

REPUBLIQUE FRANCAISE

REPUBLIC OF TURKEY

COMMISSION DES OPERATIONS DE  
BOURSE

CAPITAL MARKETS BOARD

## MEMORANDUM OF UNDERSTANDING ON THE EXCHANGE OF INFORMATION

The Capital Markets Board of Turkey and the *Commission des opérations de bourse*;

Considering in light of the increasing internalization of activities in securities, the need for mutual cooperation, and consultation in order to facilitate the performance of their functions in the areas mentioned hereinafter;

Considering, the importance of ensuring compliance with and enforcement of securities laws and regulations applicable in France and in Turkey;

Wishing to achieve the provision of the broadest possible mutual assistance, and the strengthening of cooperation and exchange of information in order to enhance the performance of the supervisory functions and the effective enforcement of the laws and regulations governing financial markets;

Have thus reached the following understanding;

### Article 1 - Signatory Authorities

1. The Capital Markets Board of Turkey (CMB) is an independent legal entity with its own authority and responsibility mandated by the Capital Market Law (Law) dated 1981.

The CMB has the responsibility for the regulation, supervision and enforcement of primary markets, secondary markets and financial intermediation in Turkey within the scope of the Law and relevant legislation. It has statutory powers of investigation, and has the ability to exercise its powers for the purpose of cooperation with regulators in other countries.

2. The *Commission des opérations de bourse* (COB) is an independent administrative authority set up by the Ordinance n°67-833 of September 28, 1967. The COB oversees the protection of savings invested in financial instruments and all other investments offered to the public, the disclosure of information to investors and the proper functioning of financial instrument markets”.

## Article 2 - Definitions

For the purpose of this Memorandum

1. "Authority" means:
  - (a) the Capital Markets Board (CMB) of Turkey;
  - (b) the *Commission des opérations de bourse* (COB) of France.
2. "Requested Authority" means the Authority to whom a request is made under this Memorandum;
3. "Requesting Authority" means the Authority making a request under this Memorandum;
4. "Laws and Regulations" means the provisions of the laws, regulations and other regulatory requirements applicable in the financial field in France and in Turkey;
5. "Financial Instruments" means shares, bonds and other forms of securitized debts, futures and derivative products, mutual funds and any other financial products within the respective competence of the Authorities.
6. "Issuer" means a natural or legal person who issues or proposes to issue any security;
7. "Financial Markets" means regulated markets and any other Securities and derivatives market supervised by the Authorities;
8. "Investment Services" means carrying out and trading transactions involving Financial Instruments on Financial Markets on its own account and/or on behalf and for the account of third parties;
9. "Investment Services Providers" means investment firms, credit institutions and any other person as authorized to provide Investment Services within the law and regulations applicable in the countries of the Authorities.

## Article 3 - Principles

1. The purpose of this Memorandum of Understanding (MoU) is to protect investors and to promote the integrity of financial markets by providing a framework for cooperation, including channels for communication, increased mutual understanding, the exchange of regulatory and technical information, and investigative assistance.
2. The MoU serves as a basis for cooperation for the authorities and does not create any binding international legal obligations, nor does it modify or supercede any laws, regulations, or regulatory requirements in force or applying in France or Turkey. The MoU does not create any rights enforceable by third parties, nor does it affect any arrangements under any other international agreements.
3. The performance of the provisions of this MoU shall be consistent with domestic laws, regulations, and conventions of the respective countries of the Authorities and within the availability of respective resources of the Authorities, and the performance of the provisions shall not be contrary to the public interests of the Requested Authority.

4. To the extent permitted by the laws and regulations of France and Turkey, the Authorities will make reasonable efforts to provide each other with information which is discovered and which gives rise to a suspicion of a breach, or anticipated breach, of the laws, rules, or regulations of the other Authority's jurisdiction.

Moreover, the Authorities will be sensitive and will make reasonable efforts to provide each other with information even though the requested information is not a subject of a suspicion of a breach, or anticipated breach, of the laws, rules, or regulations of the other Authority's jurisdiction. In any case, this kind of requests will be made in order to fulfil the duties of the Requesting Authority arising from the laws and regulations and to ensure the development and maintenance of open, fair and efficient markets.

5. Authorities having believed that facilitating the sharing of core information should be viewed as an essential element of an Authority's emergency preparedness planning and of addressing a crisis, to the extent permitted by their laws and regulations, each Authority will be sensitive on the events subject to its jurisdiction which may affect adversely financial markets in another jurisdiction and consider whether it could be appropriate to notify relevant Authority of such event.

#### Article 4 – Scope of assistance

1. The Authorities will provide each other with the fullest assistance under this MoU, to the extent permitted by their respective national laws, in order to comply with the requests for assistance in connection with investigations to determine whether there has been any violation of the financial laws and regulations and, other requests for information to facilitate the performance of their respective supervision duties. The Requested Authority will provide access to the information it holds to the Requesting Authority and when possessing the legal authority to do so, exercise its powers as necessary to obtain all useful information to comply with the request.
2. The Authorities agree to provide mutual assistance and the exchange of information in response to requests to assist them to perform their respective functions in relation to the following areas, amongst others:
  - (a) Insider dealing, market manipulation, and other fraudulent, deceptive, and manipulative practices in relation to securities, futures and options, and collective investment schemes;
  - (b) Enforcement of the laws, rules, and regulations relating to issuing, dealing in, arranging deals in, managing and advising on securities, futures and options, and collective investment schemes;
  - (c) Checking that the conditions for the taking up of business as investment services providers are met, and in particular fitness and properness of the persons who are authorized to conduct the business referred to above, and promoting high standards of fair dealing and integrity in the conduct of that business;
  - (d) Enforcing applicable laws and regulations relating to the duties, of issuers and of offerers for securities, in relation to the disclosure of relevant information to investors;
  - (e) Compliance with applicable laws and regulations to the disclosure of interests in the securities of companies;

- (f) Other matters agreed upon by the Authorities.
3. The Requested Authority shall take all reasonable steps to provide assistance to the Requesting Authority. In case of any difficulty to provide with the relevant information, the Authorities agree on particular consultations.
  4. Assistance under this MoU may be denied, in particular:
    - (a) where the execution of the request would prejudice the sovereignty, the security the fundamental economic interest or public policy of the State of the Requested Authority;
    - (b) where criminal proceedings have already been initiated in the State of the Requested Authority based on a financial sanction following the same facts and charges by the Requested Authority and against the same persons.
  5. The denial of assistance does not undermine the right of the Authorities to consult each other. When the Requested Authority does not possess the legal authority to provide the assistance requested, the Requested Authority and the Requesting Authority will consult on other possible means of dealing with the request.
  6. Without prior request for assistance, the Authorities may transmit to each other information they hold and which they may consider useful to the other Authority the performance of its functions and for the purposes that may be specified in the transmission letter, in which event the terms and conditions of this MoU will apply if the providing Authority specify that the information is given under this MoU.

#### **Article 5 – Requests for assistance**

1. To the extent permitted by their respective national laws, assistance available by the Requested Authority under this MoU may include but is not limited to;
  - (a) Providing access to information in the files of the Requested Authority;
  - (b) Taking statements from persons;
  - (c) Obtaining documents and information from persons; and
  - (d) Conducting compliance inspections or examinations of investment businesses, securities processing businesses and securities markets.
2. Requests will be made only in writing and addressed to the contact person of the Requested Authority listed in the Appendix A. An urgent request for assistance and a reply to such a request may be made in summary form or by means of communication other than the exchange of letters, provided that they are confirmed within ten business days in the manner prescribed in this MoU.
3. The request for assistance must specify the following:
  - (a) a general description of the information sought by the Requesting Authority;

- (b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;
  - (c) in so far as the request results from investigations of violations of any laws or regulations, a description of the relevant provisions that may have been violated and, if known to the Requesting Authority, a list of the persons or institutions believed by the Requesting Authority to possess the information sought or the places where such information may be obtained;
  - (d) to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure;
  - (e) an indication of the urgency of the Request, or the desired time period for the reply.
4. This MoU does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that any procedures in place in the Authorities' respective countries are observed.
  5. The Authority that obtains information from persons on a voluntary basis will notify the other Authority in detail.
  6. The Authorities agree to provide assistance on matters, which are not necessarily an offence in their own jurisdiction.

#### **Article 6 - Execution of requests**

1. The Requested Authority will provide to the Requesting Authority the information that it holds or that it may obtain by such means as may be determined by the Requested Authority, in accordance with the national laws and regulations of the Requested Authority.
2. To the extent permitted by law, the Requested Authority shall take all reasonable steps to obtain and provide the information sought.
3. The Requested Authority shall use the relevant means at its disposal for the execution of the request. The Authorities shall consult and agree on the types of enquiry that may be necessary for the execution of a request.

To the extent permitted by law, the Requesting Authority shall provide the Requested Authority with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further information as to the circumstances surrounding the request, staff or other resources.

To the extent permitted by law, the Authorities will consider conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations, where it would assist in the effective investigation of the alleged violations. The Authorities should consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and liabilities and the follow up actions to such investigations.

4. In case where the Requesting Authority needs more information than the information provided, additional information can be requested by the Requesting Authority pointing out the subjects to be clarified.
5. Each request will be assessed on a case by case basis by the Requested Authority to determine whether information can be provided under the terms of this MoU. In any case where the request cannot be accepted completely, the Requested Authority will consider whether other relevant information or assistance can be given.
6. The Requested Authority may only refuse to act on a request for assistance where communications of the information might adversely affect the sovereignty, security or public policy of the State of the Requested Authority or where judicial proceedings for the imposition of criminal penalties have already been initiated in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons or on the grounds that the provision of assistance might result in a judicial or administrative sanction being imposed, where a non-applicable judicial or administrative sanction has already been imposed, in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons.
7. Any original document or other material provided in response to a request under this MoU should be returned on request.
8. To the extent permitted by any laws or regulations applying in Turkey or France, each Authority will use reasonable efforts to provide the other Authority with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further information as to the circumstances surrounding the request.
9. Where substantial imbalance has arisen in the cumulative costs incurred, the Requested Authority may require the Requesting Authority to make a contribution to costs.

#### **Article 7 - Permissible use of information**

1. The Requesting Authority shall use the information furnished solely for purposes stated in the request, with a view to ensuring compliance with or enforcement of the national laws or regulations specified in the request and for any criminal, civil, administrative or disciplinary proceeding dealing with the violation of the provisions specified in the request.
2. To the extent permitted by law, the Authorities may supply each other with unsolicited information, the Authorities shall use the information exchanged solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings or for the discharge of the obligation to report to judicial authorities.
3. If the Requesting Authority wishes to use the information provided for any purpose other than those stated in paragraphs 1 and 2 of this article, but remaining within the scope of this Memorandum, including the transmission of this information to other competent regulators in the field of securities, it must first seek permission from the Requested Authority. If the Requested Authority agrees to the use of the information for purposes other than those stated in paragraphs 1 and 2 of this article, it might subject the use of the information to certain conditions. The Requested Authority may refuse such use of the information; in that case, the Authorities will consult each other pursuant to Article 9 regarding the reasons for refusal and the circumstances under which use of the information might otherwise be allowed.

## Article 8 – Confidentiality of the requests and information exchanged

1. Each Authority shall keep confidential, to the extent permitted by law, requests or communications of information, made within the framework of this MoU, the contents of such requests, and any other matters arising during the implementation of this Memorandum, including consultations between the Authorities.
2. In all cases, the Requesting Authority shall keep confidential, to the extent permitted by law, any information received pursuant to this MoU to the same extent as such information would be kept confidential under the national laws and regulations of the Requested Authority.
3. Nothing in paragraphs 1 and 2 shall prevent the Authorities from disclosing information in circumstances when such disclosure is required in order to comply with the obligations under national laws. In this case the Requesting Authority shall inform the Requested Authority and shall undertake that the confidentiality requirements stated in this MoU will be realized by the corresponding authority.

## Article 9 – Consultations

1. The Authorities agree to inform each other on any development in the laws and regulations affecting the scope of this MoU, and to consult each other on a periodic basis and whenever necessary.
2. The Authorities will keep the operation of this MoU under continuous review and will consult each other with a view to improving its operation and resolving any matters which may arise.
3. The Authorities may agree such further arrangements of a practical nature as may be necessary to facilitate the implementation of this MoU.
4. In any case of dispute over the interpretation of this MoU, the Authorities will consult each other with a view to reaching a mutually acceptable interpretation. The Authorities may consult informally, at any time, about a request or proposed request or any information provided within the discretion of an Authority in accordance with Article 4 of this MoU.

## Article 10 – Amendments to the Memorandum

Further to consultations held pursuant to Article 9, the Authorities may agree on such amendments as may be necessary to give effect to this MoU.

## Article 11 – Entrance Into Force

In accordance with domestic regulations, the Authorities shall follow any procedure necessary for the effectiveness of this MoU in their countries. This MoU will come into effect between the Authorities from the date of signature.

## Article 12 - Termination

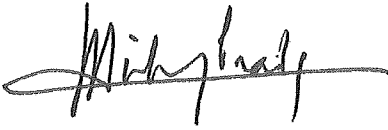
This MoU shall be concluded for an unlimited period and may be denounced by any of the Authorities at any time, by giving at least thirty days prior written notice to each other Authority. If either Authority gives such notice, this MoU will continue to have effect with respect to all requests for assistance that were made before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. The provisions concerning confidentiality shall remain in force thereafter.



IN WITNESS WHEREOF the Undersigned have signed this Memorandum.

DONE in Sydney, on May 18, 2000, in six versions, two in French, two in Turkish, and two in English.

FOR THE COMMISSION DES  
OPERATIONS DE BOURSE



Michel PRADA  
Chairman

FOR THE CAPITAL MARKETS BOARD OF  
TURKEY



Muhsin MENGÜTÜRK  
Chairman

The Requested Authority's contact officer pursuant to the Article 5 of the Memorandum is:

<p>For the <i>Commission des opérations de bourse</i>:</p>	<p>Hervé DALLERAC  Head of the Enforcement Division  Tel: (33) 1 53 45 60 00  Fax: (33) 1 53 45 63 80  E-mail: hdallerac@cob.fr</p>
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