

## MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

AND

NEW ZEALAND FINANCIAL MARKETS AUTHORITY

IN RELATION TO

ASSISTANCE AND MUTUAL COOPERATION

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## 1. INTRODUCTION

The Australian Securities and Investments Commission (ASIC), a body corporate established under section 7 of the *Australian Securities and Investments Commission Act 1989* (and continued in existence by the *Australian Securities and Investments Commission Act 2001*) and the New Zealand Financial Markets Authority (FMA), a crown entity established under section 6 of the *Financial Markets Authority Act 2011*,

Considering the establishment of the FMA as the consolidated market conduct regulator for New Zealand's financial markets,

Having regard to the strong cooperative relationship enjoyed by ASIC and the FMA's predecessor, the New Zealand Securities Commission, and the memoranda of understandings which governed that relationship,

Desiring to affirm their commitment to a close and constructive regulatory relationship,

Recognising the increasing international activity in the financial markets, and the corresponding need for cooperation between national authorities, and

Acknowledging the acceleration and deepening of trans-Tasman economic and regulatory integration,

Have reached the following understanding:

## 2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

“Authority” means the Australian Securities and Investments Commission or the New Zealand Financial Markets Authority, as the case may be;

“Authorities” means the Australian Securities and Investments Commission and the New Zealand Financial Markets Authority;

“laws and regulations” means the provisions of the laws, regulations and any other regulatory requirements administered by the Authorities.

“regulated person” means any person whose activities subject it to the supervision, oversight and/or authorisation or registration of one of the Authorities.

“Requested Authority” means the Authority to whom a request is made pursuant to paragraph 5 of this Memorandum of Understanding;

“Requesting Authority” means the Authority making a request pursuant to paragraph 5 of this Memorandum of Understanding; and

“person” means a natural or legal person, or unincorporated entity or association, including corporations and partnerships.

### 3. PRINCIPLES

- 3.1. This Memorandum of Understanding is a statement of the intent of the Authorities to consult, cooperate and exchange information in relation to the laws and regulations of each Authority, subject to the domestic law of each Authority.
- 3.2. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal consultations, supplemented, when necessary, by more in-depth cooperation, including through mutual assistance and information-gathering and sharing. The provisions of this Memorandum of Understanding are intended to support such informal communication as well as to facilitate the written exchange of non-public information where necessary.
- 3.3. The Authorities will use their best endeavours to meet the terms of this Memorandum of Understanding. This Memorandum of Understanding does not impose any legally binding obligations on the Authorities or modify or supersede any domestic laws in force in the jurisdictions of or applying to the Authorities, nor will it affect any arrangements made or to be made under other Memoranda of Understanding.
- 3.4. This Memorandum of Understanding does not affect any right of any Authority under its domestic laws or any other arrangement to take measures to assess or ensure compliance with, or to enforce, the laws and regulations of the Authority. In particular, this Memorandum of Understanding does not affect any right of either Authority to communicate with or obtain information or documents from any other person on a voluntary basis in the jurisdiction of the other Authority, provided that any existing procedures or protocols for the obtaining of such information or documents are observed.
- 3.5. This Memorandum of Understanding will not give rise, directly or indirectly, on the part of any person other than the Authorities to the right to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.
- 3.6. To the extent permitted by domestic laws and practices, each Authority will use reasonable efforts to provide the other Authority with any information obtained by it which gives rise to a suspicion of a breach or anticipated breach of the laws or regulations of the other Authority or which may assist the other Authority to perform a function or exercise a power under the laws and regulations of its jurisdiction.
- 3.7. The Authorities recognise the need and desirability for providing mutual assistance and exchanging information to assist each other in ensuring compliance with the laws and regulations of each. However, the Requested Authority may deny assistance requested under this Memorandum of Understanding on the ground that:
  - (a) the provision of assistance would violate the national or public interest or the domestic laws of the Requested Authority; or
  - (b) the request is not made in accordance with the provisions of this Memorandum of Understanding.

- 3.8. This Memorandum of Understanding is intended to complement but not otherwise affect existing arrangements concerning cooperation in securities matters including:
- (a) the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories, and
  - (b) any other relevant arrangements between the Authorities, including the Protocol to Facilitate Implementation of the Trans-Tasman Mutual Recognition of Securities Offers.

#### **4. SCOPE OF COOPERATION**

##### **Consultation**

- 4.1. The Authorities recognise the importance of close communication and intend to consult regularly in regard to:
- (a) general regulatory, oversight or enforcement related issues or developments;
  - (b) issues relevant to the operations, activities and regulation of regulated persons who, or whose activities, have a connection with either or both jurisdictions;
  - (c) the identification, assessment and mitigation of risks to Australian and New Zealand markets and investors, including those posed by regulated persons whose activities are systemically significant; and
  - (d) any other areas of mutual interest.
- 4.2. The Authorities agree to establish such arrangements as are appropriate from time to time to facilitate cooperation in relation to those matters.
- 4.3. Cooperation will extend, but not be limited, to matters relating to applications for registration or authorisation and to ongoing supervision and oversight of regulated persons who are registered or licensed in one jurisdiction and operate in the other.

##### **Advance notification**

- 4.4 Each Authority will inform the other Authority in advance where practicable, or as soon as possible thereafter if not, of:
- (a) pending regulatory or policy changes;
  - (b) material events; and
  - (c) enforcement or regulatory actions or sanctions,
- that may have a significant impact on the operations, activities, or reputation of regulated persons who, or whose activities, have a connection with either or both jurisdictions.

## **Mutual assistance and exchange of information**

### **4.5 Subject to the domestic laws of each Authority:**

- (a) Each Authority will provide the other Authority, upon written request, with information or other assistance for the purpose of supervising or of assessing or securing compliance with or enforcing the respective laws and regulations of the Authorities.
- (b) The Requested Authority will give to the Requesting Authority any information already in its possession that is relevant to the request.
- (c) The Requested Authority will endeavour to obtain documents and information from persons in order to satisfy the Requesting Authority's request. This will include obtaining information from persons relevant to the request.
- (d) The Requesting Authority may request that the Requested Authority conduct examinations or take statements from specific persons. If requested by the Requesting Authority, the Requested Authority will examine (under oath if permissible) persons involved directly or indirectly in the activities underlying the request, or holding information that may assist in carrying out the request.

## **5. EXECUTION OF REQUESTS**

5.1 The requests for information or other assistance will be made in writing and addressed to the Requested Authority's contact person(s) as provided for in paragraph 13. In urgent cases, requests may be made in summary form to be followed with a full request within five (5) business days.

5.2 Requests for information should specify:

- (a) the information required (identify the documents or information sought, identity of persons, specific questions to be asked etc.);
- (b) the purpose for which the information is sought (including details of the law or regulation pertaining to the subject matter of the request);
- (c) whether the information is sought as part of an investigation into suspected breaches of the law or regulation or for compliance activities;
- (d) the link between the specified law or regulation and the regulatory functions of the Requesting Authority;
- (e) the relevance of the requested assistance to the specified law or regulation;
- (f) in the case of requests for assistance in relation to an investigation, the possible sanctions or penalties that may result from proceedings arising from the investigation;
- (g) to whom (if anyone), onward disclosure of information is likely to be necessary, and in this context, the reason for such disclosure;

- (h) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons or entities believed by the Requesting Authority to possess the information sought or the places where such information may be obtained;
  - (i) the desired time period for the reply; and
  - (j) any other matters specified by the domestic laws of the Requested Authority.
- 5.3 Any document or other material provided in response to a request under this Memorandum of Understanding must be returned if asked for by the Requested Authority, to the extent permitted by the domestic laws of the Requesting Authority.
- 5.4 Each request will be assessed on a case-by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of this Memorandum of Understanding. In any case where the request cannot be accepted completely, the Requested Authority will consider whether there may be other assistance that can be given, to the extent permitted by the domestic laws of the Requested Authority.
- 5.5 In deciding whether to accept or decline a request, the Requested Authority will take account of :
- (a) matters specified by the domestic laws of the Requested Authority;
  - (b) whether the request involves an assertion of jurisdiction not recognised by the law of the Requested Authority; and
  - (c) whether it would be contrary to national or public interest to give the assistance sought.

## **6. UNSOLICITED INFORMATION**

- 6.1 Where one Authority has information, which will assist the other Authority in the performance of its regulatory functions, the former may provide such information, or arrange for such information to be provided, on a voluntary basis even though no request has been made by the other Authority. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that the information is passed under this Memorandum of Understanding.

## **7. PERMISSIBLE USES OF INFORMATION**

- 7.1 Any assistance or information will be provided by an Authority only for the purposes of assisting in the performance of regulatory functions in the other jurisdiction. Any assistance or information provided under this Memorandum of Understanding should be used by the recipient only for such a purpose being also the purpose stated in the request. These purposes may include:
- (a) monitoring compliance with the laws and regulations of the Requesting Authority; or

- (b) ensuring compliance with or enforcement of the laws and regulations of the Requesting Authority specified in the request, by initiating or assisting in criminal civil or administrative proceedings arising out of the breach of such law or regulations.

7.2 If the Requesting Authority desires to use the information obtained for any purpose other than that stated in paragraph 7.1 above, the Requesting Authority must notify and seek the consent of the Requested Authority to such use of the information.

## **8. CONFIDENTIALITY**

8.1 Each Authority will keep confidential, to the extent permitted by domestic laws and unless the other Authority waives such confidentiality:

- (a) any request for information made under this Memorandum of Understanding and any matter arising in the course of the operation of this Memorandum of Understanding, including consultations between the Authorities and solicited or unsolicited assistance, unless such disclosure is necessary to carry out the request; and
- (b) any information received pursuant to this Memorandum of Understanding, unless it is disclosed in furtherance of the purpose for which it was requested.

8.2 Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information or assistance.

8.3 Notwithstanding the provisions of paragraph 8.1, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing other domestic law enforcement or regulatory bodies of the request, such as the New Zealand Registrar of Companies, the Australian Prudential Regulation Authority or a securities exchange, provided that such bodies:

- (a) also have responsibilities under or associated with the respective laws and regulations of the Authorities; or
- (b) are able to assist the Requested Authority in complying with the request.

8.4 If an Authority becomes aware that information received under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose, it will to the extent permitted by law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action.

## **9. CONSULTATION**

9.1 The Authorities may consult one another informally at any time about a request or proposed request.



- 9.2 The Authorities may consult and may revise the terms of the Memorandum of Understanding in the event of a substantial change in laws, practices, market or business conditions affecting the operation of this Memorandum of Understanding.

## 10. COST OF INVESTIGATION OR ASSISTANCE

- 10.1 The Requested Authority may in exceptional circumstances, as a condition of agreeing that assistance is given under this Memorandum of Understanding, require the Requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of executing a request is substantial.

## 11. ENTRY INTO EFFECT

- 11.1 This Memorandum of Understanding will be effective from the date of signing by the Authorities. From that date, this Memorandum of Understanding replaces the Memorandum of Understanding between ASIC and the New Zealand Securities Commission dated 23 August 2005. Requests in train at the effective date will be dealt with under the previous arrangements.

## 12. TERMINATION

- 12.1 This Memorandum of Understanding will continue in effect until the expiry of thirty (30) days after either Authority gives written notice to the other Authority of its intention to terminate. This Memorandum of Understanding will continue to have effect with respect to all requests for assistance that were made before the effective date of termination.

## 13. CONTACT PERSONS

- 13.1 All communications between the Authorities should be between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may however be amended by written notice from either Authority without the need for the re-signing of this Memorandum of Understanding.

Signed this 28<sup>th</sup> day of August 2012 in Sydney



NEW ZEALAND  
FINANCIAL MARKETS AUTHORITY



AUSTRALIAN SECURITIES  
AND INVESTMENTS COMMISSION

## APPENDIX A

### LIST OF CONTACT PERSONS

#### NEW ZEALAND FINANCIAL MARKETS AUTHORITY

1. Senior Adviser, Government and Sector Relations  
New Zealand Financial Markets Authority  
Level 5, Ernst & Young Building  
52-70 Galway Street, Britomart  
PO Box 106 672  
Auckland City 1143

Tel: +64 9 300 0418  
Email: [international@fma.govt.nz](mailto:international@fma.govt.nz)

#### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

2. 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](mailto:international@asic.gov.au)