

**MEMORANDUM OF UNDERSTANDING
REGARDING
THE TREATMENT OF NON-PUBLIC INFORMATION
SHARED BETWEEN THE NORTH AMERICAN SECURITIES ADMINISTRATORS
ASSOCIATION AND THE SECURITIES AND EXCHANGE COMMISSION**

This Memorandum of Understanding (“MOU”) is entered into between:

- (1) the North American Securities Administrators Association (“NASAA”); and
- (2) the Securities and Exchange Commission (the “SEC,” and, together with NASAA, the “Parties”).

This MOU dated February 17, 2017 (the “Effective Date”) is entered into for the purpose of assisting the Parties in monitoring and evaluating new and amended exemptions at the state and federal level. This MOU sets forth the understanding of the Parties with respect to the treatment of non-public information (as defined below) when the Parties elect to share (at their discretion) non-public information regarding their observations of, or discussions about, existing, new and amended exemptions and related requirements pursuant to this MOU.

Accordingly, the Parties hereby mutually agree to the following:

1. For purposes of this MOU, “Non-Public Information” means any data, information, or reports submitted, received, or shared among the Parties pursuant to this MOU. Such Non-Public Information includes the information itself, in any form (including oral), and any document to the extent it contains such information. The provisions of this MOU do not apply to data, information, or reports obtained by the Parties through a source outside this MOU or pursuant to the Parties’ own authority, and this MOU is not intended to modify or replace any existing agreements or practices regarding the sharing of information between the Parties. This MOU does not alter the terms and conditions of bilateral or multilateral arrangements concerning cooperation in enforcement matters between the Parties.
2. This MOU does not require either Party to create or maintain Non-Public Information or to provide or share Non-Public Information with the other Party, and all sharing of Non-Public Information pursuant to this MOU shall be at the sole discretion of each Party and in keeping with any disclosure regulation or policy to which such Non-Public Information may be subject and each Party’s budget priorities.
3. It is the intent of the Parties that when one of the Parties provides Non-Public Information pursuant to this MOU to the other Party (hereafter such entity providing information shall be designated a “Providing Party” and any such receiving party shall be designated a “Receiving Party”), the Receiving Party shall presume the information so provided to be confidential Non-Public Information, and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Party designates otherwise in writing.

4. This MOU does not apply to Non-Public Information that becomes publicly available in a manner other than by a breach of this MOU by a Receiving Party. This MOU does not create any right enforceable against the Parties or any of their officers or employees or any other person to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge the execution of a request pursuant to the MOU.
5. All Non-Public Information transferred from the Providing Party to the Receiving Party remains the records of the Providing Party and shall not be disclosed by the Receiving Party except as provided for in this MOU.
6. The SEC may use Non-Public Information it receives under this MOU from NASAA to inform any investigation, examination, proceeding, or civil action. The SEC will not initiate a proceeding or civil action based on the Non-Public Information without giving prior notice to NASAA, and, other than as provided in paragraph 11(e) or paragraph 12, will disclose such information to a third party or the public only with the prior written consent of NASAA.
7. NASAA may share Non-Public Information it receives from the SEC under this MOU with representatives of state governments whose primary assignment is the regulation of the securities business within those states if NASAA determines that disclosure to those representatives will assist in effectuating greater uniformity in federal-state securities matters. Before sharing any Non-Public Information with representatives of state governments, NASAA must inform the representatives of the terms of this MOU and obtain the representatives' consent to be bound by those terms and treated as a Receiving Party. States may use Non-Public Information they receive from NASAA to inform any investigation, examination, proceeding, or civil action, but they will not initiate a proceeding or civil action based on the Non-Public Information without giving prior notice to the SEC, and, other than as provided in paragraph 11(e) or paragraph 12, will disclose such information to a third party or the public only with the prior written consent of the SEC.
8. Unless otherwise authorized in writing by a Providing Party, or as contemplated in this MOU, only officials and employees of a Receiving Party who have a need to know the information in the performance of their official work duties consistent with applicable law may receive Non-Public Information. All officials and employees of a Receiving Party with whom Non-Public Information is shared must be advised of and, as a condition of receiving Non-Public Information, be bound by the terms of this MOU and instructed to comply with all of its terms.
9. Except as provided in paragraphs 4, 6, 7, 11, and 12 of this MOU, a Receiving Party may not share Non-Public Information with any other person without the prior written consent of the Providing Party. This restriction on sharing extends to any person, agency, or other entity.
10. A Receiving Party will take all steps reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to Non-Public Information that is subject to this MOU.

11. If a Receiving Party receives a request from a third party for Non-Public Information of the Providing Party, such as a Freedom of Information Act request or subpoena, or if the SEC as the Receiving Party has an obligation under 17 CFR 201.230 to make a disclosure of Non-Public Information of the Providing Party, the Receiving Party will:
 - a) unless prohibited by law, as soon as practicable notify the Providing Party of such request, subpoena, order, or other process (including the SEC's obligation under 17 CFR 201.230) and furnish to the Providing Party copies of any such request or order as well as any documents related thereto;
 - b) afford the Providing Party a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith;
 - c) cooperate fully with the Providing Party to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Party's behalf that may reasonably be requested to be asserted;
 - d) notify the requestor seeking the Non-Public Information – or, in the case of the SEC's obligation under 17 CFR 201.230, the party to whom the SEC owes the obligation – that the information was obtained from the Providing Party and, where applicable, notify the requestor that requests for such information should be made directly to the Providing Party in accordance with applicable federal or state law;
 - e) absent written consent from the Providing Party or as provided in paragraph 12, not produce the Non-Public Information unless ordered to do so by the court or administrative body adjudicating the third-party request, except that the SEC need not wait for an order or the written consent of the Providing Party before initiating production under 17 CFR 201.230(b)(3); and
 - f) consent to application by the Providing Party to intervene in any action in order to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith.
12. Nothing in this MOU will prevent a Receiving Party from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to request and receive the Non-Public Information or a legally valid and enforceable subpoena or order by a court of competent jurisdiction for the Non-Public Information or testimony related thereto if, in the case of a subpoena or such order, the Receiving Party:
 - a) reasonably determines that efforts to quash, appeal, or resist compliance with the subpoena or order would be unsuccessful or against its interest;

- b) attempts, to the extent practicable, to secure a protective order to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith; and
- c) immediately notifies the Providing Party of its intent to comply with the subpoena or order and of any actions taken in compliance with the subpoena or order.

In complying with a request received from a duly authorized Committee of the United States Congress, the Receiving Party shall:

- a) advise the Committee that the Non-Public Information being produced belongs to the Providing Party; and
 - b) use its best efforts to obtain the commitment or agreement of the Committee that it will maintain the confidentiality of the information.
13. Should a question arise as to whether information is public or non-public, the Receiving Party will immediately contact the Providing Party and seek a determination as to the status of the information. If the Providing Party determines that the information is Non-Public Information, the Receiving Party will treat it in accordance with this MOU.
14. The Parties intend that sharing of information that is subject to this MOU will not constitute public disclosure, nor will it constitute a waiver of confidentiality or any privilege applicable to such information (including, but not limited to deliberative and consultative materials such as written analysis, opinions or recommendation relating to Non-Public Information that is prepared by or on behalf of one of the Parties). The Parties expressly reserve all evidentiary privileges and immunities applicable to the information shared under this MOU.
15. Each Party represents that it has authority to enter into this MOU and to maintain the confidentiality of Non-Public Information in accordance with this MOU. In the event of any material change in a Party's authority to either enter into this MOU or maintain the confidentiality of Non-Public Information that is subject to this MOU, written notification will be provided immediately to the other Party. If there has been a material change in a Party's authority to either enter into this MOU or maintain the confidentiality of Non-Public Information that is subject to this MOU, such Party agrees that Non-Public Information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU.

16. The MOU shall become effective as of the Effective Date and may be revised or modified upon agreement. The Party recommending the revision or modification shall provide the other Party with thirty calendar days advance written notice of the proposed change. Either Party may withdraw from this MOU with respect to prospective sharing of information by providing thirty calendar days advance written notice to the other Party. In the event of such a withdrawal, the Parties agree that (1) Non-Public Information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU; and (2) at the request of a Providing Party, any record or material provided by that Providing Party to the Receiving Party subject to this MOU shall be returned to such Providing Party or destroyed in accordance with the records retention policies of the Receiving Party.
17. As soon as practicable after execution of this MOU, each Party will advise the other Party of the name, title, and contact information, including addresses, for the appropriate official(s) to contact for purposes of notices and exchanges of information. This contact information will be updated as appropriate.
18. This MOU and all of its terms and conditions are not intended to relieve either a Providing Party or a Receiving Party of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a or the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422.
19. This MOU may be executed in two or more counterparts, each of which together shall constitute one and the same agreement.

This MOU is signed and executed by the authorized representatives of the Parties as of the Effective Date.



Name: Michael S. Piwowar
Title: Acting Chairman
Organization Name: Securities and Exchange
Commission
Date: February 17, 2017



Name: Mike Rothman
Title: President
Organization Name: North American
Securities Administrators Association
Date: February 17, 2017