss the development of Basel II and to feed views and opinions into the Committee's discussions on its development. Given Australia's relatively advanced banking system, APRA is an active contributor to this group. During the year, APRA seconded a member of staff to the Basel Committee Secretariat to assist with work on the development of Basel II. One important aspect of this work is a global Quantitative Impact Study, which analyses the possible impacts on banking sectors of the various options in Basel II. APRA is a regional co-ordinator for this work. APRA is also a member of the Basel Committee Electronic Banking Group, which over recent times has focussed on cross-border electronic banking issues.

On insurance matters, APRA is active in the work of the International Association of Insurance Supervisors (IAIS). Over 2002, an APRA executive was Deputy Chair of the Executive Committee (and was subsequently appointed Chair of the IAIS Technical Committee). APRA was also represented on the Sub-Committees for Accounting (work included revisions to international standards), Solvency (stress testing, appropriate forms of capital and convergence of solvency standards) and Investments (credit risk transfer and investment risk management) and participated in the IAIS Task Force on Revisions to the Insurance Core Principles and Methodology. APRA also provided support to the IAIS Secretariat.

APRA is a member of the Joint Forum, which brings together the IAIS, the Basel Committee and IOSCO to discuss cross-sectoral issues. Over the year, the Joint Forum has been reviewing the methods used in determining economic capital across global conglomerates and the disclosures made by banking groups.

APRA is also a member of the OECD Insurance Committee and the OECD Working Group on Private Pensions. The Committee's work over the year included terrorism insurance, environmental risk and governance structures in insurance firms. The Working Group focussed on guidelines for superannuation supervision and prepared a template for assessment of pension systems for the IMF/World Bank Financial Sector Assessment Programs. APRA supports the OECD-sponsored International Network of Pensions Regulators and Supervisors and is a member of its Technical Committee and Asia/Pacific Regional Group. APRA is also a member of the International Actuarial Association (IAA) and participates in several IAA Committees.

APRA supports a range of regional initiatives to promote development of supervisory infrastructure, deepening of the skills of supervisors and the sharing of information. This includes participation by APRA staff, either as presenters of papers or as delegates, in various regional conferences and workshops. Together with the RBA, APRA is a member of the Working Group on Banking Supervision of the Executives' Meeting of East Asia-Pacific Central Banks (EMEAP), a grouping of regional central banks and monetary authorities. The Working Group provides a forum to discuss financial developments in the region as well as progress on the new Basel Capital Accord. During the year, APRA extended its involvement in the Financial Regulators Training Initiative, a joint initiative of APEC, AusAID and the Asian Development Bank for life insurance and pensions regulators.

ASIC continues to play an active role in international co-operation efforts in financial market regulation, mainly through its membership of IOSCO. This role was enhanced when the Chairman of ASIC was elected in May 2002 as Chairman of IOSCO's Technical Committee. This Committee has overseen a number of new mandates as well as the establishment of special project teams in response to issues such as the terrorist attacks of September 11 2001 and major corporate collapses. The Committee also established a high-level sub-committee, "the Chairs' Committee", to co-ordinate and focus IOSCO's response to the regulatory issues highlighted by Enron and other high profile business failures around the world. The Chairs' Committee published two papers on auditor independence and oversight in October 2002: *Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence* and *Principles of Auditor Oversight*.

ASIC participated in one of the Technical Committee's initiatives in settling the terms of the IOSCO *Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*. The main objective of this MOU is to encourage co-operation among regulators in a global securities market. In addition to settling the terms, ASIC was also involved in determining the process for verifying MOU implementation and, through its Chairman, confirming applications from various jurisdictions to become signatories to the document. In October 2002, ASIC became one of the first signatories to the MOU. More generally, ASIC regularly contributed to IOSCO reports and papers and attended various Standing Committee and Project Team meetings. In early 2002, ASIC hosted two Standing Committee Meetings in Melbourne.

ASIC undertook considerable work in 2002 on cross-border financial services regulation. It released *Principles for cross border financial services regulation* in November 2002, which addresses issues relating to the regulation of foreign markets, products and services across international borders. ASIC also released three policy proposal papers: 1. *Australian market licences: Overseas operators*, to address the way ASIC proposes to regulate overseas markets that wish to operate in Australia; 2. *Foreign collective investment schemes*, to address the way ASIC intends to regulate scheme operators seeking to attract Australian investors; and 3. *Licensing: Discretionary powers – Foreign financial services providers*, to facilitate the entry of foreign financial service providers that are regulated by overseas regulatory authorities into the Australian market. In all cases, ASIC sought input from its major regulatory counterparts in the region.

ASIC also negotiated an MOU with the Securities and Exchange Commission of Sri Lanka, and commenced negotiations for an MOU with the Financial Services Agency of Japan and a Protocol of Information Sharing and Co-operation with the Securities and Futures Commission of Taiwan. By the end of 2002, ASIC had entered into 25 MOUs with overseas counterparts.

A number of senior ASIC officers also gave presentations at various international seminars, such as an International Regulators Conference in the United Kingdom in June 2002. ASIC personnel attended regional and local seminars hosted by the Asian Development Bank and gave presentations on a wide range of subjects, including financial services reform in Australia and ASIC's enforcement policies and practices.

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## APPENDIX A

### COUNCIL MEMBERSHIP IN 2002

| <b>Organisation</b>                              | <b>Representation</b>  | <b>Internet Address</b> | <b>Information Office</b> |
|--|--|-------------------------|---------------------------|
| Reserve Bank of Australia                        | Mr IJ Macfarlane<br>(Chairman)<br>Governor                                     | www.rba.gov.au          | (02) 9551 9721            |
|  | Dr JF Laker<br>Assistant Governor<br>(Financial System)                        |                         |                           |
| Australian Prudential Regulation Authority       | Mr GJ Thompson<br>Chief Executive Officer                                      | www.apra.gov.au         | (02) 9210 3000            |
|  | Mr CW Littrell<br>Executive General Manager<br>Policy, Research and Consulting |                         |                           |
| Australian Securities and Investments Commission | Mr DW Knott<br>Chairman  | www.asic.gov.au         | (02) 9911 2600            |

## **ADMINISTRATIVE ARRANGEMENTS**

The Council of Financial Regulators does not have its own staff; support is provided by RBA officers. The Council met three times in 2002, and aims to meet on a quarterly basis each year.

The production and printing costs of this Annual Report were met by the RBA; distribution costs were shared by the members.

The Federal Treasurer has Ministerial responsibility for the Council. Although there is no statutory requirement for the Council to table its report in Federal Parliament, the Treasurer has agreed to do so on this occasion.

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## **APPENDIX B**

### **MEMORANDA OF UNDERSTANDING BETWEEN COUNCIL MEMBERS**

#### **THE RESERVE BANK OF AUSTRALIA AND THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY**

##### **Objective**

1. This Memorandum of Understanding sets out a framework for co-operation between the Reserve Bank of Australia (RBA) and the Australian Prudential Regulation Authority (APRA) which is aimed at promoting the stability of the Australian financial system.

##### **Responsibilities**

2. The responsibilities of the RBA and APRA for promoting financial stability are largely complementary.
3. The RBA's role is focused on the objectives of monetary policy, overall financial system stability and regulation of the payments system. It has no obligation to protect the interests of bank depositors and will not supervise any individual financial institutions. The RBA does, however, have discretion to provide emergency liquidity support to the financial system.
4. APRA is responsible for the prudential supervision of banks, life and general insurance companies and superannuation funds. Supervision of building societies, credit unions and friendly societies will transfer to APRA from State jurisdictions at a later date. APRA has powers to act decisively in the interests of depositors or policy holders and fund members if a supervised institution is in difficulty.

##### **Sharing of Information**

5. Full and timely exchange of information is a crucial element in co-ordination between the RBA and APRA.
6. The RBA gathers data and other information through its participation in financial markets and its pivotal role in the payments settlement system. APRA gathers a wide range of prudential data on the institutions which it supervises.

7. The RBA and APRA agree that, subject to legislative provisions, information available to one which is relevant to the responsibilities of the other will be shared as requested. Each organisation will provide relevant information to the other on a best endeavours basis, with due regard to the urgency of doing so.
8. When exchanging confidential information, the RBA and APRA acknowledge the confidentiality and secrecy requirements of the Acts under which they operate. Each organisation has the right to specify the level of confidentiality attached to information provided to the other.
9. The RBA and APRA will work together to avoid duplication in the collection of information so as to minimise the reporting burden on financial institutions. Subject to appropriate cost sharing, the RBA may arrange for information relevant to its responsibilities to be collected from financial institutions by APRA.
10. APRA will be responsible for the custody of all records relating to the supervision of banks, including those records transferred to APRA on its establishment. It will ensure that, subject to legislative provisions, the RBA has free and open access to these records.

## **Threats to Financial System Stability**

11. If either the RBA or APRA identifies a situation which it considers is likely to threaten the stability of the financial system, it will inform the other as a matter of urgency. Responses to a disturbance of this type will depend on the particular circumstances prevailing, but in all cases the RBA and APRA will keep each other informed of their ongoing assessment and will consult closely on proposed actions.
12. The RBA will be responsible for determining whether, and how, it might provide emergency liquidity support to the financial system. It does not see its balance sheet as available to support the solvency of an individual financial institution in difficulty.

## **RBA Participation in Prudential Consultations**

13. To assist it in keeping abreast of financial developments and supervisory issues, the RBA will participate from time to time in APRA's regular on-site reviews of, and prudential consultations with, supervised institutions. The RBA will give APRA appropriate notice of its intention to participate in such reviews/ consultations.

## **Consultation on Regulatory Policy Changes**

14. Each organisation will notify the other of any proposed changes in regulatory policy, and provide the opportunity to consult on changes which are likely to impinge on the responsibilities of the other.

## **International Representation**

15. The RBA and APRA will co-operate closely to ensure that Australia has appropriate representation in regional and international supervisory fora and training initiatives. In some circumstances there will be joint representation; for example, APRA will join the RBA in the relevant study groups of the Executive Meeting of East Asia and Pacific (EMEAP) central banks. In other circumstances only one institution will be represented; for example, APRA has assumed the RBA's membership of the Core Principles Liaison Group in the Basle Committee on Banking Supervision. In the latter cases, the two organisations will consult with each other as needed before and after the particular gathering.

## **Co-ordination Committee**

16. A joint Co-ordination Committee will be established to facilitate close co-operation between the RBA and APRA. The Committee will be responsible for ensuring that appropriate arrangements are in place to respond to threats to system stability, and for co-ordinating information-sharing. It will also handle operational matters such as statistical collections, joint research work and participation in international fora.
17. The Committee will be chaired by the Assistant Governor (Financial System) of the RBA and meet monthly or more frequently as required.

**IJ Macfarlane**

Governor

Reserve Bank of Australia

**GJ Thompson**

Chief Executive Officer

Australian Prudential Regulation Authority

SYDNEY

12 October 1998

# **THE AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY AND THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

## **1. Objective**

- 1.1 This memorandum of understanding (MOU) sets out a framework for co-operation between the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (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 co-operation 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 the 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.

DATED this day 12 of October 1998

**ALAN CAMERON AM**  
Chairman  
Australian Securities and  
Investments Commission

**GRAEME THOMPSON**  
Chief Executive Officer  
Australian Prudential Regulation Authority

# THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND THE RESERVE BANK OF AUSTRALIA

## Objective

1. This Memorandum of Understanding between the Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) is intended to assist each agency in the performance of its regulatory responsibilities under the *Corporations Act 2001* in relation to clearing and settlement facilities.
2. The framework set out in this Memorandum of Understanding is also intended to promote transparency, help prevent unnecessary duplication of effort and minimise the regulatory burden on licensed facilities.

## Responsibilities

3. The RBA has specific responsibilities under the *Corporations Act 2001* for setting financial stability standards, monitoring compliance with these standards and ensuring that licensed clearing and settlement facilities do all things reasonably practicable to reduce systemic risk.
4. ASIC has responsibility under the *Corporations Act 2001* for monitoring compliance with all other legislative obligations imposed on licensed clearing and settlement facilities. These include a requirement to provide financial services in a fair and effective manner, including by having arrangements in place to enforce compliance with operating rules and for resolving complaints from facility participants.
5. ASIC also has responsibility under the *Corporations Act 2001* for taking action to enforce compliance with all obligations imposed upon licensed clearing and settlement facilities.

## Consultation

6. To promote effective and well-coordinated development of regulatory policy, ASIC and the RBA will inform each other when determining substantive issues of policy with respect to clearing and settlement facilities which may have an impact on the regulatory responsibilities of the other agency. Each will provide the other with the opportunity for consultation on the proposed policy prior to any public consultation period, and prior to the release of a finalised policy.

## **Formal Requests and Use of Powers**

7. Where either ASIC or the RBA proposes to formally exercise any of its powers relating to licensed clearing and settlement facilities under the *Corporations Act 2001*, and this exercise may have an impact on the regulatory responsibilities of the other agency, it will:
  - notify the other agency of the proposed use of powers;
  - consult with the other agency on the proposed use of powers;
  - notify the other agency when the power is formally exercised; and
  - subject to any restrictions imposed by law, provide to the other agency any relevant documentation.
8. Under section 823E of the Act, ASIC may give a direction to a licensed clearing and settlement facility to take specific measures to comply with a financial stability standard or to take any other action to reduce systemic risk. It may do this on its own initiative, or following a request from the RBA.
9. ASIC anticipates that it would generally take such action at the request of the RBA, which has responsibility for assessing licensees' compliance with financial stability standards and their obligation to do all things reasonably practicable to reduce systemic risk.
10. ASIC and the RBA will agree on detailed protocols for the handling of requests under section 823E of the Act and exchanges of information in relation to any formal exercise of power.

## **Notification and Information Sharing**

11. There are circumstances where ASIC or the RBA will receive or make notifications that are required under the Act. Subject to any restrictions imposed by law, ASIC and the RBA will inform each other of any notifications either makes or receives with respect to clearing and settlement facilities which may have an impact on the regulatory responsibilities of the other agency.
12. In addition to the exercise of formal powers and requests ASIC and the RBA will (subject to any restrictions imposed by law) share information that they believe would be of assistance to the other in undertaking its responsibilities under the Act.
13. Wherever possible, ASIC and the RBA will avoid separate collection of the same information and data from licensed clearing and settlement facilities.

14. Where ASIC or the RBA has been served with a compulsory notice which would require the disclosure to some third party of information obtained under this MOU, the agency will, prior to disclosure, notify the other agency in writing so as to enable the other agency to determine what action, if any, it should take.

## **Report to the Minister on Annual Assessment**

15. Both ASIC and the RBA are required under the *Corporations Act 2001* to conduct an annual assessment of each clearing and settlement facility licensee's compliance with particular obligations under the Act and to prepare a report to the Minister on that assessment. Under the *Corporations Act 2001*, each agency is required to give a copy of that report to the other agency. Where such a report raises issues that may have an impact on the regulatory responsibilities of the other agency, each agency will provide for appropriate consultation with the other agency prior to finalisation of the report.

## **Coordination Meetings and Liaison**

16. ASIC and the RBA will establish procedures to facilitate regular contact between officers of the organisations on routine operational matters.
17. ASIC and the RBA will hold meetings of senior officials at least every twelve months to discuss the coordination of matters relevant to the regulation of clearing and settlement facilities and the operation of this MOU.

DATED this day 18 March 2002

**D Knott**

Chairman  
Australian Securities and  
Investments Commission

**IJ Macfarlane**

Governor and Chairman  
Payments System Board  
Reserve Bank of Australia

## APPENDIX C

### MAIN TYPES OF FINANCIAL INSTITUTIONS as at December 2002

| Type of Institution   | Main Supervisor/<br>Regulator | Main Characteristics   | No. of Active Groups <sup>a</sup> | Total Assets (\$b) |
|---|-------------------------------|--|-----------------------------------|--------------------|
| <b>Banks</b>  | APRA                          | Provide a wide range of financial services to all sectors of the economy, including (through subsidiaries) funds management and insurance services. Foreign banks authorised to operate as branches in Australia are required to confine their deposit-taking activities to wholesale markets. | 51                                | 993 <sup>b</sup>   |
| <b>Non-bank financial intermediaries</b>  |                               |  |                                   |                    |
| Building societies  | APRA                          | Building societies raise funds primarily by accepting deposits from households, provide loans (mainly mortgage finance for owner-occupied housing) and payments services. Traditionally mutually owned institutions, building societies increasingly are issuing share capital.                | 14                                | 12                 |
| Credit unions   | APRA                          | Mutually owned institutions, credit unions provide deposit, personal/housing loan and payments services to members.  | 193                               | 27                 |
| Money market corporations ("merchant banks")                                    | ASIC <sup>c</sup>             | Operate primarily in wholesale markets, borrowing from, and lending to, large corporations and government agencies. Other services, including advisory, relate to corporate finance, capital markets, foreign exchange and investment management.  | 37 <sup>d</sup>                   | 80                 |
| Finance companies (including general financiers and pastoral finance companies) | ASIC <sup>c</sup>             | Provide loans to households and small to medium-sized businesses. Finance companies raise funds from wholesale markets and, using debentures and unsecured notes, from retail investors.   | 83 <sup>d</sup>                   | 90                 |
| Securitisers  |                               | Special-purpose vehicles that issue securities backed by pools of assets (eg mortgage-based housing loans). The securities are usually credit enhanced (eg through use of guarantees from third parties).  | 64                                | 118                |

| Type of Institution                              | Main Supervisor/<br>Regulator | Main Characteristics   | No. of Active Groups <sup>a</sup> | Total Assets (\$b) |
|--|-------------------------------|--|-----------------------------------|--------------------|
| <b>Funds managers and insurers</b>               |                               |  |                                   |                    |
| Life insurance companies                         | APRA <sup>e</sup>             | Provide life, accident and disability insurance, annuities, investment and superannuation products. Assets are managed in statutory funds on a fiduciary basis, and are mostly invested in equities and debt securities.   | 31                                | 180                |
| Superannuation and approved deposit funds (ADFs) | APRA                          | Superannuation funds accept and manage contributions from employers (incl. self-employed) and/or employees to provide retirement income benefits. Funds are controlled by trustees, who often use professional funds managers/advisers. ADFs are generally managed by professional funds managers and, as with super funds, may accept superannuation lump sums and eligible redundancy payments when a person resigns, retires or is retrenched. Superannuation funds and ADFs usually invest in a range of assets (equities, property, debt securities, deposits). | 11 073 <sup>f</sup>               | 325                |
| Management companies (public unit trusts)        | ASIC <sup>c</sup>             | Unit trusts pool investors' funds, usually into specific types of assets (eg cash, equities, property, money market investments, mortgages, overseas securities). Most unit trusts are managed by subsidiaries of banks, insurance companies or merchant banks. Includes cash management trusts.   | 123                               | 183                |
| Trustee companies (common funds)                 | State authorities             | Trustee companies pool into common funds money received from the general public, or held on behalf of estates or under powers of attorney. Funds are usually invested in specific types of assets (eg money market investments, equities, mortgages).  | 13                                | 8                  |
| Friendly societies                               | APRA                          | Mutually owned co-operative financial institutions offering benefits to members through a trust-like structure. Benefits include investment products through insurance or education bonds; funeral; accident; sickness; or other benefits.   | 33                                | 6                  |
| General insurance companies                      | APRA <sup>e</sup>             | Provide insurance for property, motor vehicles, employers' liability, etc. Assets are invested mainly in deposits and loans, government securities and equities.   | 77                                | 69                 |

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- a Subsidiaries of an institution undertaking the same activity are treated as part of a single group.
- b Refers only to the Australian banking operations and does not include assets of banks' overseas branches or domestic and foreign non-bank subsidiaries. Banks' global consolidated group assets (for all locally incorporated and foreign bank branches) at December 2002 were \$1173 billion.
- c ASIC does not conduct prudential supervision of these institutions, but does regulate certain aspects of their operations (eg compliance with the fundraising and securities licensing provisions of the Corporations Law).
- d Groups with total assets below \$50 million are not included.
- e State Government-owned insurance offices are not covered by Commonwealth legislation, nor supervised by APRA.
- f Includes assets in life office statutory funds, but excludes pooled superannuation trusts, non-regulated public sector funds and self-managed superannuation funds (which have less than five members); self managed funds are regulated by the Australian Tax Office. Total superannuation assets were estimated to be around \$518 billion as at December 2002.

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## APPENDIX D

### MAIN DEVELOPMENTS IN REGULATION/SUPERVISION OF THE AUSTRALIAN FINANCIAL SYSTEM: 2002

Jan An ASIC survey of financial statements to 30 June 2001 identifies a number of problems in the application of the new accounting standard *AASB 1018 Statement of Financial Performance*. ASIC reviews the financial reports of 80 listed companies to assess their compliance with AASB 1018 and finds that, while many companies had made genuine attempts to comply with both the spirit and the letter of the new standard, there had been confusion in interpretation of the standard. ASIC recommends to the AASB that the standard be clarified.

ASIC protects consumers in an internet chat room by obtaining final court orders requiring the removal of false and misleading information from an Internet website. It is believed that ASIC's action in relation to giving investment advice on websites and in any chat rooms without holding the appropriate licence is the first such action in the world by a securities regulator.

Feb APRA releases new prudential standards for general insurance companies in Australia. Scheduled to come into force on 1 July 2002. The prudential standards cover issues such as capital adequacy, assets in Australia, liability valuation, risk management, reinsurance and the transfer and amalgamation of insurance business. A transitional standard also gives APRA capacity to approve the appointment of auditors and actuaries under the new prudential framework before 1 July.

ASIC releases its Financial Services Licensing Kit, and the eLicensing design model as part of its implementation of the *Financial Services Reform Act 2001*.

Mar APRA releases the first results of a new data collection providing detailed information about the face-to-face and electronic service points made available to the Australian community by authorised deposit-taking institutions (ADIs). This information substantially improves the quality of information available to both policymakers and commentators. The data collection was developed as part of the Federal Government's response to the report *Regional banking services: money too far away?*, prepared by the House Standing Committee on Economics, Finance and Public Administration.

ASIC and the RBA sign a Memorandum of Understanding covering their respective responsibilities under the *Corporations Act 2001* in relation to

licensed clearing and settlement facilities. The MOU sets out a framework for co-operation between ASIC and the RBA to help prevent unnecessary duplication of effort and to minimise the regulatory burden on licensed facilities.

ASIC releases *Policy Statement 172: Australian market licences: Australian operators*, which sets out ASIC's role in, and approach to, financial market regulation under the financial services reform legislation.

ASIC releases a draft of updates to *Policy Statement 25* on misleading statements in takeovers to deal with "last and final statements" to reflect legislative amendments, recent experience and current enforcement practice.

Apr ASIC releases a report and announces the finalisation of its national investigation into solicitors' mortgage schemes that were unable or unwilling to make the transition from the previous regulatory regime to the *Managed Investments Act 1998* under ASIC.

May APRA releases a new prudential standard on outsourcing by ADIs, effective from 1 July 2002 . The standard sets best practice principles to ensure that the boards and managements of ADIs have policies and procedures to manage effectively the risks arising from outsourcing material business activities. The standard provides for access by APRA to service providers, including the ability to conduct on-site visits.

Jun APRA issues a prudential standard prescribing a minimum capital requirement for life insurance companies under the *Life Insurance Act 1995*. The standard seeks to preserve the current minimum capital requirement of \$10 million applicable to life insurance companies under Actuarial Standard AS6.01.

APRA's new prudential standards for general insurance companies come into effect from 30 June 2002 and must be complied with by all general insurance companies.

APRA announces that most general insurance companies in Australia have been authorised under the *General Insurance Reform Act 2001*, having successfully met the new requirements. APRA's re-authorisation process involved a rigorous assessment of a general insurer's situation and business practices and plans.

ASIC releases its report, *International Cold Calling Investment Scams*, into international scams by unlicensed overseas telemarketing firms that cheated many thousands of Australians of an estimated \$400 million.

ASIC extends existing interim relief relating to foreign collective investment schemes under *Policy Statement 65* and *Pro Forma 71* and for registered schemes given relief from s601FC(4) of the *Corporations Act 2001*, for

investment in certain kinds of unregistered foreign schemes under *Class Order 98/55*.

ASIC releases a guide promoting improved disclosure of transaction fees for retail payments and deposit products (transaction accounts) offered by banks, credit unions and building societies. The guide sets out five principles of good disclosure.

The Treasurer announces the next phase of the CLERP process (CLERP 9), a review of corporate reporting and disclosure laws, dealing with audit reform, the disclosure framework, and shareholder participation.

ASIC releases a discussion paper on disclosure for on-sale of financial products, that sets out the key issues relating to the disclosure requirements under the on-sales provisions in the *Corporations Act 2001* and ASIC's proposals to address these issues.

ASIC reviews the adequacy and appropriateness of the current arrangements for regulating Managed Discretionary Accounts in light of the changes to the *Corporations Act 2001*, arising from the *Managed Investments Act* and the *Financial Services Reform Act 2001* (for more information, see information release 02/11 at ASIC's website).

Jul ASIC releases *The hawking prohibitions: an ASIC guide*, a guidance paper on the hawking prohibitions in the *Corporations Act 2001*, which provides industry with guidance and clarification on issues to consider when complying with the hawking prohibitions.

ASIC announces an accounting surveillance project directed at areas of accounting abuse of the type recently uncovered in the United States. The surveillance is to cover capitalised and deferred expenses, recognition of revenue and recognition of controlled entities and assets. It relates to the full-year financial reports of selected listed companies for the financial year ended 30 June 2002.

ASIC issues a consumer alert on the pitfalls investors may face when considering unexpected offers to buy their shares.

ASIC releases a guidance paper aimed at assisting financial advisers completing their Australian Financial Services (AFS) licence applications.

Aug Following a decision by the Payments System Board, the RBA releases its final reforms to credit card schemes in Australia. These reforms have been developed over a three-year period during which there has been extensive consultation with a wide range of interested parties.

APRA announces an upgraded internal rating system, the Probability And Impact Rating System (PAIRS), which will be used to assess the 3,500 financial institutions (excluding small APRA superannuation funds) that are subject to its prudential regulation. PAIRS assesses both a regulated entity's probability (based on risk) of failure and the potential impact (based on size) of failure. In developing PAIRS, APRA has drawn upon and refined international rating models to ensure that it is up to world best practice.

APRA announces proposed regulatory arrangements for a new class of ADIs specialising in credit card services. Known as Specialist Credit Card Institutions (SCCIs), the new entities will be authorised to issue credit cards and acquire credit card transactions from merchants, and will be eligible to participate in credit card schemes designated by the RBA. APRA will authorise and supervise SCCIs under the *Banking Act 1959* to ensure they meet their obligations to other participants within the credit card scheme.

Sep At the request of the Commonwealth, the RBA revokes measures enacted in 2001, under the *Banking (Foreign Exchange) Regulations 1959*, to prohibit transactions involving persons or entities identified by the United Nations and United States as being linked to terrorism. Such measures are superseded by the *Charter of the United Nations (Anti-terrorism Measures) Regulations 2001*.

APRA provides its submission to the HIH Royal Commission on Future Policy Directions for prudential regulation of the general insurance industry. This is APRA's response to a request by the Commission to provide its views on improvements in the regulation of insurance. The three main areas where APRA proposes further improvements are consolidated supervision, disclosure, and corporate governance and risk management; proposed improvements in the latter area include personal attestations by directors and senior executives, peer review of actuarial reports and whistle-blowing protection. In addition, APRA recommends amendments to legislation to increase its enforcement powers, operational independence and ability to deal with insurance-type activities that do not presently come under the *Insurance Act 1973*.

ASIC releases a policy statement on the use of prospective financial information, including financial forecasts, in prospectuses, disclosure documents and product disclosure statements, with the aim of improving the quality of disclosure in prospectuses and other fundraising documents.

The Federal Treasurer releases the Government's CLERP 9 paper, *Corporate disclosure: strengthening the financial reporting framework*.

ASIC releases a discussion paper on the use of information about the past performance of investments in advertisements and other promotional material, with the aim of ensuring that past performance information is used responsibly in advertising and is not misleading.

Oct APRA announces that it has engaged Corporate Governance International Pty Ltd (CGI) to provide it with rating and analysis of large regulated banks, insurance companies and fund managers listed on the ASX. APRA's supervisors will also analyse corporate governance more broadly across the 3,500 entities (excluding small APRA superannuation funds) that are subject to its prudential regulation.

Nov The RBA is directed by the Commonwealth Government to take steps under the *Banking (Foreign Exchange) Regulations 1959* to implement financial sanctions against certain ministers and senior officials of the Government of Zimbabwe. These measures form part of the package of sanctions against the Mugabe Government announced by the Minister for Foreign Affairs.

The RBA releases, for public consultation, draft financial stability standards that apply to licensees of clearing and settlement facilities in Australia under Part 7.3 of the *Corporations Act 2001*. The objective of the standards is to ensure that licensees of clearing and settlement facilities identify and properly control the risks associated with their operations.

APRA outlines the criteria superannuation funds have to satisfy to gain a licence under its new licensing regime, while emphasising that the burden of maintaining the licence rests with fund trustees. Under the Government's announced policy on superannuation reform, all APRA-regulated superannuation funds will require a licence.

APRA releases updated prudential standards for ADIs, governing capital adequacy, large exposures and associations with related entities. The changes, to facilitate the supervision of ADI conglomerates, are effective from 1 July 2003. At the same time, APRA finalises revised requirements for ADIs deducting investments in subsidiaries from capital to avoid double counting for regulatory purposes. The new deduction rules will be implemented to coincide with the introduction of the new Basel Capital Accord on 1 January 2007.

ASIC releases its *Principles for cross border financial services regulation*, which address issues relating to the regulation of foreign markets, products and services across international borders. The Principles play an integral role in guiding all aspects of ASIC's development of policy and action in relation to cross-border financial services regulation.

ASIC also releases two policy proposal papers addressing the regulation of certain cross-border financial activity. The first, *Australian market licences: Overseas operators*, addresses the way ASIC proposes to regulate overseas markets that wish to operate in Australia. The second, *Foreign collective investment schemes (FCIS)*, addresses the way that ASIC intends to regulate FCIS operators seeking to attract Australian investors.

Dec ASIC releases a policy proposal paper on advisers' conduct and disclosure obligations. The paper, *Licensing: Financial product advisers – Conduct and disclosure*, considers how certain conduct and disclosure obligations under the *Corporations Act 2001* apply to the provision of financial product advice to retail clients.

ASIC releases revisions to *Practice Note 50, External administrators: reporting and lodging* to provide general guidance to external administrators on their reporting obligations, and effective lodgement of reports and documents with ASIC.

ASIC releases stage one results of its accounting surveillance project confirming its belief there is no reason to believe that the type of accounting abuses identified in the United States pose a material risk in Australia, and that, overall, the level of compliance with existing accounting standards is high.

ASIC releases a discussion paper seeking stakeholders' views on whether it should issue guidelines on the new socially responsible investing disclosure requirements for products with an investment component (investment products) and, if so, what these guidelines should contain.

ASIC releases a policy proposal paper, *Licensing: Discretionary powers – Foreign financial services providers* to seek comments on the way ASIC plans to use its powers under the *Corporations Act 2001*, and to facilitate the entry into the Australian market of foreign financial services providers that are regulated by overseas regulatory authorities.

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## APPENDIX E

### SPEECHES AND ARTICLES OF COUNCIL MEMBERS

Copies of the following speeches and articles are published on the Internet site or available from the Information Office of the relevant agency – see page 28.

#### Australian Prudential Regulation Authority

Carmichael, J., *APRA – The Way Forward*, Speech to CEDA luncheon, 26 November 2002.

Coleman, A.D.F., N. Esho and I.G. Sharpe, *Do Bank Characteristics Influence Loan Contract Terms?*, APRA Working Paper, February 2002.

Esho, N. and A. Liaw, *Should the Capital Requirement on Housing Lending be Reduced? Evidence from Australian Banks*, APRA Working Paper, June 2002.

Karp, T., *Regulatory Outlook Twelve Months On*, ICA Conference, 12 September 2002.

Karp, T., *Dynamic Solvency Testing Models*, IAIS Annual Conference, Chile, 10 October 2002.

Littrell, C.W., *Safety in Australian Superannuation*, NSW Division ASFA Luncheon Seminar, 29 August 2002.

Littrell, C.W., *APRA Focus on Super Regulation*, ASFA Conference, 13 November 2002.

Littrell, C.W., Address to the Sustainable Governance Conference, 26 November 2002.

Littrell, C.W., *General Insurance Regulation: The Australian Experience*, Royal Institute of International Affairs, London, 2 December 2002.

Roberts, D., *General Insurance Reform*, Insurance in Crisis – Seminar, 5 September 2002.

Roberts, D., *APRA and Regulatory Compliance*, ACPA/PwC Seminar, 17 September 2002.

Roberts, D., *Compliance, Risk and the Board*, 6th Annual ACPA Conference, 15 November 2002.

Thompson, G.J., *On APRA's Plate*, National Council Dinner of the Trustee Corporations Association of Australia, 26 March 2002.

Thompson, G.J., *Topical Issues in APRA's Patch*, Securities Institute Luncheon, 8 May 2002.

Thompson, G.J., *Prudential Supervision of General Insurance – What Next?*, ICA Canberra Conference, 22 August 2002.

Thompson, G.J., *General Insurance Industry – The Supervisor's Perspective*, Insurance Summit 2002, 29 November 2002.

## **Australian Securities and Investments Commission**

Collier. B., *ASIC's Perspective of Current Insolvencies and the Role of the Insolvency Practitioner*, Insolvency Practitioners Association of Australia (WA Division), 20 March 2002.

Collier. B., *Risk and Responsibility*, Institute of Chartered Accountants in Australia, CA Conference, 27 April 2002.

Collier. B., *Trans Tasman Perspectives on Select Issues of Financing Stock and Debtors: Australian Perspectives*, 19th Annual Banking and Financial Services Law Conference, 6 June 2002.

Collier. B., *The Role of ASIC in Corporate Governance*, Corporate Governance Summit 2002, 27 November 2002.

Johnston. I., *FSR Seven Months On*, NIBA Conference, October 2002.

Johnston. I., *Licensing for Financial Service Intermediaries*, IBNA Conference, September 2002.

Johnston. I., *The New FSR Disclosure Regime – Likely Impacts on our Industry*, Financial Planning Association Principal Members and CFP Conference, 10 May 2002.

Knott, D.W., *Protecting the Investor: The Regulator and Audit*, CPA Congress 2002 Conference, 15 May 2002.

Knott, D.W., *Corporate Governance – Principles, Promotion and Practice*, Monash Governance Research Unit, 16 July 2002.

Knott, D.W., *Changing Dynamics of the Australian Superannuation Industry*, AFSA Luncheon, 25 September 2002.

Knott, D.W., *The Regulatory Perspective*, International Accounting Standards Board World Standard Setters' Conference, Hong Kong, 18 November 2002.

Mackintosh. I., *Auditors and Audit Committees – a Regulator's View*, Centre for Corporate Law and Securities Regulation, 28 May 2002.

Rodgers, M., *e-Finance: Trends and Regulatory Responses*, Monetary Authority of Singapore's Capital Markets Seminar, May 2002.

Segal, J., *Financial Services Reform Act 2001 – Challenges for ASIC*, Committee for Economic Development of Australia FSRB (CLERP 6) Series, 28 February 2002.

Segal, J., *Current Areas of Concern to ASIC Regarding Corporate Disclosure*, Australasian Investor Relations Association, Corporate Disclosure Practices, 20 March 2002.

Segal, J., *Market Demutualisation and Cross Border Alliances: the Australian Experience*, Fourth Roundtable on Capital Market Reform in Asia, Tokyo, April 2002.

Segal, J., *The Role of the CFO in Corporate Governance*, Financial Executives International Luncheon, 3 May 2002.

## **Reserve Bank of Australia**

Battellino, R., *Why do so Many Australian Bondholders Issue Bonds Offshore?*, Talk to Australian Credit Forum 2002, 26 November 2002.

Edey, M., *The Global Economic Scene*, Talk to the Australia-Japan Business Outlook Conference 2002, 22 August 2002.

Laker, J.F., *The Reserve Bank and Financial Stability*, Talk to the Trustee Corporations Association of Australia's National Council Conference, 27 March 2002.

Macfarlane, I., *Monetary Policy in an Uncertain World*, Talk to CEDA Annual General Meeting Dinner, 13 November 2002.

Macfarlane, I., *What Does Good Monetary Policy Look Like?*, 12th Colin Clark Memorial Lecture, 21 August 2002.

Stevens, G., *Inflation, Deflation and All That*, Address to Australian Business Economists 2002 Forecasting Conference Dinner, 4 December 2002.

Stevens, G., *International Economic and Financial Issues: An RBA Perspective*, Address to Australian Banking & Finance News Magazine Asia Australia Investment Conference & Expo, 16 May 2002.

Reserve Bank of Australia Bulletin, *Recent Developments in Small Business Finance*, January 2002.

Reserve Bank of Australia Bulletin, *Australian Financial Markets*, June 2002.

Reserve Bank of Australia Bulletin, *The Private Equity Market in Australia*, June 2002.

Reserve Bank of Australia Bulletin, *Recent Developments in Housing: Prices, Finance and Investor Attitudes*, July 2002.

Reserve Bank of Australia Bulletin, *Australia's Foreign Currency Exposure and Hedging Practices*, August 2002.

Reserve Bank of Australia Bulletin, *Recent Proposals for Reform of Sovereign Debt Restructuring*, August 2002.

Reserve Bank of Australia Bulletin, *Innovations in the Provision of Finance for Investor Housing*, December 2002.