

MEMORANDUM OF UNDERSTANDING



U. S. Securities
and Exchange Commission



European Securities
and Markets Authority

Concerning Consultation, Cooperation
and the Exchange of Information Related to
the Supervision of Cross-Border Regulated Entities

**MEMORANDUM OF UNDERSTANDING CONCERNING
CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER REGULATED ENTITIES**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the United States Securities and Exchange Commission ("SEC") and the European Securities and Markets Authority ("ESMA") have reached this Memorandum of Understanding ("MOU") regarding mutual assistance in the supervision and oversight of certain regulated entities that operate on a cross-border basis in the jurisdictions of both the SEC and ESMA. The SEC and ESMA express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; fostering market and financial integrity; maintaining confidence in capital markets and reducing systemic risk.

In light of the evolving regulatory landscape and the potential for future changes to the Authorities' regulatory mandates and/or legal authority, this MOU envisages the use of Annexes regarding particular Regulated Entities and Cross-Border Regulated Entities. Consequently, without limiting the Authorities' abilities to cooperate or share information outside the terms of the MOU, this MOU itself encompasses consultation, cooperation and the exchange of information relating only to those Regulated Entities or Cross-Border Regulated Entities (as appropriate) described in the relevant Annex(es).

ARTICLE ONE: DEFINITIONS

1. "Authority" means the SEC or the ESMA (together the "Authorities").
 - a. "Requested Authority" means the Authority to whom a request is made under this MOU; and
 - b. "Requesting Authority" means the Authority making a request under this MOU.
2. "Person" means a natural person, unincorporated association, partnership, trust, investment company or corporation.
3. "Regulated Entity" means a financial market participant or other Person whose activities subject it to the supervision, oversight and/or authorization or registration of one of the Authorities.
4. (a) "Cross-Border Regulated Entity" means a Regulated Entity identified in or defined as such in the relevant Annex(es), subject to regulation: (i) by both Authorities, whether or not the Regulated entity is registered, recognized or exempted from registration by either Authority, or (ii) by one Authority, where the Regulated Entity of that Authority is controlled by a separate Regulated Entity subject to regulation by the other Authority.
 - (b) The Annex(es) does not limit the Authorities' ability to cooperate under this MOU, consistent with each Authority's laws and regulations, with regard to the

supervision of other Regulated Entities providing cross-border services that may come under their respective jurisdictions in the future.

5. "On-Site Visit" means any routine, sweep, or for-cause regulatory visit to or inspection of the Books and Records and premises of a Cross-Border Regulated Entity and entities to which functions have been outsourced and which fall under the regulatory ambit of the relevant Authority, for the purposes of ongoing supervision and oversight.
6. "Governmental Entity" means those entities referenced as such in the relevant Annex(es).
7. "Books and Records" means documents, books, and records of, and other information about, a Regulated Entity.
8. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Regulated Entity.

ARTICLE TWO: GENERAL PROVISIONS

9. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Cross-Border Regulated Entities (as set out in the Annexes) that carry out an activity in the United States and the European Union ("EU"), in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation in particular as described in the Annex(es). The provisions of this MOU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.
10. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
11. This MOU does not limit an Authority in taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Four), or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of another Authority.
12. This MOU does not prejudice, limit or alter the terms and conditions of any bilateral or multilateral Memoranda of Understanding or other arrangements concerning cooperation in cross-border securities matters between or among either Authority and any regulators from member-states of the European Union.

13. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Cross-Border Regulated Entities. Following consultation, cooperation may be denied:

- a) Where the cooperation would require an Authority to act in a manner that would violate relevant applicable laws and/or regulations;
- b) Where a request for assistance is not made in accordance with the terms of the MOU; or
- c) On the grounds of public interest.

Where a request for assistance under this MOU is denied, or where assistance is not available under the relevant applicable law, the Requested Authority will provide the reasons for not granting the assistance and consult with the Requesting Authority.

14. To facilitate cooperation under this MOU, the Authorities designate the individuals listed in the respective Appendix of the relevant annexes as contact persons for the MOU. Additional contact persons for each type of Regulated Entity may also be specified in the relevant Annex(es).

15. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MOU, should it be deemed necessary, and, in accordance with Article Eight, may amend the MOU to include the addition of new types of Cross-Border Regulated Entities.

ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION

16. **Consultation.** The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities (as set out in the Annex(es) of this MOU), and intend to consult regularly at the staff level regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities; and (iii) any other areas of mutual supervisory interest. Further detail about the scope of supervisory cooperation for each type of Cross-Border Regulated Entity can be found in the relevant Annex(es).

17. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:

- a) The initial application of a Regulated Entity or a Cross-Border Regulated Entity in one jurisdiction for authorization, registration, recognition or exemption from registration in the other jurisdiction;

- b) The ongoing oversight of a Cross-Border Regulated Entity; or
- c) Regulatory approvals or supervisory actions taken in relation to a Cross-Border Regulated Entity by one Authority that may impact the operations of the entity in the territory of the other Authority.

ARTICLE FOUR: ON-SITE VISITS

18. The Authorities intend to facilitate access to Cross-border Regulated Entities operating in their respective territories with a view to improving the effectiveness of the oversight of such entities.
19. The Authority seeking to conduct an On-Site Visit will provide advance notice to the other Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it, and will consult with the other Authority on the intended timeframe and scope of the On-Site Visit.
20. Where necessary in order to fulfill its supervision and oversight responsibilities and to ensure compliance with its laws and regulations, an Authority seeking to examine a Cross-Border Regulated Entity located in the territory of the other Authority will consult and work collaboratively with the other Authority in conducting an On-Site Visit. In addition to paragraph 19, the Authorities will comply with the following procedures before conducting an On-Site Visit:
 - a) The other Authority will endeavor to share with the Requesting Authority any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity.
 - b) The Authorities intend to assist each other regarding On-Site Visits, including cooperation and consultation in reviewing, interpreting and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Cross-Border Regulated Entity.
 - c) The Authorities will consult and, where desired, may conduct joint inspections with a view to possibly leveraging resources in the oversight of a Cross-Border Regulated Entity.
 - d) Where an Authority is seeking to conduct an examination that involves requesting information directly from a Cross-Border Regulated Entity's offices located in the other Authority's jurisdiction, the Authority will endeavor to provide the other Authority with copies of any document requests to the Cross-Border Regulated Entity for Books and Records or other information.

ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE

19. To the extent possible, a request for written information pursuant to Article Three or pursuant to the relevant Annex(es), should be made in writing, and addressed to the relevant contact person. A request generally should 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 supervisory, oversight or compliance purpose for which the information is sought; and
 - c) The desired time period for reply and, where appropriate, the urgency thereof.
20. In Emergency Situations, the Authorities will endeavor 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.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

21. The Requesting Authority may use non-public information obtained under this MOU for the purpose of supervising Cross-Border Regulated Entities and as described in the Annex(es) to the MOU.
22. Except as provided in the Annex(es) to the MOU, the Authorities recognize that while information is not to be gathered or shared by the Requested Authority under the auspices of this MOU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In cases where a Requesting Authority seeks to use information obtained under this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the Requested Authority. Where applicable, use will be subject to the terms and conditions of existing arrangements for enforcement cooperation between the SEC and the relevant EU regulator.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

23. Except for disclosures in accordance with the MOU, including permissible uses of information under Article Six and the Annex(es), each Authority will keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.

24. Except as provided in paragraph 25, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. If consent is not obtained from the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
25. Where required by law, it may become necessary for the Requesting Authority to share information obtained under this MOU with other Governmental Entities in its jurisdiction, as defined in the Annex(es). In these circumstances and to the extent permitted by law:
 - a. The Requesting Authority will notify the Requested Authority.
 - b. Prior to passing on the information, the Requesting Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
26. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
27. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

ARTICLE EIGHT: AMENDMENTS AND EXECUTION OF MOU

28. Amendments to this MOU, including the addition of new annexes, can be made by the written agreement of both Authorities.
29. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities.

ARTICLE NINE: TERMINATION

30. Cooperation and assistance in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate its cooperation and assistance hereunder. If either authority gives such notice, cooperation and assistance under this MOU will continue with respect to all requests for assistance that were made, or information provided,

before the effective date of notification (as indicated in the notice but no earlier than the date the notice is sent) until the Requesting Authority terminates the matter for which assistance was requested.

31. Without prejudice to paragraph 30, in the event of termination of all annexes to this MOU, the MOU itself will terminate.
32. In the event of the termination of this MOU, information obtained under this MOU will continue to be treated confidentially in the manner prescribed under articles Six and Seven.

ANNEX I

SPECIFIC PROVISIONS REGARDING CREDIT RATING AGENCIES

ARTICLE 1. DEFINITIONS

For purposes of this Memorandum of Understanding the following definitions apply:

1. "Credit Rating Agency" ("CRA") means:
 - a) In the US context, a Nationally Recognized Statistical Rating Organization as defined by US federal securities laws, registered with and subject to oversight by the SEC.
 - b) In the EU context, a legal person whose occupation includes the issuing of credit ratings on a professional basis, subject to registration with and oversight by ESMA.
2. "Cross-Border CRA" means a CRA subject to registration and oversight by both Authorities, and listed in Appendix A of this MOU.
3. "Governmental Entity" means:
 - a. In the United States, the US Department of the Treasury, the US Department of Justice, the US Board of Governors of the Federal Reserve System, or the Financial Stability Oversight Council, if the Requesting Authority is the SEC; and
 - b. In the European Union, the European Commission ("EC"), the European Banking Authority (EBA) established by Regulation (EU) No 1093/2010 and the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010, the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010, and the entities referred to in Article 27(2) of Regulation (EC) No 1060/2009 on credit rating agencies (as amended).
4. For the purposes of the MOU, CRAs are Regulated Entities and Cross-Border CRAs are Cross-Border Regulated Entities. As a Cross-Border Regulated Entity under the MOU, Cross-Border CRAs are subject to all of the provisions of the MOU as well as the provisions of this Annex.

ARTICLE 2. SCOPE OF COOPERATION AND EXCHANGE OF INFORMATION

5. **Registration.** Where a CRA registered with one Authority seeks to register with the other Authority, the Authority receiving the CRA's application will notify the other Authority. In addition to any relevant information covered by paragraph 6 of this

Annex, the Authority with which the CRA is already registered will provide to the Authority receiving the CRA application, upon written request, information and documents in its files related to registration, not otherwise available to Requesting Authority, including information and documents regarding the organization and rating processes provided to the Requested Authority by the applicant Cross-Border CRA in their latest available version, as well as any relevant information covered by paragraph 7 of this Annex.

6. **Unsolicited Assistance and Advance Notification.** Each Authority will use its best efforts to provide, without prior request, the other Authority with any information that it considers is likely to be of assistance to the other Authority. In particular, each Authority will inform the other Authority in advance of, where practicable, or as soon as possible thereafter of:
 - a) Pending regulatory changes that may have a significant impact on the operations or activities of a Cross-Border CRA;
 - b) Any material event that could adversely impact a Cross-Border CRA. Such events include known changes in the operating environment, operations, financial resources, management, or systems and control of a Cross-Border CRA;
 - c) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses, authorizations or registration, concerning or related to a Cross-Border CRA;
 - d) The imposition of a temporary or permanent suspension or prohibition of the use of a Cross-Border CRA's ratings for regulatory purposes; and
 - e) Any initiation of actions, sanctions, suspensions or prohibitions related to subparagraphs c and d, above.

7. **Exchange of Information.** To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information not otherwise available to the Requesting Authority, and interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation:
 - a) Where appropriate, information relevant to the financial and operational condition of a Cross-Border CRA, including, for example, internal controls procedures;
 - b) Where appropriate, relevant regulatory information and filings that a Cross-Border CRA is required to submit to an Authority including, for example, interim and annual financial statements; and

- c) Where appropriate, regulatory reports prepared by an Authority, including for example: examination reports, findings, or information drawn from such reports regarding Cross-Border CRA.
- d) Where appropriate, information and data on CRA rating activities drawn from the sources referred to in paragraphs 7(a) - 7(c).

ARTICLE 3: PERMISSIBLE USES OF INFORMATION

- 8. Where non-public information and non-public documents are provided by the Requested Authority in response to a request for assistance under this Annex, the Requesting Authority may use the information solely for:
 - a) the purposes set forth in the request for assistance (made in accordance with Article Five of the MOU), including supervisory and oversight purposes, and ensuring compliance with the Authority's laws and regulations related to the request; and
 - b) a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, where applicable.
- 9. If the Requesting Authority intends to use information furnished under this Annex for any purpose other than those stated in Paragraph 8 above, including use in assisting in a criminal investigation or proceeding, it must seek the consent of the Requested Authority in accordance with Article Six of the MOU.
- 10. **Confidentiality of Information.** Each Authority will keep confidential requests made under this Annex, the contents of such requests, and any matters arising under this Annex, including consultations between or among the Authorities, and unsolicited assistance, in accordance with Article Seven of the MOU.

ARTICLE 4: EFFECTIVE DATE OF THE CRA ANNEX

- 11. This annex will terminate in one year from the date of execution if the EC does not make a decision on equivalency of U.S. legal and supervisory framework for CRAs to the corresponding EU framework under Article 5(6) of Regulation (EC) No 1060/2009 on credit rating agencies (as amended); or if the EC decides that U.S. legal and supervisory framework for CRAs is not equivalent to the corresponding EU framework, whichever comes first.

Signed by:

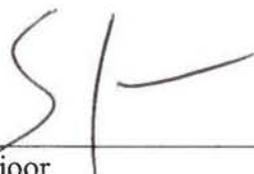


Mary L. Schapiro

Chairman

For the United States Securities and Exchange Commission

Date: 3/14/2012



Steven Maijoor

Chairman

For the European Securities and Markets Authority

Date: 3/15/2012

APPENDIX 1

Cross Border CRAs

Names of the Cross-Border CRAs
A.M. Best Company, Inc. – Ambest Road, Oldwick, New Jersey 08858, United States
A.M. Best Europe – Rating Services Limited, 12 Arthur Street. 6th Floor, London EC4R 9AB UK.
DBRS Ratings, Inc.. – 140 Broadway, 35 th Floor, New York, NY 10005
DBRS Ratings Limited, 25 Copthall Avenue, EC2R 7BP, London, UK
Fitch Ratings, One State Street Plaza, New York, NY 10004, United States
Fitch France S.A.S (France), 60 rue de Monceau, 75008 Paris, France.
Fitch Deutschland GmbH (Germany), Taunusanlage 17, 60325 Frankfurt an Main, Germany
Fitch Italia S.PA. (Italy), Vicolo Santa Maria alla Porta, 1, 20123 Milano (MI), Italy
Fitch Polska S.A (Poland) Zielna 37, 00-108, Warsaw, Poland.
Fitch Ratings España SAU. (Spain) Paseo de Gracia, 85, 7thfloor, 08008 Barcelona, Spain.
Fitch Ratings Limited (United Kingdom) 101 Finsbury Pavement, London EC2A 1RS, UK.

Fitch Ratings CIS Limited (United Kingdom) 101 Finsbury Pavement, London EC2A IRS, UK.
Moody's Investor Services, Inc., 250 Greenwich Street, New York, NY 10007 United States
Moody's Investors Service Cyprus Ltd (Cyprus), Kanika Business Centre 319 28th October Avenue PO Box 53205 Limassol, CY 3301, Cyprus.
Moody's France SAS (France), 96 boulevard Haussmann. 75008 Paris, France.
Moody's Deutschland GmbH (Germany), An der Welle 5, 60322 Frankfurt am Main, Germany..
Moody's Italia S.r.l. (Italy), Corso di Porta Romana, 68, 20122 Milano (MI), Italy
Moody's Investors Service España S.A. (Spain), Barbara de Braganza, 2 Madrid, 28004 Spain.
Moody's Investors Service Ltd (UK), One Canada Square Canary Wharf London, UK E14 5FA, UK.
Standard & Poor's Ratings Services, 55 Water Street, New York, NY 10041-0003 United States
Standard & Poor's Credit Market Services France SAS (France), 40 rue de Courcelles, Paris, 75008, France
Standard & Poor's Credit Market Services Italy SRL (Italy), Vicolo San Giovanni sul Muro, 1, 20121 Milano (MI), Italy.
Standard & Poor's Credit Market Services Europe Limited (UK) 20 Canada Square, Canary Wharf London E14 5LH, UK.

APPENDIX 2

List of Contact Persons

Country	Name of the Authority	Address	Name of Contact Person	Telephone Number	E-Mail	Fax
Europe - France	ESMA	103 rue de Grenelle 75007 Paris	Verena Ross	+ 33 1 58 36 51 13	Verena.ross@esma.europa.eu	+ 33 1 58 36 43 30
Europe - France	ESMA	103 rue de Grenelle 75007 Paris	Felix Flinterman	+ 33 1 58 36 59 12	Verena.ross@esma.europa.eu	+ 33 1 58 36 43 30
United States	SEC	100 F Street, NE Washington, DC 20549	Director, Office of International Affairs	+1-202-551- 6690		+1-202-772- 9281
United States	SEC	100 F Street, NE Washington, DC 20549	Director, Division of Trading and Markets	+1-202-551- 5500		