



רשות ניירות  
ערך  
ISRAEL SECURITIES AUTHORITY

FINANCIAL SERVICES BOARD

Memorandum of Understanding  
between the

South African Financial Services Board  
("FSB")

and the

Israeli Securities Authority  
("ISA")

on the  
Exchange of Information and Surveillance  
of Securities Activities

2005

The FSB and the ISA,

Considering the increasing internationalization, harmonization and interdependence of Financial Markets due e.g. to the use of modern technology and the need for closer co-operation between exchanges, for the broadest possible mutual assistance, for the strengthening of cross-border co-operation in order to enhance investor protection, to promote the integrity of financial markets and more generally to facilitate performance of the supervisory functions and the effective enforcement of the laws and regulations governing the markets;

Considering that such approach entails the sharing of different types of information given the various duties vested in the Authorities;

Considering that the most expedient way to achieve a necessary consensus is a Memorandum of Understanding;

Have thus reached the following understanding:

### **Article 1 - Principles**

Without prejudice to the provisions set forth by the South African and Israeli legislation, the purpose of this Memorandum of Understanding is to establish a general framework for co-operation and consultation between the Authorities referred to hereinafter, in order to facilitate the fulfilling of their supervisory responsibilities. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws and regulations.

### **Article 2 - Definitions**

1. "Authority" means the Financial Services Board and/or the Israel Securities Authority.
2. "Financial markets " means the institutions, persons and markets or any other securities and derivatives market regulated or supervised by the Authorities respectively.
3. "Intermediary" means any investment firm, bank, collective investment scheme and any other person acting within the scope of competence of the Authorities.
4. "Issuer" means a person making an offer to the public or seeking listing of a security.
5. "Laws and regulations" means any laws and regulations in force in the respective states of the Authorities.
6. "Person" means any natural or legal person.
7. "Requested Authority" means the Authority to whom a request is made under this Memorandum of Understanding.
8. "Requesting Authority" means the Authority making a request under this Memorandum of Understanding.
9. "Securities" means shares, debentures, bonds and other forms of securitized debts, futures and derivative products including commodity derivatives, participatory

interests in collective investment schemes and other financial products traded in the respective states of the Authorities.

### **Article 3 - Scope of assistance**

1. To the extent permitted by their respective laws and regulations, the Authorities shall provide each other with the fullest mutual assistance in any matter falling within the competence of the Authorities, including in particular the following areas:
  - a. investigations and enforcement in connection with applicable laws and regulations relating to insider dealing, market manipulation and other fraudulent or manipulative practices in the securities field,
  - b. investigation and enforcement of, and monitoring compliance with, applicable laws and regulations relating to dealing in, advising on and the management, administration and safekeeping of securities,
  - c. checking that the conditions for the taking up of (or continuing in) business as an Intermediary are met (including e.g. the enforcement of requirements to be authorized),
  - d. enforcing and monitoring compliance with applicable laws and regulations relating to the disclosure of interests in securities, take-over bids or the acquisition of influence over financial intermediaries,
  - e. the supervision of the financial markets, including the clearing and settlement, the monitoring and surveillance of transactions in securities listed on regulated markets,
  - f. enforcing or monitoring compliance with applicable laws relating to the duties of issuers and offerors of securities in relation to the disclosure of information.
2. In cases where the information requested may be maintained by, or available to, another authority within the country of the Requested Authority, the Authorities will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by their respective national laws and regulations. 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.
3. The Requested Authority may refuse to act on a request for assistance where communication of the information might adversely affect the sovereignty, security or public policy of the State of the Requested Authority or where judicial proceedings for the imposition of criminal penalties have already been initiated in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons, or, on the grounds that the provision of assistance might result in a judicial or administrative sanction being imposed, where a non-appealable judicial or administrative sanction has already been imposed, in the

jurisdiction of the Requested Authority, in respect of the same actions and against the same persons. Nothing in this provision shall prevent the Requested Authority from refusing a request in accordance with its own domestic laws and regulations.

4. To the extent permitted by their respective national laws and regulations and without prior request, each Authority should provide any other Authority with any relevant factual information available to it and 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 (unsolicited information).

#### **Article 4 - Requests for Assistance**

1. Requests for assistance shall be made in writing, signed by the Chairman or Executive Officer of the Requesting Authority or any other persons authorised by law to do so. The requests shall be addressed to the contact person of the Requested Authority listed in Annex A.
2. The Request should specify the following:
  - a. a description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;
  - b. a description of the specific information, documents or assistance requested by the Requesting Authority;
  - c. a description of the facts that constitute the grounds for the suspicion that the offence that is the subject of the request has been committed, and of the connection between these facts and the assistance requested;
  - d. a short description of the relevant provisions that may have been violated and, if known to the Requesting Authority, a list of the persons or institutions believed by the Requesting Authority to possess the information sought or the places where such information may be obtained and the details that support this belief, to the best of the Requesting Authority's knowledge;
  - e. in so far as the request concerns information relating to transactions in specific securities the Requesting Authority should provide at least, but not limited to the following:
    - a description of the securities in question as precise as possible (including e.g. the relevant code),
    - the names of those firms with whose transactions in the securities the Requesting Authority is concerned,
    - the dates between which transactions in the securities are considered relevant for the purposes of the request,
    - the names of any firms and persons on whose behalf relevant transactions in the securities are believed or suspected to have been entered into;

- f. in so far as the request relates to information concerning the business or activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified;
- g. an indication of the sensitivity of the information contained in the request and whether the Requesting Authority agrees that the request shall be disclosed to persons whom the Requested Authority may need to approach for information;
- h. whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the jurisdiction of the Requested Authority in relation to the subject matter of the request;
- i. any other authority whom the Requesting Authority is aware has an active interest in the subject matter of the request;
- j. an indication of the urgency of the request, or the desired time period for the reply; and
- k. a declaration that any information or document transferred to the Requesting Authority pursuant to the request shall be used solely for the purpose for which it was delivered.

#### **Article 5 - Execution of Requests for Assistance**

1. To the extent permitted by their respective laws and regulations, the Requested Authority shall take all reasonable steps to obtain and provide the information sought within a reasonable period of time.
2. The Requested Authority shall use the relevant means at its disposal for the execution of the request. The Authorities shall consult and agree on the types of execution that may be necessary for the execution of a request.

To the extent permitted by its laws and regulations, the Requesting Authority shall provide the Requested Authority with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further information as to the circumstances surrounding the request, staff or other resources.

To the extent permitted by their respective national laws and regulations the Authorities will consider conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations, where it would assist in the effective investigation of the alleged violations. The Authorities should consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and responsibilities and the follow up actions to such investigations.

If it appears to the Requested Authority that the response to a request for assistance under this Memorandum of Understanding will incur substantial costs,

the Requested Authority may call for the establishment of a cost sharing arrangement before continuing to respond to such a request.

**Article 6 - Permissible Uses of the Information Exchanged and Confidentiality**

1. The Authorities shall use the information exchanged solely for the purposes of:
  - a. securing compliance with or enforcement of the domestic laws and regulations specified in the Request;
  - b. initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the laws and regulations specified in the request, provided however that if any Authority intends to use or disclose information furnished under the Memorandum of Understanding for the purpose of initiating, conducting or assisting in a criminal procedure, it must obtain the prior written consent of the providing Authority;
  - c. any of the particular purposes specified in Art. 3 (1)(a) – (f) to the extent that they are administered by the Requesting Authority.
2. The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings or for the discharge of the obligation to report to judicial authorities.
3. To the extent permitted by their respective laws and regulations, each Authority will keep confidential any request for assistance made under this Memorandum of Understanding, the contents of such requests and the information received under this Memorandum of Understanding as well as the matter arising in the course of its operation, in particular consultations between Authorities. 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. 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. Nothing in this provision shall obligate the Requested Authority to furnish information and documents in contravention of its own domestic laws and regulations.
4. If an Authority intends to use or disclose information furnished under this Memorandum of Understanding for any purposes other than those stated in this Article and in the request, it must obtain the prior consent of the Authority which provided the information. If the Requested Authority consents to the use of the

information for purposes other than those stated, it may subject it to certain conditions.

5. Nothing in paragraphs 1 and 2 of this Article shall prevent an Authority from using or disclosing information in circumstances where such use or disclosure is required in order to comply with its obligations under its respective national laws and regulations.
6. If an Authority decides to make public an administrative or a disciplinary sanction within the course of its duties it may, with the consent of the Authority providing the information, indicate that the successful outcome of the case has been achieved with the aid of the international co-operation mechanisms provided for in this Memorandum of Understanding.

### **Article 7 - Consultations**

The Authorities will review the implementation of this Memorandum of Understanding regularly and may conduct consultations in order to improve its operation and to resolve possible difficulties.

### **Article 8 - Amendments to the Memorandum of Understanding**

This Memorandum of Understanding may be amended or modified by mutual consent. Any amendment or modification of this Memorandum of Understanding shall follow the same procedure as its entry into force.

### **Article 9 - Dispute Settlement**

Any dispute or controversy arising from the implementation or application of this Memorandum of Understanding will be settled by negotiation, with a view to an amicable settlement.

### **Article 10 - Entry into Effect and Termination**

1. This Memorandum of Understanding shall enter into force on the date of signature.
2. This Memorandum of Understanding shall be concluded for an unlimited period of time and may be terminated by any of the Authorities at any time by giving, at least, thirty days prior written notice to the other Authority. If the Requested Authority undertakes to denounce the Memorandum of Understanding, requests for information communicated before the effective date of denunciation will still be processed under this Memorandum of Understanding.

*[Signature page of the MOU between the Financial Services Board  
and the Israel Securities Authority]*

Done at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
which corresponds to the \_\_\_\_\_ day of \_\_\_\_\_ 5765 in duplicate in Hebrew  
and English all texts being equally authentic.

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Financial Services Board

By: Robert Barrow, Executive Officer

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Israel Securities Authority

By: Moshe Tery, Chairman



**Annex A**

**Contact persons**

Contact person as defined by Article 4 of the Memorandum of Understanding is:

**For the Financial Services Board**

Head of the Capital Markets Department

Tel.: 27(0)(12)4288100

Fax: 27(0)(12)3471379

e-mail: normanm@fsb.co.za

**For the Israel Securities Authority**

The Head of International Affairs Department

Tel.:(972) 2-6556488

Fax:(972) 2-6513646

e-mail: lisah@isa.gov.il