

MEMO# 22824

August 27, 2008

SEC and Australian Authorities Sign Mutual Recognition Agreement

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TO: SEC RULES MEMBERS No. 80-08
EQUITY MARKETS ADVISORY COMMITTEE No. 37-08
INTERNATIONAL MEMBERS No. 12-08 RE: SEC AND AUSTRALIAN AUTHORITIES SIGN
MUTUAL RECOGNITION AGREEMENT

The Securities and Exchange Commission entered into a mutual recognition arrangement with the Australian government and the Australian Securities and Investment Commission (collectively "Australians"). [\[1\]](#) The Arrangement provides a framework for the SEC and the Australians to consider exemptions that would permit U.S. and eligible Australian stock exchanges and broker-dealers to operate in both jurisdictions, without the need for these entities to be separately regulated in both countries. Each country would retain jurisdiction over any violations of its anti-fraud laws and regulations.

Specifically, the Arrangement provides that Australian exchanges and broker-dealers seeking to do business with U.S. institutional investors, through U.S. broker-dealers, would be subject to Australian laws, regulations and rules. Eligible Australian exchanges and broker-dealers would be required to provide U.S. institutional investors a risk disclosure statement to make such investors aware that the Australian entity is not subject to direct SEC oversight and that rights and remedies in case of dispute may be different from those for transactions conducted on a U.S. exchange. U.S. exchanges and broker-dealers seeking access to Australian investors would be subject to the same disclosure requirements.

Broker-dealers and exchanges seeking to access foreign investors would need to receive permission from regulators in the country in which they want to operate. In the U.S., the applications for exemptive relief would be subject to a public comment period and approval by the SEC; Australia's process would be similar. The first exemptions are expected to be granted in early 2009.

The SEC and Australians also agreed to increase cooperation on cross-border enforcement and approved a new agreement to enhance cross-border supervision of financial firms by entering into two additional memorandums of understanding (“MOUs”). These MOUs for regulatory and enforcement cooperation were considered necessary to fulfill the mutual recognition mandate in the Arrangement. They will apply broadly to all U.S. and Australian market activity and not just those related to the Arrangement.

SEC Chairman Cox said, “Today’s signing marks a significant milestone in our partnership with Australia to reduce the barriers that U.S. and Australian investors now face in investing in each other’s markets. The framework we are establishing is designed to ensure that the significant protections afforded to investors under each nation’s regulatory system are maintained and enhanced. An important part of this arrangement is strengthening the ability of the SEC and [the Australians] to cooperate with each other in our enforcement and supervisory efforts, thereby enhancing the integrity of both our markets.” [2]

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endnotes

[1] See Mutual Recognition Arrangement Between the United States Securities and Exchange Commission and the Australian Securities and Investments Commission, Together with the Australian Minister for Superannuation and Corporate Law, dated August 25, 2008 (the “Arrangement”). The Arrangement may be found on the SEC’s website at: http://www.sec.gov/about/offices/oia/oia_mutual_recognition/australia/framework_arrangement.pdf.

[2] See SEC, Australian Authorities Sign Mutual Recognition Agreement, Press Release 2008-182, U.S. Securities and Exchange Commission, August 25, 2008.