Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Additional Estimates

23 – 24 February 2011

Question No: AET 129

Topic: Singapore's Regulations

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Senator Eggleston asked:

Senator EGGLESTON—Thank you very much. Singapore's regulations: do you wish to make any
comment on the regime there, just in brief? I know that time is moving on.
Mr D'Aloisio—Senator, I have enough trouble with ours.
Senator EGGLESTON—Is it a different—
Mr D'Aloisio—In broad terms—
Senator EGGLESTON—Is it fundamentally a different system?
Mr D'Aloisio—One of our commissioners, Shane Tregillis, has worked for the MAS for a number of years. His view is that there are a lot of comparable things between the two systems, and Singapore has borrowed a few things from Australia. I think we can get you a separate opinion on that, if you need it. That is just a broad view.
Senator EGGLESTON—I would appreciate that, if you could, and thank you for those answers.

Answer:

Comparison of Australian and Singapore regulatory frameworks

1 Introduction- legislative framework

The legal systems of Australia and Singapore were both developed based on English common law and our regulatory regimes have evolved to contain numerous similarities. For example, Singapore's Securities and Futures Act (SFA) and Australia's Corporations Act both contain financial product disclosure requirements; capital raising requirements; and requirements for the licensing of financial services providers, market operators and operators of clearing and settlement (CS) facilities. There are however differences in the detail and substance of these requirements in a number of respects.

This paper describes at a fairly high level some of the similarities and differences in those areas we anticipate may be of particular interest to the Committee. In particular, this paper focuses on some of the core regulatory requirements applying to market operators, facility operators and market participants in Singapore and Australia.

We have not attempted to provide an exhaustive description of the similarities and differences of the two regimes. However we would be happy to provide further information to the Committee on any particular areas of interest.

2 ASIC Class Order recognition of Singapore financial services providers and collective investment schemes

In 2003 ASIC issued Class Order [CO 03/1102] *Singapore MAS regulated financial service providers*. This provides an exemption to foreign companies that are regulated by the Monetary Authority of Singapore (MAS) and which hold a Capital Markets Services license, from the requirement to obtain an Australian financial services (AFS) licence for certain financial services provided to wholesale clients in Australia. ASIC issued this Class Order after conducting a detailed assessment of Singapore's legal and regulatory regime for the provision of financial services and concluding that it was sufficiently equivalent to Australia's regime in terms of the outcomes it achieves. This Class Order can be relied on by Singaporean market participants seeking to offer financial services to wholesale clients in Australia.

In 2007 ASIC also issued Class Order [CO07/753] *Singaporean Collective Investment Schemes.* This Class Order provides operators of collective investment schemes authorised by MAS with conditional relief from the managed investment scheme registration requirements; Australian financial services licensing requirements; and certain financial product disclosure requirements under the Corporations Act. The Class Order enables Singaporean scheme operators who are authorised by MAS to offer interests in collective investment schemes to retail clients in Australia.

The remainder of this paper outlines some other similarities and differences between the two regulatory regimes in those areas in which we anticipate the Committee may have an interest. This paper should not be taken as any indication of ASIC's future approach to administering the Corporations Act or the recognition of foreign regulatory regimes by ASIC in the areas discussed.

3 Regulatory oversight

The Monetary Authority of Singapore (MAS) regulates, among other things:

(a) the offering of securities, business trusts and collective investment schemes;
(b) trading of securities and other financial products; and
(c) securities and futures market operators, clearing facilities and approved holding companies of approved exchanges and designated clearing houses.

MAS undertake a similar role to ASIC in its regulation of market operators. With respect to clearing facilities, MAS also has an oversight role which encompasses that performed by both ASIC and the RBA in Australia.

4 Regulation of market operators

MAS have similar oversight responsibilities to ASIC with respect to approved market operators.
One notable difference is that MAS has the express authority to approve the appointment of directors of market operators and their approved holding companies. While ASIC can, in limited circumstance, disqualify directors of a licensed market operator, ASIC does not have the power to approve the appointment of new directors.

5 Market supervision

One difference in the regulatory oversight arrangements for financial markets is that in Singapore it is the Singapore Stock Exchange (SGX), not MAS, which is responsible for the real-time supervision of participants. In Australia, ASIC has been responsible for the supervision of participants trading on ASX's licensed markets since 1 August 2010.

6 Corporate governance standards for listed entities

In Singapore, MAS has established a Corporate Governance Council which is responsible for setting governance standards for listed entities. Listed entities are required to provide a description in their annual reports of their compliance with the Corporate Governance Council's Code.

In Australia, the ASX Corporate Governance Council is a non statutory body chaired by ASX. The ASX Listing Rules require entities listed on ASX to disclose in their annual report the extent to which they have complied with the ASX Corporate Governance Principles.

There are a number of points of difference in the detail of the Codes, including how they define the independence of directors and their guidelines for diversity on boards. In addition, Australia's Corporations Act contains different requirements for the disclosure of executive remuneration than those which apply under Singapore's Code.

7 Listing rules and market operating rules

Market operators of Australia and Singapore set their own listing and operating rules. In Singapore, these rules can be changed following the approval of MAS. In Australia, any proposed rule changes are subject to disallowance by the Minister. The market operating rules for SGX cover matters relating to market integrity, including prohibitions on market manipulation. In Australia, market integrity related matters have been covered in the *ASIC ASX Market Integrity Rules* since 1 August 2011.

The listing rules of SGX and ASX focus on similar areas including admission, continuous disclosure, periodic disclosure, shareholder approval of significant transactions, capital raising restrictions and related party transactions.
There are however points of difference in the application of some of these requirements. One difference is that SGX operates a twin board structure while ASX has a single board for all listed entities.
While there are broad similarities in the market operating rules of ASX and SGX (i.e. the rules governing how trading takes place on the market), there are a variety of differences in the details of the respective rule books.

8 Takeovers

In Australia, Chapter 6 of the Corporations Act governs the takeover of public companies. Singapore's Code on Takeovers and Mergers (Singapore's Takeover Code) is modelled on the UK City Code on Takeovers and Mergers. Consequently, there are a number of differences in the takeover regimes of Singapore and Australia. For example, a takeover threshold of 20% applies under Australia's Corporations Act while Singapore's Takeover Code imposes a mandatory bid threshold of 30%. Also, Singapore's Takeover Code is comprised of non-statutory rules, while in Australia the takeover provisions are statutory.

9 Substantial shareholdings and takeovers of SGX and ASX

Under the Corporations Act, no person may acquire a relevant interest of more than 15% of the voting power in ASX Limited. Similar prohibitions apply to subsidiary market operators and clearing and settlement facility licensees in ASX Group, but an intending purchaser can seek the approval of the Minister to acquire more than 15% of the voting power of these subsidiaries. In addition, Australia's Foreign Acquisitions and Takeovers Act applies to acquisitions by intending foreign purchasers of members of ASX Group.

Under the Singapore's Securities and Futures Act, no person may acquire more than 12% of the voting power in SGX Limited without the prior approval of MAS. Prior approval from MAS is also required before a person acquires more than 20% of the voting power in SGX Limited.