



MEMORANDUM OF UNDERSTANDING

BETWEEN

**FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. (FINRA) OF
THE UNITED STATES OF AMERICA**

AND

COMISIÓN NACIONAL DEL MERCADO DE VALORES (CNMV) OF SPAIN

IN RELATION TO

ASSISTANCE AND MUTUAL CO-OPERATION

4 DECEMBER , 2013

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1. INTRODUCTION / RECITALS

- 1.1. The Financial Industry Regulatory Authority, Inc. (FINRA) is the largest independent regulator for all securities firms doing business with the public in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation.
- 1.2. The Comisión Nacional del Mercado de Valores (CNMV) is an independent administrative authority, it was created by the Securities Market Law 24/1988, which instituted in-depth reforms of this segment of the Spanish financial system.

The National Securities Market Commission is entrusted with the supervision and surveillance of the securities markets and of the trading activities of all individuals and corporate bodies in these markets, the exercise of the power to sanction them, and other duties attributed to it by the aforementioned Securities Market Law. The National Securities Market Commission shall seek to ensure the transparency of the securities markets, the correct formation of the prices on these markets and the protection of investors by promoting disclosure of any information necessary in order to attain these ends.

The competence of the CNMV extends over international co-operation and exchange of information in the above-mentioned fields, including setting up bilateral and multilateral relations.

- 1.3. FINRA and the CNMV wish to enter into this MOU to provide a formal basis for the exchange of market surveillance and financial regulatory information to perform more effectively their regulatory functions and ongoing supervision of regulated firms.

2. DEFINITIONS

In this MOU, unless the context requires otherwise:

- 2.2 "Laws" means any law, regulation, regulatory rules, guidance or policy applicable in the United States of America and/or in Spain, including all relevant laws pertaining to privacy and data security applicable to each Authority in its respective country.;
- 2.3 "Authority" means FINRA or the CNMV;
- 2.4 "Authorities" means FINRA and the CNMV;
- 2.5 "Requesting Authority" means the Authority making a request under this MOU;
- 2.6 "Requested Authority" means the Authority to whom the request is made under this MOU;
- 2.7 "CNMV" means Comisión Nacional del Mercado de Valores;

- 2.8. "FINRA" means the Financial Industry Regulatory Authority, Inc.;
- 2.9. "National governmental or non-governmental public authorities" means entities responsible for prosecuting, regulating or enforcing Laws falling within the areas of responsibility of the Authority, including the criminal authorities;
- 2.10. "Third party" means a third party natural person, legal entity, partnership or unincorporated association;
- 2.11. "Information" means all confidential or proprietary information of, held by, or concerning the Requested Authority or its agents, employees, officers, directors, members, representatives, licensors, suppliers, contractors, or potential or actual customers, whether in verbal, written, electronic, graphic or other form, including private, regulatory or non-public information about persons or entities listed, employed or regulated by the Requested Authority including information relating to investigatory, personnel or regulatory matters, trading activities, matters involving broker/dealers or issuers, registration, licensing and disciplinary history information of supervised persons or entities; supervisory examination and inspection reports, and actions and action plans adopted in response to issues identified in those reports; information concerning specific transactions, such as client and intermediary names; know-how; trade secrets; internal controls; and computer, data processing, and communications architectures, systems, applications, programs, and routines; whether (a) disclosed by or on behalf of the Requested to the Requesting Authority (b) obtained by the Requesting Authority through (i) observing or accessing the Requested Authority's regulatory activities, documents or materials, or (ii) communications with persons authorized by the Requested Authority to communicate with, or otherwise provide information to the Requesting Authority, concerning the Requested Authority or a Request. The Requested Authority's "Confidential Information" includes (A) all documents and other materials the Requested Authority or its Authorized Persons (defined below) generate to the extent describing, summarizing, commenting on, or otherwise containing any of the Requested Authority's information described in this Section and (B) the existence and substance of discussions regarding Requests.

3. PURPOSE AND PRINCIPLES

- 3.1. The purpose of this MOU is to establish a formal basis for co-operation between the Authorities, including the exchange of Information.
- 3.2. This MOU does not modify or supersede any Laws in force and applying to the Authorities. This MOU sets forth a statement of intent and accordingly does not create any enforceable rights, any legally binding obligations or agreement. Provided however, the provisions set forth in Sections 10, 11, 13, 14, 15 and 16 shall be binding upon the Authorities and survive the termination of the MOU.

- 3.3. The Authorities acknowledge that they may provide Information under this MOU only if permitted or not prevented under applicable Laws or National governmental or non-governmental public authorities.

4. SCOPE OF ASSISTANCE

FINRA and the CNMV agree that the scope of assistance shall be as follows:

- 4.1. The Authorities shall endeavour to provide each other with the fullest assistance permissible in any matters falling within their competence, including in particular the following areas:
- 4.1.1. Investigations and enforcement in connection with applicable Laws or regulations relating to insider dealing, market manipulation and other fraudulent or manipulative practices in the securities field;
 - 4.1.2. 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;
 - 4.1.3. Investigation and enforcement of, and monitoring compliance with, applicable Laws and regulations relating to any activities performed by non-licensed entities, insofar as they relate to the securities market;
 - 4.1.4. Licensing and registration of individuals and bodies under the regulation and supervision of the Authorities;
 - 4.1.5. To the extent relevant, enforcing and monitoring compliance with applicable Laws and regulations relating to the disclosure of interests in securities, takeover bids or the acquisition of influence over financial intermediaries;
 - 4.1.6. To the extent relevant, enforcing and monitoring compliance with applicable Laws and regulations relating to the periodic financial information or any other information to be publicly disclosed by issuers of financial instruments; and
 - 4.1.7. The supervision of the financial markets.
- 4.2. In cases where the Information requested may be maintained by, or available to, another authority within the country of the Requested Authority, FINRA and the CNMV will endeavour to provide full assistance in obtaining the Information requested to the extent permitted by law. 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.
- 4.3. The Requested Authority shall endeavour to assist the Requesting Authority, through reasonable measures, in correcting inaccurate Information if such assistance is requested by the Requesting Authority.

- 4.4. A request for assistance may be denied by the Requested Authority:
 - 4.4.1. Where the request would require the Requested Authority to act in a manner that would violate domestic law;
 - 4.4.2. 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 the 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;
 - 4.4.3. Where the request is not made in accordance with the provisions of this MOU;
 - 4.4.4. Where the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
 - 4.4.5. Where compliance with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions or business objectives;
 - 4.4.6. On grounds of public interest or essential national interest; or
 - 4.4.7. Where the Authorities, after consultation, mutually agree that compliance with the request would not be in the best interests of either or both Authorities.
- 4.5. 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.
- 4.6. 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 in writing to the Requesting Authority.

5. REQUESTS FOR ASSISTANCE OR INFORMATION

- 5.1. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to the Laws and overall internal Authority policy. Assistance may include, but is not limited to, for example:
 - 5.1.1. Providing Information in the possession of the Requested Authority;
 - 5.1.2. Confirming or verifying Information provided to it for that purpose by the Requesting Authority;
 - 5.1.3. Exchanging Information on or discussing issues of mutual interest;

- 5.1.4. Obtaining specified information and documents from persons designated by the Requesting Authority; or
- 5.1.5. Questioning or taking testimony, where permissible, of persons designated by the Requesting Authority regarding the matters set forth in the request for assistance
- 5.2. In the event that the Requesting Authority seeks additional Information beyond what is set forth in section 5.1 above, the Authorities will discuss the request on a case by case basis and may take additional steps provided that they are in furtherance of the Authorities' respective regulatory purposes.

6. PROCEDURE FOR REQUESTS

- 6.1. Requests for the provision of Information shall be made in writing. To facilitate assistance, the Requesting Authority should specify in any request:
 - 6.1.1. The specific Information or other regulatory assistance requested. This should include reference to relevant rules and/or a description of the supervisory review and/or the facts underlying the investigation that are subject of the request and the purpose for which the assistance is sought;
 - 6.1.2. 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 ought or where places where such Information may be obtained;
 - 6.1.3. An indication of any special precautions that should be taken in collecting the Information due to investigatory considerations, including the sensitivity of the Information;
 - 6.1.4. If Information is provided by the Requesting Authority for confirmation or verification, the Information and the kind of confirmation or verification sought;
 - 6.1.5. The purpose for which the Information or other assistance is sought and the reference to applicable laws and regulations that may have been violated;
 - 6.1.6. Those National governmental and non-governmental public authorities, if any, including the criminal authorities, to whom onward disclosure of Information provided to the Requesting Authority is likely to be necessary;
 - 6.1.7. Any other matters specified by the Requesting Authority and by the applicable laws, regulations and requirements in relation to the Requested Authority; and,
 - 6.1.8. In instances of urgent circumstances, requests for assistance may be effected by telephone, facsimile, or email provided such

communication is confirmed through an original signed document.

- 6.1.9 The Authorities agree that all communications between FINRA and the CNMV under this MoU may be shared with the US SEC, as appropriate.

7. PROVISION OF 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. COSTS OF INVESTIGATION OR ASSISTANCE

If the cost of fulfilling a request is likely to be substantial (i.e., entail extraordinary efforts, or is outside the ordinary course of regulatory activities), the Requested Authority may, as a condition of agreeing to give assistance under this MOU, require the Requesting Authority to make a contribution to costs.

9. PERMISSIBLE USES OF INFORMATION

- 9.1. The Requesting Authority may use without prior consent Information furnished in response to a request for assistance under this MOU solely for:

9.1.1. The purposes set forth in the request for assistance, including ensuring compliance with the Laws and Regulations related to the request; and

9.1.2. 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.

9.1.3. In the event that Information provided by FINRA to the CNMV leads the CNMV to submit a request for assistance to the US Securities and Exchange Commission (SEC), FINRA expressly authorizes the CNMV to use the Information provided by FINRA in connection with its communications with the SEC in an appropriate manner. In this event, the CNMV will provide notice to FINRA either prior to, or simultaneously with, its request to the SEC.

- 9.2. If a Requesting Authority intends to use Information furnished under this MOU for any purpose other than those stated in Section 9.1 above, it must obtain the written consent of the Requested Authority.

10. CONFIDENTIALITY

- 10.1. The Requesting Authority shall maintain in confidence the Requested Authority's Confidential Information and protect that Confidential Information from any unauthorized disclosure, access, use, destruction, alteration or loss ("Loss"), exercising at least the same degree of care as Requesting Authority exercises for its own confidential information, but not less than a reasonable degree of care. The Requesting Authority may not, nor permit any person to, (a) use or copy the Requested Authority's Confidential Information except as necessary to conduct Requesting Authority's regulatory activities (including ensuring compliance with Laws, conducting investigation or enforcement proceedings, or assisting in a self-regulatory organization's surveillance or enforcement activities) or for any other purpose the Requested Authority may identify for the Requesting Authority on one or more occasions with respect to specific Confidential Information (all of the foregoing, the "Purpose"), or (b) disclose the Requested Authority's Confidential Information to any person or entity other than Requesting Authority's employees, officers, directors, agents, contractors, attorneys, auditors or accountants who require the Confidential Information to act on the Requesting Authority's behalf with respect to the Purpose ("Authorized Persons").

- 10.1.1. The Requesting Authority's (A) shall ensure that its Authorized Persons with access to the Requested Authority's Confidential Information (1) comply with this MOU as if they were parties to this MOU in place of the Requesting Authority and (2) are bound by written confidentiality obligations, or are otherwise under a duty of confidentiality, sufficient to protect the Requested Authority's Confidential Information in a manner that is consistent with this MOU, and (B) is liable to the Requested Authority for the failure of the Requesting Authority's Authorized Persons to comply with this MOU to the same extent that the Requesting Authority's would have been had the Requesting Authority failed to comply. The Requesting Authority's shall mark as "Confidential" all copies of the Requested Authority's Confidential Information that the Requesting Authority creates and include any copyright or other proprietary notice appearing on the original version. The Requesting Authority shall ensure that its use of the Requesting Authority's Confidential Information as permitted by this MOU complies with applicable Law.

- 10.2. Information excludes information that is:

- 10.2.1. Lawfully in the Requesting Authority's possession prior to this MOU and not under a duty of non-disclosure;

- 10.2.2. Voluntarily disclosed on an unrestricted basis by a third party unrelated to either Authority and that party is not under a duty of non-disclosure;
 - 10.2.3. Voluntarily disclosed to the public by the disclosing party; or
 - 10.2.4. Generally known to the public, other than due to receiving party's breach of this MOU.
- 10.3. The permitted disclosures in section 10.2 shall not apply to any Information or intellectual property disclosed by one Authority to the other, but rather that a Requesting Authority understands and agrees that it will hold such Information or intellectual property in confidence, and that prior to disclosing such Information or intellectual property to any National governmental or non-governmental public authority or Third party, the Requesting Authority will request and obtain the prior written consent of the Requested Authority, such consent to be at the Requested Authority's sole discretion.
- 10.4. All intellectual property rights, title and interest associated with each Authority's Information, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights shall remain in the respective Authority.
- 10.5. Further, neither Authority will use, in any manner, including advertising or publicity or in any way related to this MOU or the subject matter hereof, the name of the other Authority or its affiliates or any of their directors, officers, managers, employees, consultants or agents or any trade name, trademark, service mark, logo, symbol or copyright, whether any of the above are registered or unregistered, of the other Authority or its affiliates, except with the express written consent of such other Authority. Notwithstanding anything set forth above, the Authorities may use the name of the other Authority in preparing its investigative or examination reports as well as include Information submitted to the respective Authority in its official files.
- 10.6. If there is a legally enforceable demand for Information supplied under this MOU, the Requesting Authority who has received the demand will, to the extent permitted by law, notify the Requested Authority that supplied the Information subject to the demand and receive its consent prior to disclosing such Information, unless this is not practicable for reasons of urgency. In the event of a legally enforceable demand, the Requesting Authority will notify the Requested Authority prior to complying with the demand. If the Requested Authority that supplied the Information does not consent to such disclosure, then the Requesting Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that Information as may be available.
- 10.7. Notwithstanding anything otherwise set forth herein, FINRA may disclose Information: a) to the extent revealed to a government agency with regulatory or oversight legal competence over FINRA; or b) in the course of

fulfilling any of FINRA's regulatory responsibilities, including responsibilities under the Securities Exchange Act of 1934 or other applicable law. Notwithstanding anything otherwise set forth herein, CNMV may disclose Information to the institutions listed in article 90 of the Securities market Act in the terms and under the conditions set out in the said article.

- 10.8. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the Requesting and the Requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.
- 10.9. Unauthorized Disclosure: Without limiting any of the Requested Authority's other rights and remedies for the Requesting Authority's breach of this MOU, if the Requesting Authority becomes aware of an actual or threatened Loss, (i) the Requesting Authority promptly shall notify the Requested Authority and cooperate with the Requested Authority to regain possession of its Confidential Information and prevent any further Loss, and (ii) the Requested Authority may obtain any injunctive or other equitable relief that a court of competent jurisdiction deems proper.
- 10.10. At the Requested Authority's request, the Requesting Authority shall (a) stop using and copying the Requested Authority's Information, (b) to the extent permitted by applicable Law, (i) return to the Requested Authority all of the Requested Authority's Information in the Requesting Authority's or its Authorized Persons' possession or control, or (ii) destroy that Information in a manner that makes the Information non-readable and non-retrievable, and (c) provide the Requested Authority with a certificate of return or destruction that includes the dates and facts of the return or destruction and is signed by an officer of the Requesting Authority. Notwithstanding the foregoing, the Requesting Authority has no obligation to return or destroy the Requested Authority's Information backed up from a computer system in the ordinary course of the Requesting Authority's business, but that Information remains subject to all applicable obligations under this MOU.

11. WARRANTY DISCLAIMER AND OWNERSHIP

The Authorities acknowledge that, as between the Authorities, the Requested Authority is the exclusive owner of the Requested Authority's Information and all intellectual property rights therein and thereto and any improvements and modifications of, and derivative works, derived from or based on, the Requested Authority's Information. The Requested Authority does not grant the Requesting Authority any license of those rights. The Requested Authority disclaims all representations and warranties regarding its Confidential Information and any assistance it provides Requesting Authority in response to Requests. The Requesting Authority acknowledges the Requested Authority's Confidential Information and assistance is provided "As Is."

12. DISPUTES AND CHANGES

The authorized representatives of the Authorities will consult periodically with each other regarding this MOU 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:

- 12.1 A significant change in market or business conditions or in legislation where such change is relevant to the operation of this MOU;
- 12.2 A demonstrated change in the willingness or ability of an Authority to meet the provisions of this MOU; and
- 12.3 Any other circumstance that makes it necessary or appropriate to consult, amend or extend this MOU in order to achieve its purposes.

13. CONSULTATION

- 13.1. The Authorities may consult one another informally at any time about a request or proposed request.
- 13.2. 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.
- 13.3. The Authorities will endeavour to hold a periodical 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.

14. COMMENCEMENT AND TERMINATION

This MOU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving thirty (30) days advance written notice to the other Authority.

15. CONTACT PERSONS

All notices, requests, claims between the Authorities described in or otherwise regarding this MOU must be in writing and be given or made (and will be effective on receipt) by delivery in person, by nationally recognized overnight courier service (with signature required and all fees prepaid), by facsimile (with confirmation of transmission), by registered or certified mail (postage prepaid, return receipt requested), or by email to an Authority at its address below or at any other address of which that Authority has notified the other Authority in accordance with this Section. 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.

16. ASSIGNMENT

Neither Authority may assign, delegate or otherwise transfer this MOU or any of its rights or obligations under this MOU (by operation of law or otherwise) without the other Authority's prior written consent, which that other Authority may grant or withhold in its sole discretion. Any assignment, delegation or other transfer in contravention of this Section is void. This MOU binds and inures to the benefit of the Authorities and their respective permitted successors and assignees.

17. ENTIRE AGREEMENT; THIRD-PARTY BENEFICIARIES

This MOU constitutes the entire agreement, and supersedes any prior or contemporaneous statements or agreements, between the Authorities with respect to its subject matter. Nothing in this MOU confers any legal or equitable right, benefit or remedy upon any person or entity other than the Authorities.

18. AMENDMENT; WAIVER

This MOU only may be amended or modified by a written instrument signed by each Authority's authorized representative, but "written instrument" does not include the text of e-mails or similar electronic transmissions. An Authority's failure to enforce any provisions of or rights deriving from this MOU does not waive those provisions or rights, or that Authority's right to enforce those provisions or rights.

The Authorities have caused this MOU to be executed by their respective duly authorized representatives.

Signed this bilateral MOU on 4 December 2013 in Washington and Madrid, in duplicate, in English and Spanish languages, all versions being equally authentic. In the event of any discrepancy between different versions of this memorandum of understanding, the English language version shall prevail.

**FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.
(FINRA)**

**COMISIÓN NACIONAL DEL
MERCADO DE VALORES (CNMV)
OF SPAIN**



**Mr. Richard Ketchum
Chairman and CEO**



**Mrs. Elvira Rodríguez Herrer
President**

APPENDIX A

LIST OF CONTACT PERSONS

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.

1. Managing Director, International

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("FINRA")
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2. ALTERNATE

Senior Director, International
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COMISIÓN NACIONAL DEL MERCADO DE VALORES (CNMV) OF SPAIN

1. PRESIDENT

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