

Memorandum of Understanding ("MOU")

Between

**Financial Industry Regulatory
Authority, Inc.
1735 K Street, NW
Washington, DC 20006
("FINRA")**

**and Australian Securities
and Investments Commission
Level 5, 100 Market Street
Sydney NSW 2000
("ASIC")**

Recitals

- A. The Financial Industry Regulatory Authority, Inc. (FINRA) is the largest independent regulator for all securities firms doing business in the United States. Created in July 2007 through the consolidation of National Association of Securities Dealers, Inc. and the member regulation, enforcement and arbitration functions of the New York Stock Exchange (NYSE), FINRA is dedicated to investor protection and market integrity through effective and efficient regulation. In May 2010, FINRA and NYSE Euronext announced a preliminary agreement whereby FINRA would assume the market surveillance and related enforcement functions for NYSE Euronext's U.S. equities and options markets, which encompass the NYSE, NYSE Arca, and NYSE-Amex markets. The agreement will become final upon receipt of the necessary regulatory approval from the U.S. Securities and Exchange Commission (SEC).
- B. The Australian Securities and Investments Commission (ASIC) is the national regulator of companies, financial markets, financial services organisations and professionals who deal and advise in investments, superannuation, insurance, deposit taking and credit. ASIC was established under the Australian Securities and Investments Commission Act 1989 (and continued in existence by the Australian Securities and Investments Commission Act 2001 (ASIC Act)). The ASIC Act requires ASIC, in performing its functions and exercising its powers to strive to (amongst other things) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; promote confident and informed participation of investors and consumers in the financial system; administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements, and make information about companies and other bodies available to the public as soon as practicable.
- C. FINRA and ASIC wish to enter into this MOU to provide a formal basis for the exchange of Information to perform more effectively their regulatory functions and ongoing supervision of regulated Persons.

Operative Part

Definitions

1. In this MOU, unless the context requires otherwise:

- a. "Administering" an applicable law, regulation or requirement includes enforcing the same;
- b. "Laws" means any law, regulation, or regulatory rules or requirement applicable in the United States of America and or in Australia and, where the context permits, includes any rule, guidance or policy made or given by or to be taken into account by an Authority;
- c. "Authority" means FINRA or ASIC. Together, FINRA and ASIC are the "Authorities";
- d. "Requesting Authority" means the Authority making a request under this MOU;
- e. "Requested Authority" means the Authority to whom the request is made under this MOU;
- f. "ASIC" means the Australian Securities and Investments Commission;
- g. "FINRA" means the Financial Industry Regulatory Authority, Inc.;
- h. "Agency" or "Agencies" means a national governmental or non-governmental public agency responsible for prosecuting, regulating or enforcing Laws falling within the areas of responsibility of the Authority;
- i. "Person" or "Persons" means a natural person, legal entity, partnership or unincorporated association.
- j. "Third party" means a third party natural person, legal entity, partnership or unincorporated association;
- k. "Information" means either Authority's confidential, proprietary, or non-public information collected or maintained for regulatory purposes. For example, this could include any relevant information relating to the activities of the individuals or bodies regulated and supervised by the Authorities, in particular, the registration and licensing information of supervised individuals or bodies, their disciplinary history, and with respect to supervisory examination and inspections, the substance of inspection reports (any and all issues identified and addressed during such examinations or inspections, actions (and action plans) taken in response to issues identified, and all outstanding issues), information on the transactions (name of client buy side/sell side, name of intermediary, and reason for operation), testimony of persons within the Requested Authority's jurisdiction, and any other information mutually agreed upon by the Authorities on a case-by-case basis.

- I. "Supervisory and Regulatory Know-how" means either Authority's confidential, proprietary and non-public information, systems, processes and software (and related information), including any intellectual property rights, title and interest relating to the supervision or regulation of trading or entities trading on either Authority's financial markets.

Purpose and Principles

2. The purpose of this MOU is to establish a formal basis for co-operation between the Authorities, including the exchange of Information.
3. This MOU does not modify or supersede any Laws in force and applying to the Authorities. This MOU sets forth a statement of intent and accordingly does not create any enforceable rights, any legally binding obligations or agreement. Provided however, the provisions set forth in Sections 10, 12, 14, 15 and 16 shall be binding upon the Authorities and survive the termination of the MOU.
4. The Authorities acknowledge that they may provide Information under this MOU only if permitted or not prevented under any Laws or by any Agency.

Scope of Assistance

5. FINRA and ASIC agree that the scope of assistance shall be as follows:
 - a. The Authorities shall endeavour to provide each other with full assistance in any matters falling within their competence, including in particular the following areas:
 - i. Investigations and enforcement in connection with applicable Laws relating to insider dealing, market manipulation and other fraudulent or manipulative practices in the securities field;
 - ii. Investigation and enforcement of, and monitoring compliance with, applicable Laws relating to dealing in, advising on and the management, administration and safekeeping of securities;
 - iii. Licensing and registration of Persons under the regulation and supervision of the Authorities;
 - iv. To the extent relevant, enforcing and monitoring compliance with applicable Laws relating to the disclosure of interests in securities, takeover bids or the acquisition of influence over financial intermediaries; and,
 - v. The supervision of the financial markets.
 - b. In cases where the Information requested may be maintained by, or available to, another authority within the country of the Requested Authority, FINRA and ASIC

will endeavour to provide full assistance in obtaining the Information requested to the extent permitted by law. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient Information to establish direct contact between the Requesting Authority and the other authority.

- c. The Requested Authority shall endeavour to assist the Requesting Authority, through reasonable measures, in correcting inaccurate Information if such assistance is requested by the Requesting Authority.
- d. A request for assistance may be denied by the Requested Authority:
 - i. Where the request would require the Requested Authority to act in a manner that would violate domestic law;
 - ii. Where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same Persons, or the same Persons have already been the subject of the final punitive sanctions on the same charges by the competent authorities of the jurisdiction of the Requested Authority, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority;
 - iii. Where the request is not made in accordance with the provisions of this MOU;
 - iv. Where the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
 - v. Where compliance with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions or business objectives;
 - vi. On grounds of public interest or essential national interest; and,
 - vii. Where the Authorities, after consultation, mutually agree that compliance with the request would not be in the best interests of either or both Authorities.

Assistance will not be denied based on the fact that the type of conduct under investigation would not be a violation of the Laws of the Requested Authority.

- e. Where a request for assistance is denied, or where assistance is not available under domestic law, the Requested Authority will provide the reasons for not granting the assistance in writing to the Requesting Authority.

Provision of Unsolicited Information

6. The Authorities may provide to each other or arrange to be provided, to the extent permitted by their respective national law and procedures, without prior request and solely on a voluntary basis, Information which it believes to be helpful to the other Authority for the discharge of its functions and for the purposes, which it may specify in the communication.

Requests for Assistance

7. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to the Laws, jurisdictional limits, and overall internal Authority policy. Assistance may include, but is not limited to:
 - a. Providing Information in the possession of the Requested Authority;
 - b. Requiring the production of Information from any Third party designated by the Requesting Authority or any other Third party who may possess the requested Information. Upon request, the Requested Authority will obtain other Information relevant to the request;
 - c. Seeking responses to questions and/or a statement (or where permissible, testimony under oath) from any Third party involved, directly or indirectly, in the activities that are the subject matter of the request for assistance or who is in possession of Information that may assist in the execution of the request;
 - d. Unless otherwise arranged by the Authorities, Information requested under this MOU will be gathered in accordance with the procedures applicable in the jurisdiction of the Requested Authority and by persons designated by the Requested Authority. Where permissible under the Laws of the jurisdiction of the Requested Authority, a representative of the Requesting Authority may be present at the taking of statements and testimony and may provide, to a designated representative of the Requested Authority, specific questions to be asked of any witness;
 - e. Confirming or verifying Information provided to it for that purpose by the Requesting Authority; or
 - f. Exchanging Information, or Supervisory and Regulatory Know-how, on or discussing, issues of mutual interest.

In the event that the Requesting Authority seeks additional Information or Supervisory and Regulatory Know-how, beyond (a)-(f) above, the Authorities will discuss the request on a case by case basis and may take additional steps provided that they are in furtherance of the Authorities' respective regulatory purposes.

Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the Requesting and the Requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

Procedure for Requests

8. Requests for the provision of Information shall be made in writing. To facilitate assistance, the Requesting Authority should specify in any request:
 - a. The specific Information or other regulatory assistance requested. This should include reference to relevant Laws and/or a description of the supervisory review and/or the facts underlying the investigation that are subject of the request and the purpose for which the assistance is sought;
 - b. Any Information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying either the persons believed to possess the Information or documents sought or where places where such Information may be obtained;
 - c. If Information is provided by the Requesting Authority for confirmation or verification, the Information and the kind of confirmation or verification sought;
 - d. Those Agencies, if any, to whom onward disclosure of Information provided to the Requesting Authority is likely to be necessary;
 - e. Any other matters specified by the Requesting Authority and by the applicable Laws in relation to the Requested Authority; and,
 - f. In instances of urgent circumstances, requests for assistance may be provided by telephone or facsimile, provided such communication is confirmed through an original, signed document.

Requests relating to Supervisory and Regulatory Know-how may, but need not be, made in accordance with subparagraphs 8.a.-8.f.

Permissible Use of Information

9. The Requesting Authority may use Information furnished in response to a request for assistance under this MOU solely for:
 - a. The purposes set forth in the request for assistance, including ensuring compliance with the Laws related to the request; or
 - b. A purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities (insofar as it is involved in the supervision of trading or

conduct that is the subject of the request), assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the Laws administered by the Requesting Authority. This use may include enforcement proceedings which are public.

- c. The Requesting Authority may disclose or refer to Information obtained from the Requested Authority to the SEC, and will inform the Requested Authority of this as soon as possible, but no later than three business days after the date of such disclosure or referral.

If a Requesting Authority intends to use Information furnished under this MOU for any purpose other than those stated in (a) – (c) above, it must obtain the written consent of the Requested Authority.

The Requesting Authority may use Supervisory and Regulatory Know-how furnished under this MOU for the purpose of assisting in the Requesting Authority's surveillance or supervisory activities.

Confidentiality

10. The Requesting Authority shall maintain strict confidentiality in respect to Information and Supervisory and Regulatory Know-how disclosed to them by the Requested Authority, including, but not limited to any Information or Supervisory and Regulatory Know-how which has become known to them in connection with this MOU, subject to the provisions below.
 - a. The Authorities agree that, to the extent permitted by their respective Laws, they will keep confidential all Information and Supervisory and Regulatory Know-how shared under this MOU, including but not limited to, any requests made under this MOU, the contents of such requests, and any matters arising under this MOU, including consultations between or among the Authorities, and unsolicited assistance.
 - b. The Authorities shall not use, disclose, copy or publish any Information or Supervisory and Regulatory Know-how for any purpose other than as provided under this MOU without the prior written approval of the disclosing party unless or until the Information or Supervisory and Regulatory Know-how is:
 - i. Lawfully in the receiving party's possession prior to this MOU and not under a duty of non-disclosure;
 - ii. Voluntarily disclosed by a third party so long as that party is not under a duty of non-disclosure;
 - iii. Voluntarily disclosed to the public by the disclosing party; or
 - iv. Generally known to the public.

- c. The Authorities acknowledge that they may be required to disclose Information or Supervisory and Regulatory Know-how supplied under this MOU in the event of a legally enforceable demand. Such a demand may consist of a disclosure required by one of the following: (1) applicable Laws; (2) the order of a court with jurisdiction over the affected Authority; (3) in the case of ASIC, a request or direction by staff of the Australian Commonwealth Department of the Treasury, by ASIC's responsible Minister or a House or a committee of the Parliament of the Commonwealth of Australia; or (4) in the case of FINRA, a request by the SEC, by the relevant oversight committees of the U.S. House of Representatives or Senate, or by the Government Accountability Office. In the event an Authority receives such a legally enforceable demand, such Authority shall provide timely notice to the other Authority.
- d. In the event of a legally enforceable demand, or disclosure required under paragraph 10.c, the Requesting Authority will notify the Requested Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such Information or Supervisory and Regulatory Know-how as may be available.
- e. All intellectual property rights, title and interest associated with each Authority's Supervisory and Regulatory Know-how, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights shall remain in the respective Authority. Further, neither Authority will use, in any manner, including advertising or publicity or in any way related to this MOU or the subject matter hereof, the name of the other Authority or its affiliates or any of their directors, officers, managers, employees, consultants or agents or any trade name, trademark, service mark, logo, symbol or copyright, whether any of the above are registered or unregistered, of the other Authority or its affiliates, except with the express written consent of such other Authority.

Costs

- 11. If the cost of fulfilling a request is likely to be substantial (i.e., entail extraordinary efforts, or is outside the ordinary course of business), the Requested Authority may, as a condition of agreeing to give assistance under this MOU, require the Requesting Authority to make a contribution to costs.

Warranty Disclaimer and Limitation of Liability

- 12. The Authorities hereby disclaim and make no representations or warranties, expressed or implied, as to merchantability, non-infringement, data accuracy, accuracy of informational content, data handling capabilities, or otherwise, with respect to this MOU. Neither ASIC nor FINRA will be liable for, nor will the measure of damages include, any indirect, incidental, special or consequential damages, including lost profits or savings, arising out of or relating to its actions or omissions under this MOU, even if the Authorities have been advised of the possibility of such losses or damages.

Commencement and Termination

13. This MOU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving thirty (30) days advance written notice to the other Authority.

Disputes

14. The Authorities shall use reasonable efforts to settle amicably all disputes arising out of or in connection with the MOU or its interpretation.

Contact Points

15. The Authorities will provide a list of contact points to which Information or requests for information or assistance under this MOU should be directed, and which should be updated when necessary.

Entire Agreement

16. The Authorities agree that this MOU supersedes any outstanding agreements between the Authorities pursuant to which the Authorities share Information. All changes or modifications to this MOU must be agreed to in writing between the Authorities.

FINRA

Richard G. Ketchum
Chairman and CEO
Financial Industry Regulatory Authority, Inc.
1735 K Street, NW
Washington, DC 20006

ASIC

Tony D'Aloisio
Chairman
Australian Securities and Investments
Commission
Level 5, 100 Market Street
Sydney NSW 2000

Executed by the Authorities:

For FINRA:

Richard Ketchum
Signature

Richard G. Ketchum
Chairman and CEO

June 17, 2010
Date

For ASIC:

Tony D'Aloisio
Signature

Tony D'Aloisio
Chairman

17/6/10
Date