

Memorandum of Understanding
between the
Dubai Financial Services Authority



and the

**Australian Securities &
Investments Commission**



ASIC

Australian Securities & Investments Commission

SEPTEMBER 2006

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1 INTRODUCTION

- 1.1 The Dubai Financial Services Authority ("DFSA") and the Australian Securities & Investments Commission ("ASIC") wish to maintain a close and co-operative relationship; particularly in regard to the exchange of information and provision of investigative assistance. Both Authorities acknowledge the importance of compliance with the Financial Action Task Force (FATF) Recommendations on Anti-Money Laundering, and the IOSCO Objectives and Principles of Securities Regulation.
- 1.2 The arrangements outlined below are intended to support an effective working relationship, but they are not restrictive or legally binding. Both Authorities share the goal of promoting investor, depositor and policyholder protection and support the continuous development and innovation of regulations and supervision in financial products and activities within their respective financial markets.
- 1.3 The DFSA was established under Dubai Law No. 9 of 2004 and is the independent financial services and market regulator of the Dubai International Financial Centre (DIFC). The DFSA administers the DIFC Regulatory Law No. 1 of 2004, which provides, among other things, for the authorization, registration, recognition and supervision of financial service providers, financial services and products related to banking, securities, Islamic finance, collective investment schemes, asset management, trust services and insurance and re-insurance. The DFSA has the authority under the DIFC Markets Law No. 12 of 2004 to regulate the securities markets, including futures and derivatives.
- 1.4 The ASIC is the national corporate and securities regulator established under the Australian Securities and Investment Commissions Act 1989.
- ASIC is responsible for the administration and enforcement of the Corporations Act 2001 and the Australian Securities and Investments Commissions Act 2001 which provide for the regulation of corporations, securities markets and intermediaries, and investor protection in relation to financial services and products.

Under the Australian Securities and Investments Commission Act 2001 ASIC is required to:

- uphold the law uniformly, effectively and quickly;
- promote confident and informed participation by investors and consumers in the financial system;
- make information about companies and other bodies available to the public; and
- improve the performance of the financial system and the entities within it.

2. DEFINITIONS

"Authority" means the DFSA or ASIC or together the "Authorities";

"Applicable Laws" means any law, regulation or requirement applicable in DIFC or in Australia relating to financial and securities markets and products within the competence of the Authorities, including those related to:

- (i) insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders;
- (ii) the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
- (iii) market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
- (iv) markets, exchanges and clearing and settlement entities.

"ASIC" means the Australian Securities & Investments Commission;

"DFSA" means the Dubai Financial Services Authority;

"Issuer" means a person making an offer to the public or seeking listing of a security;

"Jurisdiction" means the country, state or other territory, as the case may be, in which the DFSA or ASIC have legal authority, power and/or jurisdiction by law;

"Authorised Entity" means any bank, building society, investment firm, collective investment scheme, corporate or trust service provider registered with the Authorities, or any other person acting within the scope of competence of the Authorities;

"Memorandum of Understanding" (MOU) means a document which sets out the arrangements for both mutual co-operation and exchange of information between regulatory bodies;

"Person" means any natural person or legal person;

"Permitted onward recipient" means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities.

"Requested Authority" means the Authority to whom a request is made under this Memorandum of Understanding;

"Requesting Authority" means the Authority that makes a request under this Memorandum of Understanding;

"Securities" means shares, bonds and other forms of securitized debts, futures and derivative products including commodity derivatives, units of undertakings in collective investment schemes and other financial products traded in the respective jurisdiction of the Authorities;

"Financial Markets" means any securities and derivatives market supervised by an Authority.

3. INTENTION

- 3.1 This Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities to enforce or secure compliance with laws and regulations of their respective jurisdictions.
- 3.2 The Authorities intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws and regulations of their respective jurisdictions. Assistance from one jurisdiction to the other will, to the extent permitted by law, not be limited to information concerning institutions authorised, licensed, registered or recognised in DIFC and/or Australia.
- 3.3 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of Authorised Entities by improving the effective regulation, enhancing the supervision of cross-border transactions, and creating an environment conducive to the prevention of fraudulent and other prohibited practices in DIFC and Australia.
- 3.4 The Memorandum of Understanding does not create any binding legal obligations upon the Authorities.
- 3.5 The Authorities intend, where legal authorisation is lacking, to actively pursue all avenues towards obtaining, by law, all the necessary powers for the effective achievement of the objectives of the Memorandum of Understanding, and to keep each other informed of developments in connection therewith.
- 3.6 The provisions of this Memorandum of Understanding do not grant the right to any person, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.

3.7 The Authorities will use reasonable efforts to provide each other with any information that they discover which leads to a suspicion of a breach or anticipated breach of laws or regulations in the jurisdiction of the other Authority.

4. SCOPE

4.1 The Authorities will provide each other with the fullest mutual assistance in any matters falling within the competence of the Authorities, including in particular the following areas:

- a) assisting in the discovery of and taking of action against unauthorised business or fraudulent or prohibited practices in relation to activities that the Authorities regulate;
- b) investigations and enforcement in connection with applicable laws and regulations relating to insider dealing, market manipulation and other fraudulent or manipulative practices;
- c) authorisation or licensing of entities within the scope of competence of the Authorities;
- d) regulation and supervision of Authorised Entities;
- e) promoting and securing the fit and proper qualities of directors, managers (including company secretaries and compliance officers) and controllers of Authorised Entities and the promotion of high standards of fair dealing and integrity of their conduct of business;
- f) the supervision of Financial Markets, including the clearing and settlement, the monitoring and surveillance of OTC-transactions in securities listed on regulated markets;
- g) enforcing or monitoring compliance with applicable laws and regulations relating to the duties of issuers and offerors of securities in relation to the disclosure of information;
- h) enforcing and monitoring compliance with applicable laws and regulations relating to the disclosure of interests in securities, takeover bids or the acquisition of influence over financial intermediaries;
- i) any matters agreed upon between the Authorities from time to time evidenced in writing.

- 4.2 Where the information may be maintained by, or available to, another authority within the country of the Requested Authority, the Authority will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by law. If necessary, the Requested Authority will provide the Requesting Authority with sufficient information to establish direct contact with the other authority.

5. REQUESTS FOR ASSISTANCE OR INFORMATION

- 5.1 This Memorandum of Understanding does not affect the ability of the Authorities to obtain information from persons in the other's jurisdiction on a voluntary basis, provided that the Authorities observe the procedures in that other jurisdiction for the obtaining of such information.
- 5.2 To facilitate communication and ensure continuity in the co-operation between the Authorities, each Authority will designate the contact officers set forth in Annex A hereto for communications under this Memorandum of Understanding.
- 5.3 A Requesting Authority will make requests for assistance in writing addressed to the contact officer or officers of the Requested Authority.
- 5.4 To the extent available to the Requesting Authority, the request will include the following particulars:-
- a) description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;
 - b) the legal provisions or a brief description thereof concerning the matter that is the subject matter of the request;
 - c) a description of the specific information requested by the Requesting Authority;
 - d) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons, bodies or entities believed by the Requesting Authority to possess the information sought, or the places where the Requested Authority may obtain such information, in particular:
 - i) in so far as the request concerns information relating to transactions in specific securities:
 - a full description of the securities in question (including e.g. the securities code),
 - the names of the firm/s involved in the transactions,

- the dates between which transactions are considered relevant for the purposes of the request,
 - the names of any persons on whose behalf relevant transactions are believed or suspected to have been entered into;
- ii) in so far as the request relates to information concerning the business or activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified;
- e) an indication of the sensitivity of the information contained in the request and whether the Requesting Authority is content for the fact that it has made the request to be disclosed to persons whom the Requested Authority may need to approach for information;
- f) whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the State of the Requested Authority in relation to the subject matter of the request and whether any other Authority, governmental or non-governmental, is co-operating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward disclosure of information is likely to be necessary;
- g) any other authority whom the Requesting Authority is aware has an active interest in the subject matter of the request;
- h) an indication of the urgency of the request, or the desired time period for reply.
- 5.5 In urgent circumstances, the Requested Authority will accept a request by means of communication other than the exchange of letters, and will expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters. Such urgent communications will be confirmed in writing as prescribed above by the relevant contact person set out in Annex A within five business days.
- 5.6 To the extent permitted by law, the Requested Authority will take all reasonable steps to obtain and provide the information sought.

6. UNSOLICITED INFORMATION

An Authority may provide, or arrange for the provision of, information that it believes will assist the other Authority in the performance of its regulatory functions, on a voluntary basis even though the other Authority has made no request. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that it is passing the information under this Memorandum of Understanding.

7. PERMISSIBLE USES OF INFORMATION

- 7.1 Any assistance or information provided in terms of the Memorandum of Understanding should be used by the recipient only for the purpose of performing its regulatory and supervisory functions.
- 7.2 The Requesting Authority may not use information furnished for any purpose other than that identified in terms of paragraph 5.4 a).
- 7.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in terms of paragraph 5.4 a), the Requesting Authority will seek and obtain the consent in writing of the Requested Authority prior to the use of such information.
- 7.4 Where the Requesting Authority believes that sharing confidential information with a third party is necessary, it will inform the Requested Authority of the third party's interest in this information and it must provide the Requested Authority with the opportunity to oppose such use.
- 7.5 The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.
- 7.6 Where unsolicited information is supplied, the Authority will use this information solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings or for the discharge of the obligation to report to judicial authorities.

8. CRISIS SITUATIONS

Where there is a need for urgent action by either Authority, in view of exceptional circumstances affecting an Authorised Entity, including financial distress, the DFSA and the ASIC will inform the other of such information as is deemed appropriate in the particular circumstances, taking into account all relevant factors.

9. CONFIDENTIALITY

- 9.1 The Authorities will, to the full extent permitted by the laws and regulations of their respective jurisdictions, keep confidential:-
 - a) any request for assistance or information pursuant to this Memorandum of Understanding;
 - b) any information received pursuant to this Memorandum of Understanding; and
 - c) any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.

- 9.2 The Requesting Authority will not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior written consent of the Requested Authority.
- 9.3 Notwithstanding the provisions of paragraph 7 (7.1, 7.2, 7.3), the confidentiality provisions of this Memorandum of Understanding will not prevent the Authority from informing the law enforcement bodies in its jurisdiction when disclosure is required pursuant to a legally enforceable demand.
- 9.4 If the Requesting Authority becomes aware that information passed to it under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose, it will, to the extent permitted by laws or regulations of its jurisdiction, inform the Requested Authority of that demand. The Authorities will then consult on the appropriate course of action.
- 9.5 The Authorities' obligation to retain the confidential treatment of assistance and information will continue when either Authority gives notice of its intent to cease co-operation under this Memorandum of Understanding. The Authorities understand that the laws and regulations of their respective jurisdictions place limitations on use and disclosure of non-public information obtained pursuant to this Memorandum of Understanding.

10. RIGHTS OF REQUESTED AUTHORITY

- 10.1 The Requested Authority may deny requests for assistance:-
- a) where the request would require the Requested Authority to act in a way that would violate the laws or regulations of the jurisdiction of the Requested Authority;
 - b) where the request is not in accordance with the provisions of this Memorandum of Understanding;
 - c) where judicial proceedings for the imposition of criminal penalties have already been initiated or criminal investigation is already underway;
 - d) where final judgment has already been passed or sanctions have already been applied by the competent Authorities, in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons; or
 - e) on grounds of public interest, national security or essential national interest.

- 10.2 Where the Requested Authority denies or opposes a request for assistance, or where assistance is not available under the law of the jurisdiction of the Requested Authority, the Requested Authority will provide the reasons why it is not granting the assistance. The Authorities will then consult pursuant to paragraph 11.
- 10.3 The Authorities recognise that this present Memorandum of Understanding should not be considered as limiting or enhancing the powers of the Authorities under the laws and regulations of their respective jurisdictions to investigate or gather information or to take measures otherwise than as provided in the Memorandum of Understanding to obtain information, whether or not concerning a request under the Memorandum of Understanding.

11. CONSULTATION

- 11.1 The Authorities will consult with each other on an on-going basis to enhance regulatory co-operation between them and to improve the operation of the Memorandum of Understanding and to strive to resolve any matters that may arise, including but not limited to:-
- a) matters of mutual interest to enhance co-operation and to protect depositors and investors by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions;
 - b) the co-ordination of the supervision of Authorised Entities and Markets; and
 - c) the administration of the laws or regulations of their respective jurisdictions.

The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the financial services industries of their respective jurisdictions whilst avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.

- 11.2 The Authorities will inform one another of the adoption of domestic measures that may affect their respective Authority's ability to provide assistance under this Memorandum of Understanding.
- 11.3 The Authorities may take practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding. As such, the Authorities may amend, relax or waive any of the terms of the Memorandum of Understanding.

12. AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING

- 12.1 This Memorandum of Understanding may be amended or modified by mutual consent. Any amendment or modification of this Memorandum of Understanding shall follow the same procedure as its entry into force.
- 12.2 Amendment to Annex A may be made by providing written notice to the contact person in Annex A.

13. COSTS OF INVESTIGATION

If it appears that the Requested Authority may incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Authorities will consult with a view to establishing an appropriate and equitable cost-sharing arrangement before proceeding with such a request for assistance.

14. LISTS OF AUTHORISED ENTITIES

The Authorities will exchange lists of Authorised Entities in their jurisdictions at the date of signing of this Memorandum of Understanding. Such lists will be updated and exchanged at the half-year dates following. Where an Authority maintains records of authorised entities and/or disqualified or banned registers on its website and these are kept up-to-date this will satisfy the initial and ongoing requirement.

15. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding will continue in effect for an indefinite period but will terminate upon the expiration of thirty days after either Authority gives written notice to the other Authority of its intention to terminate the Memorandum of Understanding. If either Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that either Authority had made before the effective date of notification until the Requesting Authority terminates the matter for which it requested assistance.

16. PUBLICATION

The Authorities agree that this Memorandum of Understanding may be published.

17. EFFECTIVE DATE

This Memorandum of Understanding will be effective from the date of its signing by the Authorities.

SIGNED on this 14 day of September 2006

**FOR THE
Australian Securities and Investment
Commission**

**FOR THE
Dubai Financial Services Authority**



**Jeffrey Lucy AM
Chairman**



**David Knott
Chief Executive**

ANNEX A

DESIGNATED CONTACT OFFICERS

Australian Securities & Investments Commission

Level 18, No.1 Martin Place
GPO Box 9827
Sydney NSW 2001
DX 653 Sydney

Tel: + 61 2 99112000
Fax : + 61 2 9911 2634
Website : www.asic.gov.au

For all matters:
Mr Andrew Crain
Director, Office of International Relations

andrew.crain@asic.gov.au
Tel : + 61 2 9911 2050

Dubai Financial Services Authority

Level 13, The Gate
PO Box 75850
Dubai, UAE

Tel : + 971 4 362 1500
Fax : + 971 4 362 0801
Website : www.dfsa.ae

For all matters:
Mr Mark Mc Guinness
Director, International Relations

MMcGuinness@dfsa.ae
Tel : + 971 4 362 1508