



MEMORANDUM OF UNDERSTANDING

BETWEEN

EMIRATES SECURITIES AND COMMODITIES AUTHORITY (ESCA)

AND

SECURITIES AND EXCHANGE COMMISSION OF BRAZIL (CVM)

IN RELATION TO

ASSISTANCE AND MUTUAL CO-OPERATION

16 September 2013

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1. INTRODUCTION

1.1. **Emirates Securities and Commodities Authority (ESCA)** 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.

1.2 The **Comissão de Valores Mobiliários (CVM)** is a regulatory agency linked to the Ministry of Finance, having been created by Law No.6385, dated December 7th, 1976, with the objective of supervising, monitoring and inspecting capital market participants; issuing rules and provide for their enforcement; and promoting the development of orderly and efficient market operations, including activities such as securities issuing and distribution; intermediating securities and derivatives transactions; operation of stock, futures and commodities exchanges; portfolio management and custody services; consultancy and analysis; and auditing.

2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

“Authority” means the **Securities And Exchange Commission of Brazil** or the **Emirates Securities and Commodities Authority**, as the case may be.

“Authorities” means the **Securities And Exchange Commission of Brazil** 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, futures and 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 markets by providing a framework for co-operation, increased mutual understanding, exchange of information and investigative assistance, to the extent permitted by the Authorities’ laws.
- 3.3. In furtherance of the objective of promoting a sound securities regulatory framework, subject to the availability of capacity and resources, the authorities may, upon request, provide technical assistance to each other, with a view 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 MOU does not impose any legally binding obligation on the Authorities. It doesn’t modify or supersede any domestic laws or regulatory requirements, in force in, or applying, to the Authorities. It will not affect any arrangements made, or to be made under any other MOU.
- 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 any other person, directly or indirectly, other than the authorities, the right to obtain information. No person other than the Authorities, may suppress or exclude any information, or challenge the execution of a request for assistance invoked through this MOU.
- 3.7. In the course of ongoing supervision and/or in case of investigations and to the extent permitted by laws and practices, each Authority will use all reasonable efforts to provide the other Authority with any information and documents held in the files of the Requested Authority that is related to the facts discovered in the course of ongoing supervision and/or underlying the investigations.
- 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:-

- 3.8.1. the provision of assistance would violate the national or public interest or the domestic law of the Requested Authority; or
- 3.8.2. the request is not made in accordance with the provisions of this Memorandum of Understanding.
- 3.8.3. 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 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

4. SCOPE

- 4.1. Under the foregoing general theme, the scope of this Memorandum of Understanding will include the following:
 - 4.1.1. assisting in discovery of and taking action against insider dealing, market manipulation and other fraudulent practices in securities dealings in relation to companies, securities, futures contracts, options and collective investment schemes. The assistance shall include taking or compelling a Person's statement or, where permissible, testimony under oath;
 - 4.1.2. enforcement of laws, rules and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options and collective investments;
 - 4.1.3. supervising and monitoring stock markets and clearing and settlement activities and their compliance with the relevant laws and regulations;
 - 4.1.4. promoting and securing the fitness and properness of registered persons and promoting high standards of fair dealing and integrity in their conduct of business;
 - 4.1.5. 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;
 - 4.1.6. 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;

4.1.7. take-overs and mergers; and

4.1.8. 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. 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 there from.
- 5.3. Requests for information should specify:-
- 5.3.1. A description of the facts discovered in the course of ongoing supervision and/or underlying the investigation that are the subject of the request, and the purpose for which the assistance is sought;
 - 5.3.2. The information required (identity of persons, specific questions to be asked etc.);
 - 5.3.3. the purpose for which the information is sought (including details of the rule or law pertaining to the subject matter of the request);
 - 5.3.4. the link between the specified rule or law and the regulatory functions of the Requesting Authority;
 - 5.3.5. the relevance of the requested assistance to the specified rule or law;
 - 5.3.6. 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;
 - 5.3.7. the desired time period for the reply;
 - 5.3.8. 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 could 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 :-
- 5.6.1. matters specified by the laws and regulations in the territory of the Requested Authority, and
 - 5.6.2. whether the request involves an assertion of jurisdiction not recognised by the territory of the Requested Authority, and
 - 5.6.3. whether it would be contrary to national or public interest to give the assistance sought.

6. EXECUTION OF REQUESTS

- 6.1. 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.
- 6.2. Unless otherwise arranged by the Authorities, information and documents requested under this Memorandum of Understanding 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 and Regulations 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.
- 6.3. In urgent circumstances, the response to requests for assistance may be effected by telephone or facsimile, provided such communication is confirmed through an original, signed document.

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:-

- 8.1.1. the purpose of performing its regulatory functions;
 - 8.1.2. 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
 - 8.1.3. 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 written 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 requests made under this Memorandum of Understanding, the contents of such requests, and any matters arising under this Memorandum of Understanding, including consultations between or among the Authorities, and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.
- 9.3. The Requesting Authority will not disclose non-public documents and information received under this Memorandum of Understanding, except in response to a legally enforceable demand. In the event of a legally enforceable demand, 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 as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and information received under this Memorandum of Understanding.
- 9.4. Prior to providing information to a self-regulatory organization, the Requesting Authority will ensure that the self regulatory organization is able and will comply on an ongoing basis with the confidentiality provisions set forth in the above items 9.2 and 9.3 of this Memorandum of Understanding, and that the information will be used only in accordance with section 8 of this

Memorandum of Understanding, and will not be used for competitive advantage.

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, when considered needed, may hold bilateral meetings at a venue to be decided by the Authorities for 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. REGULATORY COOPERATION AND TECHNICAL ASSISTANCE

- 12.1. The Authorities may give assistance as to matters related to cooperation with regard to:
 - 12.1.1. The laws and regulations applicable to securities and futures business;
 - 12.1.2. The laws and regulations applicable to securities, futures and option exchanges, and other types of markets;
 - 12.1.3. The development of corporate bond markets;
 - 12.1.4. The establishing and organizing of secondary markets;
 - 12.1.5. The specific provision applicable to Islamic finance;
 - 12.1.6. The oversight of securities and futures and option exchanges by regulatory and market authorities;
 - 12.1.7. The prevention and detection of market manipulation, and
 - 12.1.8. The prevention and detection fraud and other irregularities or unlawful activities in connection with the offer, purchase or sale of any securities, futures or options contract.

12.2 The Authorities may periodically review the functioning and effectiveness of the cooperation arrangements carried out, with a view to expanding or altering the scope or operation of this MOU.

Cooperation in accordance with this MOU may include study visits and visits of delegations in order to enhance dialogue and mutual exchange of information. To that end, the Authorities acknowledge that cooperation under this MOU is limited to the competences conferred upon them by the respective jurisdiction's law.

13. EFFECTIVE DATE

This Memorandum of Understanding becomes effective on the day it is signed by the Authorities.

14. 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.

15. 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.

This MoU is signed in triplicate, in the Arabic, English and Portuguese languages, all versions being equally authentic. In case of divergences in interpretation, the English version shall prevail.

Signed on Monday 16 September 2013 in Luxembourg.

**EMIRATES SECURITIES &
COMMODITIES AUTHORITY**



**SECURITIES AND EXCHANGE
COMMISSION OF BRAZIL**



**H. E. Abdullah S. Al Turifi
Chief Executive Officer**

**Leonardo Gomes Pereira
Chairman**