



ASIC

Australian Securities & Investments Commission

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**

AND

**THE COMMISSION DE SURVEILLANCE DU SECTEUR
FINANCIER**

CONCERNING

**CONSULTATION, COOPERATION AND THE EXCHANGE
OF INFORMATION RELATED TO THE SUPERVISION OF
REGULATED ENTITIES**

SEPTEMBER 2013

MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF REGULATED ENTITIES

PREAMBLE

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the Australian Securities and Investments Commission ("ASIC") and the Commission de Surveillance du Secteur Financier ("CSSF") have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of regulated entities that operate in the financial markets in the jurisdictions of the Authorities. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; fostering market and financial integrity; and maintaining confidence and systemic stability.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means the ASIC or the CSSF.

"Requested Authority" means the Authority to whom a request is made under this MOU; and
"Requesting Authority" means the Authority making a request under this MOU.

2. "Person" means a natural person, unincorporated association, partnership, trust, investment company or corporation.

3. "Regulated Entity" means a financial market participant or other entity whose activities subject it to the supervision, oversight and/or authorization or registration of one of the Authorities.

4. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Regulated Entity, investors or financial markets.

5. "Governmental Entity" means: a House or Committee of the Parliament of Australia, the Ministry of Finance or Treasury, the Central Bank and any other national prudential authority in the jurisdiction of the relevant Authority.

ARTICLE TWO: GENERAL PROVISIONS

6. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Regulated Entities that operate in Australia or Luxembourg, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MOU are intended to support such informal and oral

communication as well as to facilitate the written exchange of non-public information where necessary.

7. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.

8. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any right of any Authority to communicate with or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.

9. This MOU complements, but does not alter the terms and conditions of, the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation ("IOSCO MMOU") and the Exchange of Information, to which the Authorities are signatories, which also covers information-sharing in the context of enforcement investigations.

10. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Regulated Entities. Following consultation, cooperation may be denied:

- a) Where the cooperation would require an authority to act in a manner that would violate domestic law;
- b) Where a request for assistance is not made in accordance with the terms of the MOU; or
- c) On the grounds of the national public interest.

11. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary.

12. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

ARTICLE THREE: SCOPE OF SUPERVISORY COOPERATION

13. The Authorities recognize the importance of close communication concerning Regulated Entities, and intend to consult at the staff level regarding: (i) general supervisory issues, including with respect to regulatory or oversight developments; (ii) issues relevant to the operations, activities, and regulation of Regulated Entities; and (iii) any other areas of mutual supervisory interest.

14. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:

- a) The initial application of a Regulated Entity in one jurisdiction for authorization, registration or exemption from registration in the other jurisdiction;
- b) The ongoing oversight of a Regulated Entity; or
- c) Regulatory approvals or supervisory actions taken in relation to a Regulated Entity by one Authority that may impact the operations of another entity in the other jurisdiction.

15. **Notification.** Each Authority will inform the other Authority as soon as practicable of:

- a) Pending regulatory changes that, in the opinion of the Authority, may have a significant impact on the operations, activities, or reputation of a Regulated Entity subject to the jurisdiction of both Authorities;
- b) Any material event that, in the opinion of the Authority, may have a significant impact on a Regulated Entity subject to the jurisdiction of both Authorities. Such events include known changes in the operating environment, operations, financial resources, management, or systems and control of a Regulated Entity; and
- c) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration that, in the opinion of the Authority, may have a significant impact on a Regulated Entity subject to the jurisdiction of both Authorities.

16. **Exchange of Information.** To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information not otherwise available to the Requesting Authority, and interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation:

- a) Information relevant to the financial and operational condition of a Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal controls procedures;
- b) Relevant regulatory information and filings that a Regulated Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices; and
- c) Regulatory reports prepared by an Authority, including for example: examination reports, findings, or information drawn from such reports regarding Regulated Entities.

ARTICLE FOUR: EXECUTION OF REQUESTS FOR ASSISTANCE

17. To the extent possible, a request for written information pursuant to Article Three should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:

- a) The information sought by the Requesting Authority;
- b) A general description of the matter which is the subject of the request and the supervisory purpose for which the information is sought; and
- c) The desired time period for reply and, where appropriate, the urgency thereof.

18. In Emergency Situations, the Authorities will endeavor to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

ARTICLE FIVE: PERMISSIBLE USES OF INFORMATION

19. The Requesting Authority may use non-public information obtained under this MOU solely for the purpose of supervising Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority.

20. This MOU is intended to complement, but does not alter the terms and conditions of, the existing arrangements between the Authorities concerning cooperation in securities matters, as set forth in Paragraph 9. The Authorities recognize that while information is not to be gathered under the auspices of this MOU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMOU.

ARTICLE SIX: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

21. Except for disclosures in accordance with the MOU, including permissible uses of information under Article Five, each Authority will keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.

22. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.

23. In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MOU with other

Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:

- a) The Requesting Authority will notify the Requested Authority.
- b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.

24. Except as provided in paragraph 22, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. If consent is not obtained from the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.

25. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

ARTICLE SEVEN: TERMINATION

26. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MOU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in a manner prescribed under Articles Five and Six.



Greg Medcraft

Chairman

For the Australian Securities and Investments Commission

Date:



Jean Guill

Director General

For the Commission de Surveillance du Secteur Financier

Date: 19.9.2013

APPENDIX A

LIST OF CONTACT PERSONS

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

1. Senior Manager, International Cooperation Requests
Stakeholder Services
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Fax: +61 3 9280 3444

Email: international@asic.gov.au

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

1. Ms Irmine Greischer
Head of Department UCI – International, regulation and enforcement
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Email: direction@cssf.lu