

**MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION AND COOPERATION
AND THE EXCHANGE OF INFORMATION
BETWEEN THE PHILIPPINE SECURITIES AND EXCHANGE COMMISSION
AND THE HONG KONG SECURITIES AND FUTURES COMMISSION**

PURPOSE

The Philippine Securities and Exchange Commission and the Hong Kong Securities and Futures Commission, considering the increasing international activity in the securities and derivatives markets, and the corresponding need for mutual cooperation and consultation as a means for improving their effectiveness in administering and enforcing the securities and derivatives laws and regulations of their respective jurisdictions, have reached the following understanding:

DEFINITIONS

For the purposes of this Memorandum of Understanding:

1. “Authority” means the Philippine Securities and Exchange Commission or the Hong Kong Securities and Futures Commission.
2. “Requested Authority” means an Authority to whom a request for assistance is made under this Memorandum of Understanding.
3. “Requesting Authority” means an Authority making a request for assistance under this Memorandum of Understanding.
4. “Laws and Regulations” mean the provisions of the laws of the jurisdictions of the Authorities, the regulations promulgated thereunder, and other regulatory requirements that fall within the competence of the Authorities, concerning the following:
 - (a) insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders;
 - (b) the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
 - (c) market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
 - (d) markets, exchanges and clearing and settlement entities.

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

MUTUAL ASSISTANCE AND THE EXCHANGE OF INFORMATION

6. General Principles regarding Mutual Assistance and the Exchange of Information

- (a) This Memorandum of Understanding sets forth the Authorities’ intent with regard to mutual assistance and the exchange of information for the purpose of enforcing and securing compliance with the respective Laws and Regulations of the jurisdictions of the Authorities. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws.
- (b) The Authorities represent that no domestic secrecy or blocking laws or regulations should prevent the collection or provision of the information set forth in 7(b) to the Requesting Authority.
- (c) This Memorandum of Understanding does not authorize or prohibit an Authority from taking measures other than those identified herein to obtain information necessary to ensure enforcement of, or compliance with, the Laws and Regulations applicable in its jurisdiction.
- (d) This Memorandum of Understanding does not confer upon any Person not an Authority, the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.
- (e) The Authorities recognize the importance and desirability of providing mutual assistance and exchanging of information for the purpose of enforcing, and securing compliance with, the Laws and Regulations applicable in their respective jurisdictions. 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 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 Memorandum of Understanding; or
- (iv) on grounds of public interest or essential national interest.

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 and consult pursuant to paragraph 12.

7. **Scope of Assistance**

- (a) The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance permissible to secure compliance with the respective Laws and Regulations of the Authorities.
- (b) The assistance available under this Memorandum of Understanding includes, without limitation:
 - (i) providing information and documents held in the files of the Requested Authority regarding the matters set forth in the request for assistance;
 - (ii) obtaining information and documents regarding the matters set forth in the request for assistance, including:
 - contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions;
 - records that identify: the beneficial owner and controller, and for each transaction, the account holder; the amount purchased or sold; the time of the transaction; the price of the transaction; and the individual and the bank or broker and brokerage house that handled the transaction; and
 - information identifying persons who beneficially own or control non-natural Persons organized in the jurisdiction of the Requested Authority.
 - (iii) in accordance with Paragraph 9(d), taking or compelling a Person's statement, or, where permissible, testimony under oath, regarding the matters set forth in the request for assistance.
- (c) Assistance will not be denied based on the fact that the type of conduct under investigation would not be a violation of the Laws and Regulations of the Requested Authority.

8. Requests For Assistance

- (a) Requests for assistance will be made in writing addressed to the Requested Authority's contact office listed in the Appendix.
- (b) Requests for assistance will include the following:
 - (i) a description of the facts underlying the investigation that are the subject of the request, and the purpose for which the assistance is sought;
 - (ii) a description of the assistance sought by the Requesting Authority and why the information sought will be of assistance;
 - (iii) 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 the places where such information may be obtained;
 - (iv) an indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity of the information; and
 - (v) the Laws and Regulations that may have been violated and that relate to the subject matter of the request.
- (c) In urgent circumstances, requests for assistance may be effected by telephone or facsimile, provided such communication is confirmed through an original, signed document.

9. Execution of Requests for Assistance

- (a) Information and documents held in the files of the Requested Authority will be provided to the Requesting Authority upon request.
- (b) Upon request, the Requested Authority will require the production of documents identified in 7(b)(ii) from: (i) any Person designated by the Requesting Authority; or (ii) any other Person who may possess the requested information or documents. Upon request, the Requested Authority will obtain other information relevant to the request.
- (c) Upon request, the Requesting Authority will seek responses to questions and/or a statement (or where permissible, testimony under oath) from any Person 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 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.

- (e) 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.

10. **Permissible Uses of Information**

- (a) The Requesting Authority may use non-public information and non-public documents furnished in response to a request for assistance under this Memorandum of Understanding solely for:
 - (i) the purposes set forth in the request for assistance, including ensuring compliance with the Laws and Regulations related to the request; and
 - (ii) 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 and Regulations administered by the Requesting Authority. This use may include enforcement proceedings which are public.
- (b) If a Requesting Authority intends to use information furnished under this Memorandum of Understanding for any purpose other than those stated in Paragraph 10(a), it must obtain the consent of the Requested Authority.

11. **Confidentiality**

- (a) 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 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.
- (b) The Requesting Authority will not disclose non-public documents and information received under this Memorandum of Understanding, except as contemplated by paragraph 10(a) or 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.

- (c) Prior to providing information to a self-regulatory organization in accordance with paragraph 10(a)(ii), 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 paragraphs 11(a) and (b) of this Memorandum of Understanding, and that the information will be used only in accordance with paragraph 10(a) of this Memorandum of Understanding, and will not be used for competitive advantage.

12. **Consultation Regarding Mutual Assistance and the Exchange of Information**

- (a) The Authorities will consult periodically with each other regarding this Memorandum of Understanding about matters of common concern with a view to improving its operation and resolving any issues that may arise. In particular, the Authorities will consult in the event of:
 - (i) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this Memorandum of Understanding;
 - (ii) a demonstrated change in the willingness or ability of an Authority to meet the provisions of this Memorandum of Understanding; and
 - (iii) any other circumstance that makes it necessary or appropriate to consult, amend or extend this Memorandum of Understanding in order to achieve its purposes.
- (b) The Requesting Authority and Requested Authority will consult with one another in matters relating to specific requests made pursuant to this Memorandum of Understanding (e.g., where a request may be denied, or if it appears that responding to a request will involve a substantial cost). These Authorities will define the terms herein in accordance with the relevant laws of the jurisdiction of the Requesting Authority unless such definition would require the Requested Authority to exceed its legal authority or otherwise be prohibited by the laws applicable in the jurisdiction of the Requested Authority. In such case, the Requesting and Requested Authorities will consult.

13. **Unsolicited Assistance**

Each Authority will make all reasonable efforts to provide, without prior request, the other Authority with any information that it considers is likely to be of assistance to the other Authority in securing compliance with Laws and Regulations applicable in its jurisdiction.

FINAL PROVISIONS

14. Effective Date

Cooperation in accordance with this Memorandum of Understanding will begin on the date of its signing by the Authorities.

15. Termination

- (a) Either Authority may terminate its participation in this Memorandum of Understanding at any time by giving at least 30 days prior written notice to the other Authority.
- (b) In the event that an Authority decides to terminate its participation in this Memorandum of Understanding, cooperation and assistance in accordance with this Memorandum of Understanding will continue until the expiration of 30 days after that Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance hereunder. If either Authority gives a termination notice, cooperation and assistance in accordance with this Memorandum of Understanding will continue with respect to all requests for assistance that were made, or information provided, before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Authority terminates the matter for which assistance was requested.
- (c) In the event of the termination of an Authority's participation in the Memorandum of Understanding under the provisions of 15(a), information obtained under this Memorandum of Understanding will continue to be treated confidentially in the manner prescribed under paragraph 11 of this Memorandum of Understanding.

Signed this day of November 2004 in Singapore.

Philippine Securities and Exchange Commission

Fe B. Barin, Chairwoman

Hong Kong Securities and Futures Commission

Andrew Sheng, Chairman