

Memorandum of Understanding

between

Australian Securities and Investments Commission

and

Reserve Bank of New Zealand

(together "the Authorities")

in relation to

Information exchange and co-operation

1 Objective

- 1.1 This Memorandum of Understanding ("MOU") sets out a framework for information exchange and co-operation between the Authorities in areas of common interest where it will promote the effective and efficient performance of their respective financial regulation functions.

2 The Authorities

- 2.1 The Australian Securities and Investments Commission ("ASIC") is responsible for monitoring, regulating and enforcing corporations and financial services laws. ASIC is Australia's integrated corporate, markets, financial services and consumer credit regulator. ASIC is responsible for the administration and enforcement of the *Corporations Act 2001* and other financial sector legislation, which provide for the regulation of corporations, securities and futures markets and intermediaries, authorised deposit-taking institutions, credit and insurance providers and intermediaries, and investor and consumer protection in relation to financial services and consumer credit products.
- 2.2 The Reserve Bank of New Zealand ("RBNZ") is responsible for promoting the maintenance of a sound and efficient financial system in New Zealand. It is the national prudential regulator of banks, non-bank deposit takers and insurers carrying on business in New Zealand. The RBNZ is responsible for carrying out functions and exercising other powers as set out in the *Reserve Bank of New Zealand Act 1989* ("the RBNZ Act"), including powers in respect of banking supervision, and payments and settlement systems. The RBNZ acts as the prudential regulator and licensing authority for non-bank deposit takers under the *Non-bank Deposit Takers Act 2013*; the RBNZ issues licences to insurers carrying on insurance business in New Zealand and undertakes prudential supervision of licensed insurers under the *Insurance*

(*Prudential Supervision*) Act 2010; and the RBNZ supervises banks, life insurers, and non-bank deposit takers for compliance with measures to detect and deter money laundering and terrorism financing under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009*.

3 Definitions

For the purposes of this MOU:

“Authority” means the Australian Securities and Investments Commission or the Reserve Bank of New Zealand, as the case may be;

“Authorities” means the Australian Securities and Investments Commission and the Reserve Bank of New Zealand;

“regulated person” means any person whose activities are, or are intended to be subject to the supervision, oversight and/or authorisation or registration of one of the Authorities;

“regulatory laws” mean the provisions of the laws, regulations and any other regulatory requirements that are respectively administered by the Authorities of each jurisdiction;

“Requested Authority” means the Authority to whom a request is made pursuant to paragraph 6 of this Memorandum of Understanding;

“Requesting Authority” means the Authority making a request pursuant to paragraph 6 of this Memorandum of Understanding; and

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

4 Principles

4.1 This MOU is a statement of the intent of the Authorities to consult, co-operate and exchange information in relation to the regulatory laws of each jurisdiction, subject to the domestic law of each jurisdiction.

4.2 The Authorities anticipate that co-operation will be primarily achieved through ongoing, informal consultations, supplemented, when necessary, by more in-depth co-operation, including through mutual assistance and information exchange. The provisions of this MOU are intended to support such informal communication as well as to facilitate the written exchange of non-public information where necessary.

4.3 The Authorities will use their best endeavours to meet the terms of this MOU. This MOU does not impose any legally binding obligations on the Authorities or modify or supersede any domestic laws in force in the respective jurisdictions, nor will it affect any arrangements made or to be made under other Memoranda of Understanding.

4.4 This MOU 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 regulatory laws. In particular, this MOU 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.

- 4.5 The MOU 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 MOU.
- 4.6 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 by regulated persons of the regulatory laws that apply in the jurisdiction of the other Authority or which may assist the other Authority to perform a function or exercise a power under the regulatory laws of its jurisdiction.
- 4.7 The Authorities recognise the need and desirability for providing mutual assistance and exchanging information to assist each other in ensuring compliance by regulated persons with the regulatory laws of each other's respective jurisdictions. Each request for assistance or information will be assessed on a case-by-case basis by the Requested Authority. The Requested Authority may deny assistance requested under this MOU 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 MOU; or
 - c) complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions.

5 Scope of Co-operation

Consultation

- 5.1 The Authorities may consult one another on a needs basis to assist with the performance of their respective functions, including to discuss general regulatory, supervisory or enforcement developments, a proposed request for assistance or information, the operation of this MOU and any necessary modifications to it, or any other supervisory concerns of mutual interest.
- 5.2 The Authorities agree to establish such arrangements as are appropriate from time to time to facilitate co-operation in relation to those matters.

Mutual assistance and exchange of information

- 5.3 Subject to the domestic laws of each respective jurisdiction:
- 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 regulatory laws;
 - b) The Requested Authority will give to the Requesting Authority any information already in its possession that is relevant to the request.

Advance notification

5.4 Subject to the domestic laws of each respective jurisdiction, each Authority will inform the other Authority in advance where practicable, or as soon as possible thereafter if not, of:

- a) pending **significant** regulatory or policy changes;
- b) **material** events; and
- c) enforcement or regulatory actions or sanctions of a **material nature**,

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.

6 Execution of Requests

6.1 Requests for information or other assistance will be made in writing, or made orally and subsequently confirmed in writing within five (5) business days, and addressed to the Requested Authority's contact person(s) as provided for in Appendix A.

6.2 The Requesting Authority should specify in any written request the following:

- 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 assistance or information is sought (including details of the regulatory laws pertaining to the subject matter of the request);
- c) whether the information is sought as part of an investigation into suspected breaches of the regulatory laws or for compliance activities;
- d) the link between the regulatory laws and the regulatory functions of the Requesting Authority;
- e) the relevance of the request to the regulatory laws;
- 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 place where such information may be obtained; and
- i) the desired time period for the reply; and

j) any other matters specified by the domestic laws of the jurisdiction of the Requested Authority.

6.3 Any document or other material provided in response to a request under this MOU must be returned if asked for by the Requested Authority, to the extent permitted by the domestic laws of the jurisdiction of the Requesting Authority.

7 Unsolicited Information

7.1 Where an 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 MOU will apply if the providing Authority specifies that the information is provided under this MOU.

8 Permissible Uses of Information

8.1 Any assistance or information will be provided by the Requested Authority only for the purposes of assisting in or enabling the performance of regulatory functions by the Requesting Authority. Any assistance or information provided under this MOU should be used by the Requesting Authority only for such a purpose being also the purpose stated in the request. These purposes may include:

- a) monitoring compliance with the regulatory laws of the jurisdiction of the Requesting Authority; or
- b) ensuring compliance with or enforcement of the regulatory laws of the jurisdiction of the Requesting Authority specified in the request, by initiating or assisting in criminal, civil or administrative proceedings arising out of the suspected or anticipated breach of such laws.

8.2 If the Requesting Authority desires to use the information obtained for any purpose other than that stated in paragraph 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 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 MOU and any matter arising in the course of the operation of this MOU, 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 MOU, unless it is disclosed in furtherance of the purpose for which it was requested.

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

9.3 If an Authority becomes aware that information received under this MOU 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 Commencement

10.1 This MOU will take effect when all Authorities have signed this document.

11 Publication of this MOU

11.1 The Authorities agree to this MOU being made publicly available.

12 Termination of MOU

12.1 This MOU will continue in effect until the expiry of thirty (30) calendar days after either Authority gives written notice to the other Authority of its intention to terminate. In the event of termination of this MOU, information obtained under this MOU will continue to be treated according to the confidentiality provisions in this MOU. This MOU will continue to have effect with respect to all requests for assistance that were made before the effective date of termination.

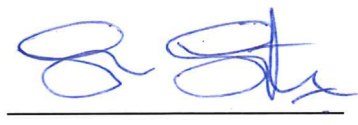
13 Contact persons

13.1 All communications between the Authorities should be between the contact persons 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 MOU.

Signed this

day of

17 December 2019



Adrian Orr, Governor

James Shipton, Chair

Reserve Bank of New Zealand

Australian Securities and Investments Commission

APPENDIX A

LIST OF CONTACT PERSONS

RESERVE BANK OF NEW ZEALAND

2 The Terrace
PO Box 2498
Wellington
New Zealand 6140

Attention:
Mr James Painter
Adviser
Reserve Bank of New Zealand
Email: James.Painter@rbnz.govt.nz
Tel: (+64-4) 471 3838

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

GPO Box 9287
Brisbane QLD 4001

Attention:
Ms Kim Holmes
Senior Manager, International
Australian Securities and Investments Commission
Email: kim.holmes@asic.gov.au (cc: international@asic.gov.au)
Tel: +61 3 9280 3332