

**MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION
AND EXCHANGE OF INFORMATION ON
CROSS-BORDER OFFERS OF ASEAN COLLECTIVE INVESTMENT
SCHEMES TO NON-RETAIL INVESTORS**

1. INTRODUCTION

This Memorandum of Understanding (“MOU”) sets out the understanding amongst the Signatories to provide mutual assistance and exchange information to facilitate the Signatories’ supervision of the cross-border offers of collective investment schemes to non-retail investors in their respective jurisdictions and to ensure the development and maintenance of fair and efficient markets for cross-border collective investment schemes offerings to non-retail investors.

2. DEFINITIONS

In this MOU, unless the context states otherwise:

- 2.1 **“ACMF member”** means the securities regulator of the respective ASEAN jurisdiction or collectively be referred as the “ACMF members”;
- 2.2 **“Approval”**, “Approve” or “Approved” in relation to the Home Jurisdiction means the approval, permission, authorisation, or registration (as the case may be) granted by the Home Regulator for the offer of NRI CIS in that Home Jurisdiction whereas in relation to the Host Jurisdiction means the approval, permission, authorisation, registration, or recognition (as the case may be) granted by the Host Regulator for the cross-border offer of NRI CIS in that Host Jurisdiction;
- 2.3 **“CIS”** means a collective investment scheme;
- 2.4 **“CIS Operator”** in relation to a NRI CIS, means a person or investment management entity which is licensed by or registered with a Signatory to operate or manage a NRI CIS or offer units in a NRI CIS under the Laws and Regulations of the Signatory;
- 2.5 **“Emergency Situation”** means the occurrence of an event that could materially impair the investors or the markets, or the financial or operational condition of a NRI CIS or a CIS Operator of the NRI CIS;
- 2.6 **“Home Jurisdiction”** in relation to a NRI CIS, means the jurisdiction in which the NRI CIS is constituted or established, and managed by a CIS Operator in that jurisdiction;

/ 2.7 **“Host Jurisdiction”**...

- 2.7 **“Host Jurisdiction”** in relation to a NRI CIS means a jurisdiction (other than the Home Jurisdiction) in which the NRI CIS is offered or to be offered;
- 2.8 **“Home Regulator”** means the Signatory whose jurisdiction is the Home Jurisdiction of the NRI CIS;
- 2.9 **“Host Regulator”** means the Signatory whose jurisdiction is the Host Jurisdiction of the NRI CIS;
- 2.10 **“IOSCO”** means the International Organization of Securities Commissions;
- 2.11 **“Laws and Regulations”** means any law, regulation or regulatory requirement applicable in the jurisdiction of a Signatory, and, where the context permits, includes any rule, direction, requirement, or policy made or given by or to be taken into account by the Signatory in its jurisdiction;
- 2.12 **“NRI”** or “Non-retail investors” means the class of investors in a particular jurisdiction who, under the Laws and Regulations of that jurisdiction, are deemed to be sufficiently sophisticated and well-informed about investment matters and in certain circumstances may be afforded a lower level of protection than that afforded to the general investing public in that jurisdiction. This class of investors may be referred to, in the Laws and Regulations of the Signatories, as professional investors, sophisticated investors, accredited investors, institutional investors or other similar terms.
- 2.13 **“NRI CIS”** means a collective investment scheme which is Approved by a Signatory to be offered to non-retail investors in its jurisdiction;
- 2.14 **“Offeror”** in relation to a NRI CIS, means a person or entity who undertakes the selling/ offering activity for that NRI CIS, to the investors or the markets;
- 2.15 **“Person”** means a natural or legal person, or unincorporated entity or association, including corporation and partnership;
- 2.16 **“Requested Authority”** means the Signatory to whom a request for assistance is made under this MOU or who provides unsolicited assistance or information under this MOU;
- 2.17 **“Requesting Authority”** means the Signatory making a request for assistance under this MOU or who receives unsolicited assistance or information under this MOU;
- 2.18 **“Signatory”** means an ACMF member who is listed in Appendix A and has signed on to this MOU, and which are collectively referred to in this MOU as “the Signatories”.

3. PURPOSE AND PRINCIPLES

- 3.1 The purpose of this MOU is to enhance investor protection and to promote the integrity of cross-border NRI CIS offers within ASEAN by establishing a framework for mutual assistance and exchange of information amongst the Signatories to facilitate the enforcement by the Signatories of their respective Laws and Regulations in respect of the offer of a NRI CIS in their jurisdictions (“Framework”).
- 3.2 This MOU serves as a basis for co-operation among the Signatories and does not create any legally binding obligations; confer any rights, modify or supersede any Laws and Regulations in force or applicable in their respective jurisdictions. This MOU does not create any enforceable rights, nor will it affect any arrangements between the Signatories made or to be made under any other Memoranda of Understanding.
- 3.3 This MOU does not authorize nor does it prohibit any Signatory from taking measures other than those described herein to obtain information necessary to ensure enforcement of, or compliance with the Laws and Regulations applicable in its jurisdiction.
- 3.4 The Signatories will make reasonable efforts to provide each other with information permissible under the Laws and Regulations in their respective jurisdictions. To this end, the Requesting Authority will first endeavour to obtain the information from the CIS Operator. In the event that the Requesting Authority is unable to obtain the information from the CIS Operator and to the extent permitted by the Laws and Regulations of jurisdictions, the Requested Authority will make reasonable efforts to provide the Requesting Authority with the information pertaining to the CIS Operator.
- 3.5 To the extent permitted by their Laws and Regulations, each Signatory will endeavour to monitor material events within its jurisdiction which may adversely affect the cross-border offer of CIS to NRI in the jurisdiction of other Signatories and consider whether it would be appropriate to notify the relevant Signatories of such events.
- 3.6 Without prejudice to any powers and authority conferred by the Laws and Regulations, for the avoidance of doubt:
 - 3.6.1 The Home Regulator should have the appropriate supervisory and enforcement powers, and be able to take enforcement actions against the CIS Operator or trustee / fund supervisor for breaches of their duties and breaches of the Laws and Regulations in the Home Jurisdiction in connection with the offer of NRI CIS. Such actions or sanctions would include stopping the offer of a NRI CIS within the Home Jurisdiction,

private warnings, public reprimands, directions, restrictions on business activities, monetary fines, and revocation of licenses.

Where the Home Regulator stops the offer of a NRI CIS within its jurisdiction, the Home Regulator will, to the extent that it is aware the NRI CIS has been offered in another Host Jurisdiction, notify the Host Regulator of such action as soon as practicable.

- 3.6.2 It is noted that the Host Regulator retains any discretion it may have under the Laws and Regulations of the Host Jurisdiction —
- (a) not to Approve a NRI CIS to be offered within the Host Jurisdiction in accordance with the Laws and Regulations of the Host Jurisdiction;
 - (b) to stop the offer of a NRI CIS within its jurisdiction in accordance with the Laws and Regulations in the Host Jurisdiction;
 - (c) to obtain information or documentation from a CIS Operator regarding the CIS Operator or a NRI CIS as the Host Regulator may require for the purposes of monitoring, facilitating or assessing compliance with the Laws and Regulations of the Host Jurisdiction; and
 - (d) to take action as the Host Regulator deems appropriate for the purpose of enforcing the obligations of a CIS Operator or a NRI CIS in accordance with the Laws and Regulations in the Host Jurisdiction.

The Host Regulator will, as far as practicable, notify the Home Regulator before taking any action under (b) or (d), stating the reason for taking that action.

4. PRE-REQUISITE TO BECOMING A SIGNATORY

Any ACMF member may become a Signatory to this MOU provided that such ACMF member is listed in Appendix A of the IOSCO Multilateral Memorandum of Understanding (“IOSCO MMOU”) Concerning Consultation and Cooperation and the Exchange of Information.

5. SCOPE OF ASSISTANCE

- 5.1 To the extent permitted by the Laws and Regulations in their respective jurisdictions, every Signatory will provide the fullest possible mutual assistance within the Framework of this MOU. Such assistance will be provided to facilitate

- a Signatory's supervision of NRI CIS and CIS Operator managing such NRI CIS, and the enforcement of the applicable Laws and Regulations in respect of the offer of the NRI CIS in that Signatory's jurisdiction.
- 5.2 A Signatory will provide mutual assistance including exchange of information in response to requests for assistance from other Signatories to the extent permissible under the Laws and Regulations of their respective jurisdictions. Such requests for assistance may be in relation to the following areas:
- 5.2.1 enforcing the Laws and Regulations of the Requesting Authority relating to issuing, dealing in, arranging deals in, and managing a NRI CIS;
- 5.2.2 issues relevant to the operation and regulation of NRI CIS and CIS Operators in the Requesting Authority's jurisdiction which may include;
- (a) fitness and propriety of the Persons who are authorised to conduct the business referred to [in paragraph 5.2.1] above, and promoting high standards of fair dealing and integrity in the conduct of such business;
 - (b) the duty of the CIS Operators and of Offerors of a NRI CIS in managing and offering the NRI CIS including the duty to disclose material information to investors as may be required under the Laws and Regulations of the respective jurisdictions;
 - (c) the disclosure of information in respect of a NRI CIS and a CIS Operator under the supervision and regulation of the Requested Authority;
 - (d) general supervisory issues including with respect to regulatory oversight, regulatory Approval, supervisory actions; and
 - (e) Other matters as agreed upon by the Signatories from time to time.
- 5.3 A Signatory may request for assistance in respect of a NRI CIS or CIS Operator only if such NRI CIS has been offered in the jurisdiction of the Signatory or the CIS Operator has applied to the Signatory for Approval to offer the NRI CIS in the jurisdiction of the Signatory.
- 5.4 The Signatories will endeavour to rely on the CIS Operator as the primary source of information. If it is not practicable to obtain the information from the CIS Operator, each Requested Authority will, upon receipt of a written request from the Requesting Authority, and to the extent permitted by and subject to applicable Laws and Regulations of the respective jurisdictions:
- 5.4.1 Provide information on the initial application submitted by the CIS Operator to the Requested Authority for Approval to offer a NRI CIS in the jurisdiction of the Requested Authority;

5.4.2 Provide the Requesting Authority with any information about a NRI CIS domiciled in the Requested Authority's jurisdiction or a CIS Operator licensed or registered in its jurisdiction which may be significant to and/or may be in connection with the supervision of the NRI CIS or CIS Operator in the Requesting Authority's jurisdiction. The information covered by this paragraph, includes, but not limited to:

- (a) information concerning the financial and operational conditions of a CIS Operator, such as internal control procedures, interim and annual financial statements; and
- (b) relevant details from the examination reports prepared by Signatory, in the course of its supervision of the CIS Operator, or any findings, or information drawn from such examination reports.

5.4.3 Any other information necessary for effective discharge of the functions set out in paragraph 5.2.1 above.

6. REQUESTS FOR ASSISTANCE

6.1 Requests for assistance will be made in writing, in the English Language, and addressed to the contact person of the Requested Authority listed in Appendix A of this MOU, and will be made within the terms, and subject to the conditions, of this MOU and, where applicable, the IOSCO MMOU.

6.2 In Emergency Situation, the Signatories will endeavour to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

6.3 In order to facilitate the provision of assistance, the Requesting Authority will specify:

- 6.3.1 a description of the facts underlying the enquiry or investigation that are the subject of the request, and the purpose for which the assistance is sought;
- 6.3.2 a description of the assistance sought by the Requesting Authority and why the information sought will be of assistance;
- 6.3.3 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;

- 6.3.4 an indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity or confidentiality of the information;
- 6.3.5 the Laws and Regulations of the Requesting Authority that may have been violated and that related to the subject matter of the request;
- 6.3.6 Subject to paragraph 9.2, any other person to whom the information provided is likely to be disclosed to, by the Requesting Authority;
- 6.3.7 the urgency of the request and the desired period of time for the reply;
- 6.3.8 any other information which the Requested Signatory may, upon the receipt of the request for assistance, require the Requesting Signatory to provide; and
- 6.3.9 the contact details of the contact person of the Requesting Authority listed in Appendix A.

7. EXECUTION OF REQUESTS

- 7.1 Each request will be assessed on a case by case basis by the Requested Authority to determine whether assistance can be provided under the terms of this MOU.
- 7.2 In order to avoid unnecessary delays, and where appropriate, the Requested Authority will pass on portions of the requested information as they become available and consult on relevant procedure, as appropriate.
- 7.3 In cases where the Requesting Authority is not satisfied with the information provided, additional information can be requested by the Requesting Authority pointing out the subjects which need to be clarified.
- 7.4 In any case, where the request cannot be fulfilled in part or whole, the Requested Authority will consider whether there may be other assistance that can be given by itself or by any other authority in its jurisdiction.
- 7.5 A request for assistance may be denied by the Requested Authority on the following grounds;
 - 7.5.1 where the request would require the Requested Authority to act in a manner that would violate its Laws and Regulations;
 - 7.5.2 where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same Person, or the same Person has already been the subject of final

punitive sanctions on the same charges by the competent authority 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;

- 7.5.3 where the provision of assistance would be impractical as it will disrupt the proper performance of the Requested Authority's functions;
- 7.5.4 where the request is not made in accordance with the provisions of this MOU;
- 7.5.5 on ground of public interest or essential national interest; or
- 7.5.6 where the information or assistance would be more readily obtained through other channels.

Where a request for assistance is denied, or where assistance is not available under its Laws and Regulations, the Requested Authority will promptly inform the Requesting Authority of the reason for its refusal.

- 7.6 Any document or other material provided in response to a request under this MOU and any copies thereof will be returned on request.

8. UNSOLICITED ASSISTANCE

- 8.1 To the extent permissible under the Laws and Regulations of their respective jurisdictions, each Signatory will make all reasonable efforts to provide, without prior request, the following information to the other Signatories:
 - 8.1.1 information on any material event to the knowledge of the Signatory that could adversely impact a NRI CIS or CIS Operator. Such events include material changes in a NRI CIS or CIS Operator. (Such events may include changes in majority shareholding or significant deterioration in financial position of a CIS Operator);
 - 8.1.2 any information on any non-compliance of a NRI CIS or a CIS Operator with Laws and Regulations applicable in its jurisdiction which has significant impact on the operation or activities of a NRI CIS or CIS Operator;
 - 8.1.3 regulatory changes which the first-mentioned Signatory becomes aware of that may have a significant impact on the operations or activities of a NRI CIS or CIS Operator; and

- 8.1.4 regulatory actions (excluding any investigation and actions relating to investigation) or sanctions that have been or may be taken by the Signatory, including the revocation or suspension of the Approval of a NRI CIS, or the licensing or registration of a CIS Operator.

9. PERMISSIBLE USES OF INFORMATION

- 9.1 The Requesting Authority in receipt of such information from a Requested Authority may use non-public information furnished in response to a request for assistance under this MOU solely for:
- 9.1.1 the purposes stated in the request, including ensuring compliance with the Laws and Regulations related to the request;
- 9.1.2 a purpose within the general framework of the use stated in the request for assistance including:
- (a) conducting a civil or administrative enforcement proceeding;
 - (b) assisting in a criminal investigation or proceeding; or
 - (c) 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.

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

10. CONFIDENTIALITY

- 10.1 Each Signatory will keep confidential requests made under this MOU, the contents of such requests, and any matters arising under this MOU, including consultations between or among the Signatories, 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.

- 10.2 Assistance or information will be provided under this MOU by the Requested Authority only for the purposes set out in this MOU. Any non-public information provided under this Framework should only be used by the Requesting Authority for such purposes and should not be disclosed to any third parties without the prior written consent of the Requested Authority. Each Signatory will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.
- 10.3 If the Requesting Authority intends to use or disclose information furnished under this MOU for any purpose other than those stated in this MOU and in the request for the information, including the transmission of the information to third parties, it must obtain the prior written consent of the Requested Authority which provided the information. The Requested Authority may give consent subject to such conditions as it may impose at its discretion or may refuse such use of the information. In that case, the Signatories will, pursuant to paragraph 11, consult each other regarding the reasons for refusal and the circumstances under which use of the information might otherwise be allowed.
- 10.4 When the Requesting Authority, upon obtaining the prior consent of the Requested Authority, discloses information to a third party, the Requesting Authority will obtain an undertaking from the third party that it will maintain the confidentiality of the information.
- 10.5 Notwithstanding the confidentiality provisions of this MOU, the Signatories, will not be prevented from informing the law enforcement bodies in its jurisdiction when disclosure is required pursuant to a legally enforceable demand.
- 10.6 The Requesting Authority will not disclose non-public information received under this MOU except as contemplated by paragraph 10.2 or in response to a legally enforceable demand from a third party.
- 10.7 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 information received under this MOU.
- 10.8 The Signatories understand that the Laws and Regulations of their respective jurisdictions may place limitations on use and disclosure of non-public information obtained pursuant to this MOU.
- 10.9 When disclosing confidential information, the Signatories will respect the confidentiality and secrecy requirements under the relevant Laws and Regulation under which the Requesting Signatory operates.

- 10.10 Each Signatory agrees that any information disclosed under this MOU will be subjected to adequate and confidentiality protection under the relevant Laws and Regulations of the Requesting Signatory.
- 10.11 The Signatories agree to notify each other if there are any changes in the confidentiality and secrecy requirements under its relevant Laws and Regulations that may affect the adequacy and appropriateness of the confidentiality protection on information disclosed under this MOU

11. CONSULTATION

- 11.1 The Signatories will consult regularly with each other to enhance regulatory co-operation, to improve the operation of the MOU and to strive to resolve any matters that may arise.
- 11.2 Each Signatory will advise the other Signatory if there is a material change in the Laws and Regulations relating to CIS Operators or the operation and/or offering of NRI CIS where such change is relevant to the operation of this MOU.
- 11.3 Where the specific conduct set out in the request for assistance may constitute a breach of Laws and Regulations in the jurisdiction of the Requesting Authority or the Requested Authority, the Signatories will consult to determine the most appropriate way to provide assistance.

12. CONTACTS

All communication between the Signatories will be directed to the points of contacts provided in Appendix A, as may be updated from time to time.

13. COSTS

If it appears to the Requested Authority that the response to a request for assistance under this MOU will incur substantial costs, the Requested Authority may, as a condition of arranging that assistance be given under this MOU, require the Requesting Authority to make a contribution to said costs.

14. REVISION

This MOU may be amended or revised with mutual written consent of the Signatories from time to time in light of the experience in applying this MOU, in order to improve the efficacy of the MOU herein. In addition, before amending or

revising of the MOU, the ACMF Secretariat may request comments from all ACMF members.

15. EFFECTIVE DATE AND TERMINATION

15.1 Cooperation in accordance with this MOU will commence with effect from the date of its signing by the ACMF members. For any additional ACMF member which signs on thereafter, the MOU will be effective in respect of that ACMF member from the date on which it becomes a Signatory.

15.2 A Signatory to this MOU may terminate its participation in this MOU at any time by giving at least 30 days prior written notice ("Termination Notice") to each of the remaining Signatories.

A Signatory who has terminated its participation in this Framework will continue to provide and maintain any procedures it may have for protecting the existing participants in any NRI CIS in relation to which it is the Home Jurisdiction and such NRI CIS has been offered in the remaining Signatories' jurisdictions.

15.3 In the event of the termination of a Signatory's participation in this MOU, information obtained under this MOU will continue to be treated confidentially in the manner described under paragraph 10 and cooperation under this MOU will continue among the remaining Signatories.

This MOU is signed in Bangkok, Thailand on October 1st, 2013.

**For the Securities
Commission Malaysia**

**For the Monetary Authority
of Singapore**

**For the Securities and
Exchange Commission of
Thailand**

Datuk Ranjit Ajit Singh
Chairman

Mr. Lee Chuan Teck
Assistant Managing Director

Dr. Vorapol Socratianurak
Secretary-General

APPENDIX A

List of Signatories and Contact Persons

The Securities Commission Malaysia

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