

# Memorandum of Understanding

between

**Financial Markets Authority**

and

**Serious Fraud Office**



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## **Memorandum of Understanding** dated July 2014

### **Between**

**Financial Markets Authority**, an independent Crown entity established under the Financial Markets Authority Act 2011 ("FMA");

### **And**

**Serious Fraud Office**, a Government Department established by the Serious Fraud Office Act 1990 ("SFO").

### **Background**

- A. The FMA has statutory functions under the FMA Act and the Acts listed in Schedule 1 of that Act. The FMA enforces securities, financial reporting and company laws as they apply to financial services and securities markets. Its main objective as the conduct regulator is to promote and facilitate fair, efficient, transparent financial markets. The FMA has a statutory function to promote the confident and informed participation of businesses, investors and consumers in financial markets and to investigate and prosecute breaches of Financial Markets Legislation and breaches of the Crimes Act by financial markets participants.
- B. The SFO has statutory functions under the SFO Act relating to the detection, investigation and prosecution of offences involving serious or complex fraud or matters of bribery and corruption. The SFO may investigate and prosecute breaches of any legislation containing relevant offences.
- C. The FMA and the SFO may both have an interest in matters relating to misconduct in financial markets or by financial markets participants and wish to record their agreement upon principles to foster collaboration and support for each other and for determining the role that each agency may have in investigating and prosecuting such matters.

## **1. Purpose of this memorandum**

- 1.1 The purpose of this Memorandum of Understanding (MoU) is to record the FMA's and the SFO's shared commitment to:
- a. work together to ensure the most effective and efficient use of each agencies' resources in the investigation and prosecution of financial crime;
  - b. avoiding the duplication of the use of resources;
  - c. the processes and principles that will apply to enable decisions to be made quickly and efficiently as to the role that each agency will play in response to potential or actual misconduct;
  - d. supporting each other in fulfilling each agency's primary statutory objectives.

## **2. Relationship management and Co-operation**

- 2.1 Having regard to the purposes of this MoU, the agencies will:
- a. communicate in an open, honest, and timely manner;
  - b. refer complaints to the appropriate agency in a timely way;
  - c. respond promptly to requests by the other;
  - d. exchange information and ideas to improve the performance of each party's statutory functions;
  - e. work together, so far as is practicable, to avoid duplication of expenditure of tax payer funded resources;
  - f. forewarn each other of actions taken, or proposed to be taken, of which the other might reasonably expect to be advised;
  - g. work together, so far is practicable, to achieve the most efficient and optimal regulatory and law enforcement outcomes, including increasing efficiency in investigations;
  - h. aim to ensure that the most appropriate party, recognising the relative statutory and structural issues of each party, responds to a regulatory or law enforcement issue;
  - i. provide feedback after an investigation to ensure the parties are learning and updating knowledge and enhancing processes;
  - j. share training and staff development opportunities, and provide mutual operational support; and
  - k. work collaboratively to identify opportunities to share resources across both agencies.

### **3. Areas of Primary Responsibility**

- 3.1 The parties acknowledge that the following are their primary areas of responsibility:
- a. The FMA has primary responsibility for the detection, investigation and prosecution of offences under Financial Markets Legislation, including breaches of the Crimes Act by financial markets participants, which principally relate to misconduct in financial markets regarding the provision of financial markets services and products;
  - b. The SFO has primary responsibility for the detection, investigation and prosecution of offences that constitute serious or complex fraud, or involve matters of bribery and corruption, or in the case of financial markets, matters which involve serious or complex fraud to the extent that the alleged misconduct is not principally concerned with regulatory issues.
- 3.2 Nothing in this MoU is intended to limit or affect the independence of each agency or the requirement that each agency must independently perform its statutory functions.

### **4. Strategic Coordination**

- 4.1 The parties agree that strategic coordination is required to ensure that the shared objectives of efficiency and effectiveness in enforcement activities are achieved in relation to cases where the statutory functions of both parties may be enlivened by the same entities or circumstances.
- 4.2 The Director of the SFO and the Chief Executive of the FMA will meet quarterly (or more or less frequently as agreed by the parties) to:
- a. discuss the general strategic co-ordination of the agencies' enforcement activities, the sharing of knowledge and resources between the parties and other matters relevant to the performance of the parties respective statutory functions;
  - b. address any issues that may have arisen in the course of decision making with respect to joint interest matters;
  - c. raise issues otherwise impacting upon the capacity of both agencies to discharge their statutory mandates; and
  - d. provide a forum to monitor investigations and prosecutions involving financial markets.

## **5. Tactical Coordination**

- 5.1 The Primary Contacts will meet each month (or more or less frequently as agreed by the parties) to:
- a. seek to identify any Joint Interest Matters and where agreement has not already been reached, agree which entity is to take primary responsibility for that matter;
  - b. review the progress of any inquiries or investigations into Joint Interest Matters.
  - c. ensure that a decision has been made as to which agency is to take responsibility for any new issues of misconduct that may have been identified;
  - d. identify opportunities for the parties to provide mutual assistance or support in the conduct of their respective investigations;
  - e. discuss and report on the progress of each investigation and prosecution of a Joint Interest Matter;
  - f. periodically assess the effectiveness and practicality of the processes established under this MoU and recommend changes to the MoU that will assist day to day operations under it;
  - g. identify opportunities for the sharing of resources and expertise; and
  - h. discuss any other matters arising under this MoU.

## **6. Co-ordination principles**

- 6.1 The FMA and the SFO agree that as soon as either agency becomes aware of a matter that may be a Joint Interest Matter, they will notify the Primary Contact and ensure that a swift process is engaged to decide which agency will take the lead in relation to the matter.
- 6.2 The decision-making process will reflect the following principles:
- a. Notification of a Joint Interest Matter will be given to the other agency in a timely way once an agency has become aware of the matter;
  - b. Sufficient information will be exchanged between each agency to enable the agencies to determine which agency shall have primary responsibility;
  - c. The decision as to which agency will take the lead, will be made as early as possible;
  - d. Except in exceptional circumstances, which shall be approved by the Director and Chief Executive of the SFO and the Chief Executive of the FMA, only one agency will be responsible for the investigation of a joint interest matter and the areas of primary responsibility referred to in clause 3 will, in most cases, be determinative;
  - e. A joint investigation may be undertaken with the approval of the Director and Chief Executive of the SFO and the Chief Executive of the FMA; and

f. If a joint investigation is to be undertaken, the Primary Contacts will appoint an investigation team and a case manager which will meet and agree the steps to be taken by each agency with respect to the investigation.

6.3 The FMA and the SFO will cooperate to ensure that all matters of responsibility, and any matter in which both agencies are or might be engaged, are efficiently and effectively resolved, and, where appropriate, communicated to individuals or entities involved in the investigation.

## **7. General Liaison**

7.1 All correspondence and notices required by this MoU will be directed to the Primary Contact.

## **8. Public Statements**

8.1 The parties recognise the confidentiality and sensitivity of information concerning active investigations by either body.

8.2 The parties agree that as far as possible and wherever appropriate no public comment will be made about Joint Interest Matter without prior notification to the other party of the proposed comment and prior consultation as to the form and timing of the comment being made.

8.3 The parties agree that any media releases that may affect or be of interest to the other party will be disclosed and coordinated in accordance with a communications protocol to be formulated by the Primary Contacts.

## **9. Confidentiality**

9.1 Without prejudice to or limitation of the provisions of either Financial Markets Legislation or the SFO Act, both parties will observe the strictest secrecy in relation to information or materials supplied to it under this MoU by the other, or derived from or based on any such information ("Protected Information").

9.2 Neither party shall use or disclose any Protected Information unless the use or disclosure is:

- a. required by law; or
- b. authorised by the other party.

## **10. Mutual Assistance Agreements**

10.1 Where either party has entered into or proposed to enter into an arrangement with another agency within New Zealand or overseas which is or may be relevant to the other parties' area of primary responsibility it will notify the other party of the nature and terms of that arrangement and (within the limitations of the terms of that arrangement):

- a. take reasonable steps to use the arrangement to assist the other party in relation to its area of primary responsibility; or
- b. where permitted under the terms of that arrangement, notify the other party of any information or other assistance received under the arrangement that may be relevant to matters within that other party's area of primary responsibility.

## **11. Term and Review**

11.1 This MoU shall be subject to review every two years from the date of signing

11.2 Either party shall provide three months' notice of their intention to terminate the MoU

## **12. Legal Nature of Memorandum**

12.1 As recorded in clause 3.2, nothing in this MoU is intended to limit or affect the independence of each agency. The parties acknowledge that the terms and conditions of this MoU are not in substitution for and do not replace the requirements of the Financial Markets Legislation or the SFO Act and nothing:

- a. limits or affects the statutory powers of either party or its ability to perform its functions and act where necessary in the public interest; or
- b. requires or obliges either party to provide any information to the other except as required by law; or
- c. binds either party in the exercise of any discretion conferred on it by law or obliges either party to do any other act or thing with goes beyond its legal rights powers and obligations under Financial Markets Legislation or the SFO Act respectively.

12.2 In particular, this MoU is intended to be facilitative only and to assist with the mechanics and implementation of the statutory functions conferred on the parties, and is not intended to create legally enforceable rights or obligations.



### 13. Definitions

13.1 In this MoU, except where otherwise required by the context, the following terms bear the following meanings:

**"FMA Act"** means the Financial Markets Authority Act 2011

**"Financial Markets Legislation"** means the FMA Act and the Acts listed in Schedule 1 of that Act;

**"Joint Interest Matters"** means misconduct, investigations and prosecutions with respect to which FMA and SFO may be may both have an interest pursuant to their statutory objectives;

**"Primary Contacts"** means the General Manager, Financial Markets and Corporate Fraud of the SFO and the Head of Enforcement of FMA;

**"Protected Information"** has the meaning ascribed in clause 8.1;

**"SFO Act"** means the Serious Fraud Office Act 1990;

### Execution

**Signed by Rob Everett**

Chief Executive Officer of the  
Financial Markets Authority

A handwritten signature in black ink, appearing to read 'Rob Everett', written over a horizontal line.

**Signed by Julie Read**

Chief Executive and Director of the  
Serious Fraud Office

A handwritten signature in blue ink, appearing to read 'Julie Read', written over a horizontal line.

