

MEMORANDUM OF UNDERSTANDING

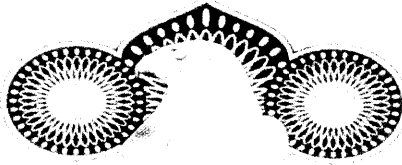
IN RELATION TO

ASSISTANCE AND CO-OPERATION

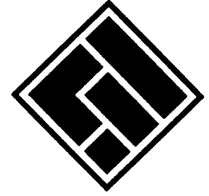
BETWEEN

**United Arab Emirates**

**Australia**



هيئة الأوراق المالية والسلع  
SECURITIES & COMMODITIES AUTHORITY



**ASIC**

Australian Securities & Investments Commission

EMIRATES SECURITIES AND  
COMMODITIES AUTHORITY (ESCA)

AUSTRALIAN SECURITIES AND  
INVESTMENTS COMMISSION (ASIC)

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION (ASIC)**

AND

**EMIRATES SECURITIES AND COMMODITIES AUTHORITY (ESCA)**

IN RELATION TO

**ASSISTANCE AND MUTUAL CO-OPERATION**

## MEMORANDUM OF UNDERSTANDING

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## 1. INTRODUCTION

The Emirate Securities and Commodities Authority was established under Article 2 of the “Federal Law No. 4 of 2000 Concerning The Emirates Securities & Commodities and Market” to regulate the securities and commodities markets in United Arab Emirates. Its primary role is to ensure the orderly development of a fair and efficient securities and commodities market in line with the economic and development objectives of the country. The main functions of the Emirates Securities and Commodities Authority include supervising and monitoring the activities of any exchange, clearing house and central depository, safeguarding the interests of the persons dealing in securities; promoting proper conduct amongst members of the exchanges and all registered persons; suggesting law reforms relating to securities or commodities contracts and encouraging the development of the securities in United Arab Emirates.

The Australian Securities and Investments Commission was established under the *Australian Securities and Investments Commission Act 2001* for the regulation of companies, the supervision of capital markets and participants, and for consumer protection in relation to financial services and products in Australia. The Australian Securities and Investments Commission 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. ASIC's ability to exercise coercive powers on behalf of foreign regulators for the administration or enforcement of foreign business laws is governed by the *Mutual Assistance in Business Regulation Act 1992*.

## **2. DEFINITIONS**

For the purposes of this Memorandum of Understanding:

“Authority” means the Australian Securities and Investments Commission or the Emirates Securities and Commodities Authority, as the case may be

“Authorities” means the Australian Securities and Investments Commission and the Emirates Securities and Commodities Authority

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

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

“person” means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government

“securities market” means an exchange or other market, including an over-the counter market, in respect of equity securities, debt securities, bonds, options or any other security that is recognised, regulated or supervised by the Authorities.

“territory” means the country, state or other territory, as the case may be, in which an Authority has legal authority, power and / or jurisdiction conferred by law.

## **3. PRINCIPLES**

- 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 ensure compliance with their respective securities and futures laws or regulatory requirements.
- 3.2. The purpose of this Memorandum of Understanding is for increased investor protection and further promotion of the integrity of the securities, futures and options markets by providing a framework for co-operation, increased mutual understanding, exchange of information and investigative assistance, to the extent permitted by the laws and practices of the Authorities.
- 3.3 In furtherance of the objective of promoting a sound securities regulatory framework, the Australian Securities and Investments Commission may, upon request, provide training and technical assistance to the Emirates Securities and Commodities Authority, or vice versa. In this regard, the Authorities will consult each other to identify and address, subject to the availability of capacity and resources, areas of training and technical assistance to facilitate the development of the respective capital markets.

- 3.4 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 obligation on the Authorities or modify or supersede any domestic laws or regulatory requirements in force in or applying to the Authorities, nor will it affect any arrangements made or to be made under other Memoranda of Understanding.
- 3.5. This Memorandum of Understanding does not affect any right of any Authority under its domestic laws or any other arrangement to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, its domestic laws or regulations. 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 territory of the other Authority.
- 3.6. This Memorandum of Understanding will not give rise, directly or indirectly, on the part of any person other than the Authorities the right to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.
- 3.7. To the extent permitted by laws and practices, each Authority will use reasonable effort to provide the other Authority with any information that is discovered which gives rise to a suspicion of a breach or anticipated breach, of rules or laws in the territory of the other Authority.
- 3.8. The Authorities recognise the need and desirability for providing mutual assistance and exchanging information to assist each other in ensuring compliance with laws or regulations of their respective countries. 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 law of the Requested Authority; or
  - (b) the request is not made in accordance with the provisions of this Memorandum of Understanding.

#### **4. SCOPE**

Through the machinery set up by this Memorandum of Understanding, the Authorities agree to promote mutual assistance and exchange of information to enable the Authorities to effectively perform their respective duties according to law. Under the foregoing general theme, the scope of this Memorandum will include the following:-

- (a) assisting in discovery of and taking action against insider dealings, market manipulation and other fraudulent practices in securities dealings in relation to companies, securities, futures contracts, options and collective investment schemes;

- (b) enforcement of laws, rules and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options and collective investments;
- (c) supervising and monitoring stock markets and clearing and settlement activities and their compliance with the relevant laws and regulations;
- (d) promoting and securing the fitness and properness of registered persons and promoting high standards of fair dealing and integrity in their conduct of business;
- (e) the compliance by issuers of and offers for securities and directors, officers, shareholders and professional advisers of companies listed, or applying for listing, on the respective securities markets pertaining to the Authorities with any duties under any relevant laws and rules and any obligation to make full, accurate and timely disclosure of information relevant to investors;
- (f) enforcement of laws, rules and regulations relating to the issuing of, dealing in, arranging deals in, managing and advising on securities and other investment products;
- (g) take-overs and mergers; and
- (h) any other matters agreed upon between the Authorities from time to time.

## **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 on a voluntary basis, provided that existing procedures in the territory of each Authority for the obtaining of such information are observed.
- 5.2. The requests for information or other assistance will be made in writing in the English Language and addressed to the Requested Authority's contact person(s) referred to in article 14 herein. In urgent cases, requests may be made in summary form to be followed with a full request within five (5) business days therefrom.
- 5.3. Requests for information should specify:-
  - (a) the information required (identity of persons, specific questions to be asked etc.);
  - (b) the purpose for which the information is sought (including details of the rule or law pertaining to the subject matter of the request);
  - (c) the link between the specified rule or law and the regulatory functions of the Requesting Authority;

- (d) the relevance of the requested assistance to the specified rule or law;
  - (e) to whom, onward disclosure of information is likely to be necessary, and in this context, the reason for such disclosure;
  - (f) 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;
  - (g) the desired time period for the reply;
  - (h) any other matters specified by the laws and regulations in the territory of the Requested Authority.
- 5.4. Any document or other material provided in response to a request under this Memorandum of Understanding must be returned on request, to the extent permitted by the laws of the Requesting Authority.
- 5.5. 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 which can be given, to the extent permitted by the laws of the Requested Authority.
- 5.6. In deciding whether to accept or decline a request, the Requested Authority will take account of:-
- (a) matters specified by the laws and regulations in the territory of the Requested Authority, and
  - (b) whether the request involves an assertion of jurisdiction not recognised by the territory of the Requested Authority, and
  - (c) whether it would be contrary to national or public interest to give the assistance sought.

## **6. EXECUTION OF REQUESTS**

Access to information held in the possession of the Requested Authority will be provided upon the request of the Requesting Authority, to the extent permitted by the domestic laws and internal policies of the Requested Authority.



## **7. UNSOLICITED INFORMATION**

Where one Authority has information, which will assist another 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.

## **8. PERMISSIBLE USES OF INFORMATION**

8.1. Any assistance or information will be provided by an Authority only for the purposes of assisting the other Authority in the performance of its regulatory functions. Any assistance or information provided under this Memorandum of Understanding should be used by the recipient only for:-

- (a) the purpose of performing its regulatory functions;
- (b) the purposes stated in the request, including ensuring compliance with or enforcement of the laws or regulations of the Requesting Authority specified in the request, by initiating or assisting in criminal prosecution arising out of the breach of such rule or law; or
- (c) conducting or assisting in civil proceedings brought by the Authorities or other law enforcement or regulatory bodies within the territory of the Requesting Authority in taking regulatory action or imposing regulatory requirements within the scope stated in article 4 above arising out of the breach of the rule or law specified in the request.

8.2. In the event that the Requesting Authority desires to use the information obtained for any purpose other than that stated in 8.1 above, the Requesting Authority must notify and seek the consent of the Requested Authority to such use of the information.

## **9. CONFIDENTIALITY**

- 9.1. The assistance or information obtained pursuant to this Memorandum of Understanding should not be disclosed to third parties without the prior consent of the Requested Authority. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information or assistance.
- 9.2. Each Authority will keep confidential, to the extent permitted by law,
- (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 unsolicited assistance, unless such disclosure is necessary to carry out the request or the other Authority waives such confidentiality;
  - (b) any information received pursuant to this Memorandum of Understanding unless it is disclosed in furtherance of the purpose for which it was requested.
- 9.3. Notwithstanding the provisions of paragraphs 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing the law enforcement or regulatory bodies in its territory, such as the registrar of companies or stock exchange, of the request or passing information received pursuant to a request, provided that:-
- (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the ambit of the areas set out in article 4; or
  - (b) the purpose of passing such information to such an agency or body falls within the areas set out in article 4 herein; and
  - (c) such agencies or bodies are also subject to the same confidentiality provisions contained in this Memorandum of Understanding; and
  - (d) the request for information or a supplementary request, specifies that the information may be passed on to such agencies or bodies in accordance with paragraph 5.3(f).
- 9.4. If an Authority becomes aware that information passed 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.

## **10. CONSULTATION**

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

- 10.2. 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.
- 10.3 The Authorities may meet from time to time for the purposes of assessing and reviewing interactions and cooperation initiatives that have taken place between the Authorities pursuant to this Memorandum of Understanding, and to discuss any matter related thereto.

## 11. COST OF INVESTIGATION OR ASSISTANCE

The Requested Authority may as a condition of agreeing that assistance be 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.

## 12. ENTRY INTO EFFECT

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

## 13. TERMINATION

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.

## 14. CONTACT PERSONS

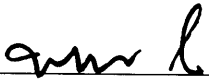
All communications between the Authorities should be between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may however be amended by written notice from either Authority without the need for the resigning of this Memorandum of Understanding.

Signed this 14 day of March 2005 in Sydney

**EMIRATES SECURITIES  
AND COMMODITIES AUTHORITY**

**AUSTRALIAN SECURITIES  
AND INVESTMENT COMMISSION**

  
\_\_\_\_\_  
**Sheikha Lubna Bint Khalid Al-Qassimi  
Chairman**

  
\_\_\_\_\_  
**Jeffrey Lucy  
Chairman**

**APPENDIX A  
LIST OF CONTACT PERSONS**

**EMIRATES SECURITIES AND COMMODITIES AUTHORITY (ESCA)**

1. **Mr Abdullah Salem Al-Turaifi**  
**Chief Executive**  
**Emirates Securities & Commodities Authority**  
**Al-Gaith Tower Floor 13**  
**The Chief Executive Office**  
**Abu Dhabi United Arab Emirates**  
**Tel: (971) 612 0140**  
**Fax: (971) 627 3332**  
**Email: alturifi@sca.ae**

2. **Alternate:**

**Mr. Nabil Farhat**  
**Chief Financial Analyst**  
**Chief Executive Office**  
**Emirates Securities & Commodities Authority**  
**Al-Gaith Tower Floor 13**  
**The Chief Executive Office**  
**Abu Dhabi United Arab Emirates**  
**Tel: (971) 627 7606**  
**Fax: (971) 627 4600**  
**Email: naf@sca.ae**

**Australian Securities & Investments Commission (ASIC)**

1. **Jeffrey Lucy**  
**Chairman**  
**Australian Securities and Investments Commission**  
**Level 18 No 1 Martin Place**  
**Sydney 2001 AUSTRALIA**  
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2. **Alternate:**

**Mark McGinness**  
**Director, International Relations**  
**Australian Securities and Investments Commission**  
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