MEMORANDUM
OF
UNDERSTANDING

SOUTH AFRICA

Financial Services Board
of the Republic of South Africa

JERSEY

Jersey Financial Services Commission
1. INTRODUCTION

1.1 The Financial Services Board ("the FSB") of the Republic of South Africa is a statutory body established under section 2 of the Financial Services Board Act, 1990 (Act No. 97 of 1990) ("the FSB Act"). The functions of the board are to-

(a) supervise and enforce compliance with laws regulating financial institutions (excluding banks) and the provision of financial services;

(b) advise the Minister on matters concerning financial institutions and financial services, either of its own accord or at the request of the Minister; and

(c) provide, promote or otherwise support financial education, awareness and confidence regarding financial products, institutions and services, in order to protect financial consumers, maintain the soundness of financial institutions and to maintain the integrity and efficiency of the financial markets.

1.2 The Executive Officer of the FSB is, in terms of the laws administered by the FSB, the Registrar for the purposes of supervising and enforcing legislation applicable to financial institutions. Thus, the Executive Officer of the FSB is the Registrar of Long-term and Short-term Insurance, Collective Investment Schemes, Pension Funds, Friendly Societies, Securities Services, Financial Services Providers and Credit Rating Agencies.

1.3 The Jersey Financial Services Commission ("the JFSC") was established under Article 2 of the Financial Services Commission (Jersey) Law 1998 ("the 98 Law"). The functions of the JFSC are prescribed under Articles 5 and 6 of the 98 Law and include the supervision and development of financial services provided in or from within the Island, providing advice assistance and information to government bodies in relation to any matter connected with financial services, recommending amendments or replacement of legislation pertaining to financial services, companies and other forms of business structure and such functions in relation to financial services as are required by or under any enactment or as the Government of Jersey may, by Regulations, transfer. The JFSC presently has responsibility for regulating and supervising the following:

1.3.1 Banking and other categories of deposit taking business under the Banking Business (Jersey) Law 1991;
1.3.2 Insurance businesses under the Insurance Business (Jersey) Law 1996;
1.3.3 Collective investment funds and functionaries of such funds under the Collective Investment Funds (Jersey) Law 1988; and
1.3.4 Investment businesses, trust company businesses, general insurance mediation businesses, money service businesses and fund services businesses under the Financial Services (Jersey) Law 1998.
1.4 The JFSC also incorporates Jersey’s Registry of Companies, Limited Partnerships, Limited Liability Partnerships, Separate Limited Partnerships and Incorporated Limited Partnerships.

1.5 The FSB and the JFSC recognise the importance of international co-operation to the development and maintenance of open, fair, orderly and sound domestic financial services industries in South Africa and Jersey respectively, and the increasing international activity in the supply of financial services and the corresponding need for mutual co-operation and the sharing of information in the administration and enforcement of laws, regulations and rules concerning the financial services industry in South Africa and Jersey.

THEREFORE, THE FSB AND THE JFSC HAVE REACHED THE FOLLOWING UNDERSTANDING:

2. DEFINITIONS

"Authority" means the Financial Services Board of South Africa or the Jersey Financial Services Commission, as the case may be;

"Authorities" means the Financial Services Board of South Africa and the Jersey Financial Services Commission;

"Requested Authority" means the Authority to whom a request is made pursuant to paragraph 5 of this Memorandum of Understanding;

"Requesting Authority" means the Authority making a request pursuant to paragraph 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;

"Financial institutions" means the institutions and persons regulated and supervised by the Authorities respectively; and

"Jurisdiction" means the country, state or other territory, as the case may be, in which an Authority has legal authority, power and/or jurisdiction by law.

"Data breach" means information that has been accessed through an unintended source such as a computer worm, search engine crawler, password compromise or access by any person or automated program that is not authorised to access this data.
3. **INTENTION**

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 about financial institutions that operate on a cross-border basis within the Authorities' respective jurisdictions, as well as to enforce or secure compliance with any laws or regulations of their respective jurisdictions.

3.2 The Authorities intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws, regulations and rules of their respective jurisdictions. This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of the financial institutions and consumer protection by improving the effective regulation, enhancing the supervision of cross-border transactions, and preventing fraudulent and other prohibited practices in Jersey and South Africa.

3.3 The Authorities intend, where legal authorisation is lacking, to actively pursue all avenues towards obtaining, by law, all the necessary powers for the effective achievement of the objectives of this Memorandum of Understanding, and to keep the other Authority informed of developments in connection therewith.

3.4 The provisions of this Memorandum of Understanding do not lead to the right of any person, 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. This Memorandum of Understanding does not create any enforceable rights nor does it affect any arrangement under other Memoranda of Understanding.

3.5 The Authorities will use reasonable effort to provide each other with any information that they discover which leads to a suspicion of a breach or anticipated breach of rules or laws in the jurisdictions of the Authorities by a financial institution.

4. **SCOPE**

4.1 The Authorities agree to promote mutual assistance and exchange of information to enable the Authorities to carry out their respective duties effectively according to the laws, regulations and rules of their respective jurisdictions.

4.2 In terms of this general theme, the scope of this Memorandum of Understanding includes the following information that may be shared-

(a) information relating to the regulation and supervision of financial institutions and clearing and settlement activities;

(b) information relating to the enforcement of the laws, regulations and rules in respect of financial institutions and financial markets;
(c) information assisting in the discovery of and taking of action against financial crime (including fraudulent practices) in relation to activities the Authorities regulate; and

(d) information relating to 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 the Authorities observe procedures in the jurisdiction of each Authority for the obtaining and sharing of such information.

5.2 For the purpose of facilitating communication between Authorities, each Authority will assign contact officers by signed letter, for communications under this Memorandum of Understanding.

5.3 A Requesting Authority will make requests for assistance in writing addressed to the contact officer of the Requested Authority.

5.4 The request will include:

(a) a general description of both the subject matter of the request and the purpose for which the Requesting Authority seeks the assistance or information. When the subject matter of the request is to assist in the investigation of a regulatory offence then the Requesting Authority should provide sufficient information to demonstrate reasonable grounds for suspecting that a regulatory offence has been committed;

(b) a general description of the assistance, documents or information sought by the Requesting Authority;

(c) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons, bodies or entities believed by the Requesting Authority to possess the information sought, or the places where the Requested Authority may obtain such information;

(d) the legal provisions concerning the matter that is the subject matter of the request;

(e) whether any other authorities, governmental or non-governmental, are cooperating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward disclosure of information is likely to be necessary; and

(f) the desired period of time for the reply.
5.5 In urgent circumstances, the Requested Authority will accept a request for assistance and will expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters. Such urgent communications must be confirmed in writing by the designated contact officer within five business days thereafter.

6. UNSOLICITED INFORMATION

6.1 Where one Authority has information that 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 the other Authority has made no request. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that it is providing the information under this Memorandum of Understanding.

7. PERMISSIBLE USES OF INFORMATION

7.1 Any assistance or information provided in terms of this Memorandum of Understanding must be used by the Requesting Authority only for the purpose of performing its regulatory and supervisory functions.

7.2 The Requesting Authority may not use information furnished for any other purpose than that identified in terms of paragraph 5.4.

7.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in terms of paragraph 5.4, the Requesting Authority must notify the Requested Authority of its intention and provide the Requested Authority with an opportunity to oppose such use.

7.4 Where the Requesting Authority believes that disclosing confidential information with an authorised third party is necessary, it must inform the Requested Authority of the other third party's interest in this information, the legal basis for the provision of such confidential information and it must provide the Requested Authority with the opportunity to oppose such use.

7.5 The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.

8. CONFIDENTIALITY

8.1 The Authorities will, to the full extent permitted by the laws, regulations and rules of their respective jurisdictions, keep confidential-

(a) any request for assistance or information pursuant to this Memorandum of Understanding;
any information received pursuant to this Memorandum of Understanding;
and

any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.

8.2 The Requesting Authority shall not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior written consent of the Requested Authority.

8.3 Notwithstanding the provisions of paragraphs 7.1, 7.2 and 7.3, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing the law enforcement agencies or regulatory bodies in their jurisdictions, e.g. the Registrar of Companies, of the request or from passing information received pursuant to a request provided that:

(a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the scope of this Memorandum of Understanding; or

(b) the purpose of passing on such information to such an agency or body falls within the scope of this Memorandum of Understanding; and

(c) an undertaking has been obtained from the agency or body in advance by the providing Authority that it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable demand pursuant to the provisions of paragraph 8.4.

8.4 If compelled under a legally enforceable demand in law to make available information obtained and provided under this Memorandum of Understanding to a third party, the Requesting Authority shall promptly inform the Requested Authority of the:

(a) name of the person seeking to compel disclosure of such information obtained under this Memorandum of Understanding;

(b) legal provisions relied upon by the third party; and

(c) where possible, use all reasonable means to resist the disclosure of or protect the information from being disclosed to the third party (except where the Requested Authority has confirmed that it has no objection to the disclosure of the information).

8.5 The Authorities' duty of confidentiality of information will continue when either Authority gives notice of its intent to cease co-operation under this Memorandum of Understanding. The Authorities understand that the laws, regulations and rules of
their respective jurisdictions place limitations on use and disclosure of non-public information obtained pursuant to this Memorandum of Understanding.

8.6 The Authorities undertake to provide written notification to the other Authority where the confidentiality of shared information, arising from this Memorandum of Understanding, has been impaired due to a data breach. The Authorities acknowledge that this duty to notify is not alleviated where the data breach has occurred with its contracting third party or any other third party to whom it has disclosed this information.

8.7 The Authorities must provide the other Authority will sufficient information on how the data breach is being handled and any measures that have been implemented to circumvent a reoccurrence of such a data breach.

8.8 The provision of notification contained in paragraphs 8.6 and 8.7 above shall not prevent the Authority from complying with domestic laws relating to a data breach.

8.9 The Authorities acknowledge their duty of confidentiality, and the corresponding duty of its contracting third parties, through the on-going use and management of reasonable organisational and technical information security measures, subject to any requirement set in domestic law, regulation or rules.

9. RIGHTS OF REQUESTED AUTHORITY

9.1 The Requested Authority may deny requests for assistance under this Memorandum of Understanding—

(a) where the request would require the Requested Authority to act in a way that would violate the laws of the jurisdiction of the Requested Authority;

(b) where the request is not in accordance with the provisions of this Memorandum of Understanding; or

(c) on grounds of public interest, public safety or national security.

9.2 Where the Requested Authority denies or opposes a request for assistance, or where assistance is not available under the law of the jurisdiction of the Requested Authority, the Requested Authority will provide the reasons why it is not granting the assistance. The Authorities will then consult pursuant to paragraph 12.

9.3 The Authorities recognise that they intend nothing in this Memorandum of Understanding to either limit or enhance the powers of the Authorities under the laws of their respective jurisdictions to investigate or gather information or to take measures otherwise than as provided in this Memorandum of Understanding to obtain information, whether or not concerning a request under the Memorandum of Understanding.
10. CUSTOMER COMPLAINTS

10.1 Complaints made against a registered financial institution will be dealt with by the relevant Authority. The Authorities will share with each other any information leading to or arising from a complaint which is relevant to the other Authority for the purposes of carrying out its functions.

10.2 The Authorities acknowledge that neither can act as an ombudsman or arbitrator (or similar) and that regulatory action in relation to a complaint would only be taken by an Authority where it revealed breaches of regulatory requirements or raised questions over the fitness and propriety of owners, directors or other employees of a financial institution or the financial soundness of a financial institution.

11. FINANCIAL CRIME

11.1 The Authorities will co-operate promptly and closely, within the framework of applicable laws, regulations and requirements, when they identify cases of suspected financial crime in financial institutions, or otherwise, of which it would be appropriate for the other Authority to be made aware for the purposes of carrying out its functions.

11.2 For the purposes of this Memorandum of Understanding, ‘financial crime’ shall include money laundering and the financing of terrorism, fraud, insider dealing or market manipulation, corruption, and collusion to commit a financial crime, and unauthorised financial services business by registered financial institutions.

12. CONSULTATION

12.1 The Authorities will consult with each other to improve the operation of this Memorandum of Understanding and resolve any matters that may arise including but not limited to-

(a) matters of mutual interest to enhance co-operation and to protect investors by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions;

(b) the co-ordination of the supervision of financial institutions; and

(c) the administration of the laws, regulations and rules of their respective jurisdictions.

12.2 The purpose of the consultations envisaged in clause 12.1 is to assist in the development of mutually agreeable approaches for strengthening the financial services industries of their respective jurisdictions while avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.
12.2 The Authorities will consider the need for additional measures for the exchange of investigation, enforcement, supervisory and surveillance information in the administration and enforcement of the laws, regulations and rules concerning financial institutions in their respective jurisdictions, on an on-going basis. To this end, the Authorities will inform one another of the adoption of domestic measures that may affect their respective authority to provide assistance under this Memorandum of Understanding.

12.3 The Authorities may take practical measures as may be necessary to facilitate the implementation of this Memorandum of Understanding. As such, the Authorities, may, by mutual agreement, amend, relax or waive any of the terms of this Memorandum of Understanding. Where an Authority considers that an amendment, relaxation or waiver would be appropriate it shall notify the contact officer of the other Authority in writing.

13. COSTS OF INVESTIGATION

13.1 If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Authorities will establish a cost-sharing arrangement before continuing to respond to such a request for assistance.

14. TERMINATION OF MEMORANDUM OF UNDERSTANDING

14.1 This Memorandum of Understanding will continue in effect until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate this Memorandum of Understanding. If either Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that the Authorities made before the effective date of notification until the requesting Authority terminates the matter for which it requested assistance.

15. EFFECTIVE DATE

15.1 This Memorandum of Understanding will be effective from the date of its signing by the Authorities and from that date will replace the previous Memorandum of Understanding between the Authorities dated May 2000.
16. PUBLICATION

16.1 Either, or both, Authorities may make a copy of this Memorandum of Understanding, or the text of it, publicly available.

EXECUTED BY THE AUTHORITIES:

For the FSB

Dube Tshidi
Executive Officer

Date: 15 January 2015

For the JFSC

John Harris
Director General

Date: 8 January 2015