

## **MEMORANDUM OF UNDERSTANDING**

Between the

**NEW YORK STATE BANKING DEPARTMENT**

And

**DUBAI FINANCIAL SERVICES AUTHORITY**

The Authorities express, through the Memorandum of Understanding ("Memorandum"), their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of Cross-border Establishments within their respective jurisdictions, and taking into consideration, as appropriate, their particular supervisory needs. The Authorities will use their best endeavors to cooperate in routine supervisory procedures, and to notify and provide to each other relevant information regarding any material supervisory concerns with respect to Cross-border Establishments.

I. For the purposes of this Memorandum:

1. "Authority" means the Dubai Financial Services Authority ("DFSA") and the New York State Banking Department ("Department"), collectively (the "Authorities").
2. "Supervised Institution" means a firm authorized by the DFSA to carry on banking activities through the Dubai International Financial Center ("DIFC") and subject to the supervision of the DFSA, or a Banking Organization that is subject to regulation or supervision by the Department.
3. "Banking Organization", means any entity chartered under New York Banking Law ("NYBL").

4. The term "Branch" includes branches, agencies and representative offices and means an organizational unit of a Supervised Institution incorporated in the Home Authority jurisdiction operating in the Host Authority jurisdiction.
5. "Subsidiary" means a separate legal entity authorized or supervised by a Host Authority and controlled (as such term may be used in applicable law) by a Supervised Institution incorporated in the other jurisdiction.
6. "Cross-border Establishment" means a Branch or Subsidiary.
7. "Home Authority" means in the case of a Banking Organization chartered in New York State, the Department, and in the case of a firm authorized by the DFSA to carry on banking activities through the DIFC, the DFSA. The DFSA and the Department are responsible for the supervision, on a consolidated basis, of a Supervised Institution and its Cross-border Establishments.
8. "Host Authority" means either the DFSA or the Department in its role as supervisor of one or more Cross-border Establishments of a Supervised Institution incorporated in the Home Authority jurisdiction.

## II. Competent Authorities

The Department regulates and supervises Banking Organizations as well as New York licensed branches, agencies and representative offices of foreign banking institutions domiciled outside of the United States.

The DFSA is in charge of the supervision of banks (including foreign bank branches and representative offices) located within the jurisdiction of the DIFC.

### III. Sharing of Information

The Authorities recognize first and foremost the information should be shared in order to facilitate effective supervision of Supervised Institutions on a consolidated basis. Information-sharing should include contact during the authorization and licensing process, in the supervision of the ongoing activities of such entities and in the handling of problems regarding the Supervised Institutions.

The Authorities hereby recognize that close cooperation during the authorization process of a Cross-border Establishment as well as sharing of information on an ongoing basis would be mutually advantageous for the Authorities for effective supervision of Supervised Institutions exercised on a consolidated basis.

To the extent possible, a request for information pursuant to this Memorandum should be made in writing. Where the Authorities perceive a need for expedited action, a request may be initiated in any form but should be confirmed subsequently in writing.

A request for information should generally specify the following:

- a) the information sought by the requesting Authority;
- b) a general description of the matter which is the subject of the request and the purpose for which the information is sought; and
- c) the desired time period for reply and, where appropriate, the urgency thereof.

The Authority receiving a request for information should endeavor to acknowledge receipt of such request as soon as possible by mail, fax or e-mail

and, to the extent possible, specify the estimated time period for providing response.

In connection with the authorization process,

- a) the Host Authority should notify the Home Authority, without delay, of applications for approval to establish or acquire Cross-border Establishments in the host jurisdiction;
- b) upon request, the Home Authority should inform the Host Authority whether the applicant Supervised Institution is in substantial compliance with banking laws and regulations, and whether it may be expected, given its administrative structure and internal controls, to manage the Cross-border Establishment in an orderly manner. The Home Authority should also, upon request, assist the Host Authority by verifying or supplementing any information submitted by the applicant;
- c) the Home Authority should inform the Host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated supervision over the applicant. Similarly, the Host Authority should indicate the scope of its supervision and indicate any specific features of its supervision that might give rise to the need for special arrangements in that regard and;
- d) to the extent permitted by law, the Home and Host Authorities should share information on the fitness and properness of prospective directors, managers and relevant shareholders of the Cross-border Establishment.

The procedures described above also would apply, to the extent appropriate, in cases where a Supervised Institution, rather than acquiring or establishing a Cross-border Establishment, seeks to acquire shares of a Supervised Institution

in the other jurisdiction and is required to seek authorization from the Authority in that other jurisdiction in order to acquire such shares.

When a Supervised Institution within the jurisdiction of the Home Authority proposes to set up a Cross-border Establishment in the territory of the Host Authority jurisdiction, the Host Authority shall seek the opinion of the Home Authority (or obtain a statement of “no-objection”) before the authorization is granted.

In connection with the ongoing supervision of Cross-border Establishments in New York and the DIFC the Authorities should:

- a) Provide information to each other regarding material developments or concerns with respect to the operations of a Cross-border Establishment;
- b) Respond to requests for information received from each other on their respective regulatory systems and inform each other about major changes, in particular, those which have a significant bearing on the activities of Cross-border Establishments;
- c) Endeavor to inform the appropriate Host Authority, in a timely manner and to the extent reasonable, about any external factor which may significantly influence the financial condition of such Cross-border Establishment in the host jurisdiction;
- d) Inform the relevant Authority of material administrative penalties imposed, or other formal enforcement action taken, against a Cross-border Establishment. Prior notification should be made, as far as practicable and subject to applicable laws; and

Before enforcement or administrative action against a Cross-border Establishment is taken by one Authority on the sole basis of information received from the other Authority, the Authority seeking to take such action will endeavor to consult the other Authority.

#### IV. On-site Inspections

The Authorities recognize that cooperation is particularly useful in assisting each other in carrying out on-site inspections of Cross-border Establishments in the host jurisdiction.

At the discretion of the Home Authority and in accordance with the applicable laws and provisions in each jurisdiction, on-site inspections may be carried out independently or jointly with the Host Authority. The Host Authority should allow the Home Authority to carry out on-site inspection concerning any Cross-border Establishments of a Supervised Institution within its jurisdiction, subject to the fulfillment of the following formalities;

- a) The Authorities will use their best efforts to ensure that requests for on-site inspections or/and participation in the inspections are provided by the Home Authority at least two months before the anticipated date of the visit. Specifically, such request should indicate the purpose and scope of the inspection or the type of participation in the inspection, its expected duration, the institutions to be inspected and provide information regarding the persons who will take part in the inspection;
- b) The Authorities should consider, to the extent reasonable, requests for on-site inspections on an expedited basis where a demonstrated supervisory need exists;

- c) The Home Authority should inform and provide the Host Authority, to the extent reasonable, the results of an inspection relevant to the operations of the Cross-border Establishment at the conclusion of such inspection.

#### V. The Supervision of Cross-Border Establishments

This paragraph shall apply if a Host Authority is unable to obtain from a Cross-border Establishment information that is considered necessary to carry out its supervisory responsibilities regarding such establishment because such information is maintained at an office of a Supervised Institution located outside of the host jurisdiction. The Host Authority shall contact the Home Authority to request assistance in gaining access to the necessary information from the office of the Supervised Institution located outside of the host jurisdiction. The Authorities will endeavor to work together to find an appropriate solution.

#### VI. Financial Crimes

The Authorities will cooperate closely when they identify suspected financial criminal activities in Supervised Institutions. For the purposes of this Memorandum, financial crimes include, without limitation, money laundering and unauthorized banking.

The Home and Host Authorities may share information to the extent allowed under their laws on financial crimes concerning the respective Supervised Institutions which carry out cross-border activities in the other jurisdiction or which could affect the other jurisdiction. In the event that an Authority, during an inspection, detects a serious violation of the criminal laws of its jurisdiction, the Authority may be under a strict legal obligation to pass the information immediately to appropriate law enforcement authorities. As permitted by law, the Authority should inform the other Authority of its intended action.

## VII. Protection of Information

Information should be shared to the extent reasonable and subject to relevant statutory provisions, including those restricting disclosure. The request for information under this Memorandum may be denied on grounds of public interest or national security or when disclosure would interfere with an ongoing investigation.

Any confidential information received by one Authority from the other will be used exclusively for supervisory purposes. To the extent permitted by law, each Authority will hold confidential all such information obtained. In this regard, employees of the Authorities are generally bound to hold confidential all information obtained during the course of their duties. It is understood that in certain circumstances an Authority in one jurisdiction that receives confidential information from an Authority in another jurisdiction may, to the extent permitted by law, disclose such information to a third party supervisory authority. This should only be done if there is a legitimate common interest in the matter and if the third party supervisory authority is also bound to hold the information confidential. The Authority being asked to disclose information should consult with, and seek agreement from, the Authority that originated the information, who may attach conditions to the release of the information, prior to passing it to a third party supervisory authority. It is also understood that an Authority may be required under law to disclose information it has received from the other Authority to appropriate law enforcement authorities.

In the case where an Authority is legally compelled to disclose confidential information received pursuant to this Memorandum, such Authority shall cooperate in seeking to preserve the confidentiality of the information to the

extent permitted by law. The Authority receiving a legally enforceable request for confidential information provided under this Memorandum should, to the extent permitted by law, consult with, and seek agreement from, the Authority that provided such information before providing it to the requesting party. If the Authority that provided the information does not consent to the disclosure, the Authority that is compelled to share it will advise the requesting party that the forced disclosure could adversely affect the future transmission of confidential information.

In cases where an Authority receives a request for information from a third party, but disclosure is not legally compelled or necessary to carry out the Authority's lawful supervisory responsibilities, the Authority receiving the request must consult and obtain the prior consent from the Authority that originally provided the information before releasing it.

#### VIII. Ongoing Coordination

The Authorities may promote their cooperation through visits for information purposes and by exchanges of staff. In addition, the Authorities may pursue areas where the training of staff at one Authority would benefit from input and support by the other in order to reinforce sound banking supervisory practices in both jurisdictions.

The Authorities may conduct meetings as often as appropriate to discuss issues concerning Supervised Institutions which maintain Cross-border Establishments within their respective jurisdictions.

Cooperation and assistance in accordance with this Memorandum will continue until the expiration of 30 days after one Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance. If an Authority gives such notice, cooperation and assistance in accordance with this

Memorandum will continue with respect to all requests for assistance that were made before the effective date of notification until the requesting Authority withdraws the matter for which assistance was requested. In the event of termination of this Memorandum, information obtained under this Memorandum will continue to be treated confidentially.

**AGREED** this date, 11 June 2010  
State of New York Banking Department

By Richard H. Neiman  
Richard H. Neiman, Superintendent of Banks

**AGREED** this date, 11 June 2010  
Dubai Financial Services Authority

By Paul M. Koster  
Paul M. Koster, Chief Executive