

CONFORMANCE WITH THE STATEMENT OF OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION DEVELOPED BY THE IOSCO

The International Organization of Securities Commissions (IOSCO) Statement of Objectives and Principles of Securities Regulation document sets out 30 principles of securities regulation, which are based upon three objectives of securities regulation. These are:

- The protection of investors;
- Ensuring that markets are fair, efficient and transparent;
- The reduction of systemic risk.

The principles are grouped into eight categories: the regulator; self-regulation; enforcement of securities regulation; cooperation in regulation; issuers; collective investment schemes; market intermediaries; and the secondary market.

Australia meets these IOSCO objectives, through provisions under the Corporations Law which provide investor protection against manipulative and fraudulent practices, while maintaining market integrity by promoting confident and informed participation of investors. Systemic risk is managed through a secure payments and clearance system and the supervision of market participants, directly and indirectly, through the regulator and co-regulatory bodies.

The standards are intended to recognise the need for practices to develop as the markets change and as technology and improved coordination among regulators makes other strategies available. The reference to securities markets is broad, applying to all the various market sectors; in particular, to the derivatives markets.

Full disclosure of information material to investors' decisions is required. Investors are, thereby, better able to assess the potential risks and rewards of their investments and, thus, to protect their own interests. Disclosure is required both at the time of initial offering of securities and on a continuous disclosure basis. Only licensed or

authorised persons are permitted to hold themselves out to the public as providing investment services.

Australia's regulator, the Australian Securities and Investments Commission (ASIC), actively carries out inspection, surveillance and compliance programs. In addition, self-regulatory organisations such as the exchanges, are required to actively carry out their regulatory responsibilities. The regulator has an obligation and the resources to pursue investigations and enforce the law for which it has regulatory responsibility for the benefit of investors. In addition, Australian securities law provides investors with rights to take civil action through the normal court system as a means of redress and compensation for improper behaviour.

Exchanges require authorisation of the Minister for Financial Services and Regulation to alter their trading rules, which are subject to regulatory review by ASIC to ensure fair and orderly markets. Transparency is assisted by information being made publicly available on a real-time basis. Australian law is intended to give investors fair access to reliable market facilities and price information with advanced, efficient electronic clearing and settlement systems.

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<i>Regulator</i>	
<p>The responsibilities of the regulator should be clearly and objectively stated.</p>	<p>The powers of the Australian markets regulator, the Australian Securities and Investment Commission (ASIC) are clearly set out in its enabling legislation.</p> <p>The responsibilities of the regulator are related to specific legislation and the powers provided to it under these laws.</p> <p>The enabling legislation also includes a set of aims which the regulator must strive to achieve.</p>
<p>The regulator should be operationally independent and accountable in the exercise of its functions and powers.</p>	<p>The regulator is established as an independent, statutory body. It is separate from the executive arm of government, operating under its own budget provided by the Government.</p> <p>In Australia, the regulator is responsible for regulation, meaning how laws are to be applied. The Government is responsible for the development of policy in relation to the law.</p> <p>The regulator is accountable to the responsible Minister of the Government for the exercise of its powers and functions. At present the Minister for Financial Services and Regulation is responsible for the regulator. This role comes under the Treasurer's portfolio.</p>
<p>The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.</p>	<p>Australian laws regulating financial services provide a range of tools which are designed to ensure that appropriate compliance mechanisms exist so that information is provided to or can be accessed by the regulator and action can be taken if a breach is detected.</p>

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<p><i>Continued from previous page</i></p>	<p>Under these laws the regulator has powers that allow it, inter alia, to make assessments, reviews, carry out investigations and make orders. Its powers include the ability to initiate civil actions to seek various remedies available under Australian law such as monetary damages.</p> <p>The regulator is also able to carry out criminal investigations in order to gather evidence which can be referred to a relevant criminal enforcement agency or prosecutor.</p> <p>The regulator is provided with significant resourcing that is commensurate with the responsibilities it is required to carry out. The national government auditor (Australian National Audit Office) has the discretionary power to carry out performance audits of the regulator.</p>
<p>The regulator should adopt clear and consistent regulatory processes.</p>	<p>The regulator operates in an open and transparent way. It publicly articulates its views, interpretation of the law and approach to enforcement, through both formal documentation such as policy statements and informal means such as conferences and meetings with industry participants.</p> <p>The regulator also carries out wide-ranging consultation in the policy development process.</p>
<p>The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.</p>	<p>Staff are bound by the standards and requirements generally applying to public officials in Australia under national laws set down in the <i>Public Service Act 1922</i>.</p>

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<i>Self-regulation</i>	
The regulatory regime should make appropriate use of Self-Regulatory Organisations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, to the extent appropriate to the size and complexity of the markets.	Authorised exchanges and futures markets have co-regulatory responsibilities with the regulator. The exchanges are required to develop business rules which regulate the conduct of their members and the operation of markets. Any amendments to the business rules require the exchange to lodge with the Australian Securities and Investment Commission written notice of these changes, within 21 days of the amendment being made. The ASIC is required to send a copy to the Minister for Financial Services and Regulation, the current responsible Minister, who within 28 days of receipt of the notice may disallow the whole or a specified part of an amendment.
SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.	The regulator provides regulatory oversight of co-regulatory bodies. Australian law includes requirements for procedural fairness, including natural justice, for bodies carrying out administrative and regulatory functions.
The regulator should have comprehensive inspection, investigation and surveillance powers.	The regulator has a range of compliance and enforcement tools at its disposal. These include powers dealing with inspection and investigation. Some are general in scope and application, while others are specific to particular offences.
The regulator should have comprehensive enforcement powers.	The regulator has the power to enforce laws for which it has regulatory responsibility. These powers enable it to take, as appropriate, civil or administrative action and to refer matters for criminal prosecution.
The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.	The regulator aims to ensure that it carries out its functions in an effective and credible way. In the reporting year 1997-98, 90% of its enforcement actions were successful.

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<i>Cooperation in regulation</i>	
The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.	Specific provision is contained in the <i>Mutual Assistance in Business Regulation Act 1992</i> , which allows the regulator to disclose information to domestic and foreign agencies.
Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.	ASIC has signed Memoranda of understanding (MOUs) with 18 overseas counterparts as well as non-government co-regulators such as the Australian Stock Exchange (ASX) and the Sydney Futures Exchange (SFE). MOUs are statements of intent between agencies, reflecting a willingness to cooperate on mutually agreed terms in respect of information exchange, investigative assistance and regulatory matters generally.
The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.	The <i>Mutual Assistance in Business Regulation Act 1992</i> , grants the regulator the medium to exercise compulsory powers for the functions and purposes of foreign regulators. This includes power to obtain books and records and conduct interviews. The foreign regulator is required to give an undertaking to preserve the privilege against self-incrimination. Authorisation from the Attorney-General must be obtained before the regulator exercises these powers.
<i>Principles for issuers</i>	
There should be full, timely and accurate disclosure of financial results and other information that is material to investors' decisions.	Australian law imposes general continuous disclosure obligations. These obligations apply to issuers of securities for both listed and non-listed entities. The Australian Stock Exchange Listing Rules supplement the disclosure obligations with additional reporting requirements

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<p>Holders of securities in a company should be treated in a fair and equitable manner.</p>	<p>The Australian Stock Exchange Listing Rules include the principle that securities must have rights and obligations attaching to them that are fair to new and existing security holders.</p>
<p>Accounting and auditing standards should be of a high and internationally acceptable quality.</p>	<p>This issue is covered in detail in this Report under the heading of Accounting Standards.</p>
<p><i>Collective investment schemes</i></p>	
<p>The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.</p>	<p>Collective investment schemes, known as ‘managed investment schemes’ in Australia, are subject to detailed regulatory requirements under the law. These schemes need to meet eligibility and operational requirements.</p>
<p>The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</p>	<p>The legal form and structure of managed investment schemes are specified under the law. The provisions provide for the segregation and protection of client assets.</p>
<p>Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.</p>	<p>Managed investment schemes are subject to general prospectus disclosure requirements. Information material to making an investment decision must be disclosed to potential investors.</p>
<p>Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.</p>	<p>Under the general prospectus disclosure requirement this information should be provided.</p>

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<i>Principles for market intermediaries</i>	
Regulation should provide for minimum entry standards for market intermediaries.	<p>Australian law requires securities dealers, investment advisers, and futures brokers and advisers to hold an appropriate licence.</p> <p>Representatives must hold a proper authority and their principal must be licensed.</p> <p>The granting of a licence is subject to conditions under the law and any further conditions imposed by the regulator. Criteria for granting licences include educational qualifications and relevant experience.</p> <p>The regulator has issued a policy statement outlining the competency standards expected of people applying for a licence to give advice on securities.</p>
There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	<p>Securities and investment dealers licences and futures brokers and adviser licences are subject to financial conditions and the lodging of security.</p> <p>Capital requirements form part of the business rules and by-laws of the authorised exchanges.</p>
Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.	<p>Australian law regulates the conduct of securities and futures businesses, including the issuing of contract notes, the manner in which they are audited, dealings on the dealers or brokers own account, dealers and brokers accounts, and the management of clients money and property.</p>
There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.	<p>Australian law requires authorised exchanges, such as the Australian Stock Exchange to maintain fidelity funds to cover defaults by intermediaries.</p> <p>The business rules and by-laws of the authorised exchanges outline default procedures.</p>

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<i>Secondary market</i>	
The establishment of trading systems including securities exchanges should be subject to regulatory authorisation and oversight.	The law regulates the manner in which exchanges are granted authorisation and the relationship between exchanges and the regulator in regulating the conduct of the market. Provision is made in the law for approving specialised stock and futures markets subject to specific requirements.
There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.	Amendments to the listing rules, business rules, or by-laws of authorised exchanges are subject to Ministerial disallowance.
Regulation should promote transparency of trading.	The listing, business rules, and by-laws of authorised exchanges outline disclosure obligations that their members are required to adhere to. These obligations include, corporate governance related disclosure, and periodic and continuous disclosure.
Regulation should be designed to detect and deter manipulation and other unfair trading practices.	Australian law regulates conduct in securities and futures markets including market manipulation, insider trading, and false and misleading statements. The authorised exchanges listing and business rules and by-laws are designed to ensure that a fair and orderly market is conducted.
Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.	The authorised exchanges and clearing house listing and business rules and by-laws deal with default procedures, and risk management practices, and trading halts.

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<p>Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.</p>	<p>Australia regulates the manner in which clearing houses are authorised.</p> <p>Any amendments to the business rules or by-laws of authorised clearing house are subject to Ministerial disallowance, which provides the opportunity to assess their fairness, efficiency and effect on systemic risk.</p>
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