

# Memorandum of Understanding

## U.S. Department of the Treasury, Office of Foreign Assets Control State of Florida, Office of Financial Regulation

### I. Background

#### A. Purpose

This Memorandum of Understanding (“MOU”) sets forth procedures for the exchange of specified information between the State of Florida, Office of Financial Regulation (“OFR”) and the Office of Foreign Assets Control (“OFAC”), an office within the U.S. Department of the Treasury (collectively, the “Agencies”).

The OFR has examination and enforcement authority for the financial condition, safe and sound operation, and compliance with laws and regulations of the banking organizations it supervises. For the purposes of this MOU, the term “banking organizations” means Florida state-chartered financial institutions as that term is defined in Section 655.005, Florida Statutes (2006). Under delegated authority from the Secretary of the Treasury, OFAC furthers U.S. foreign policy and national security goals by administering and enforcing economic and trade sanctions against targeted foreign countries, groups, and persons subject to 31 C.F.R. Ch. V, Office of Foreign Assets Control Regulations.<sup>1</sup>

Information to be shared under this MOU includes information about OFAC’s administration and enforcement of economic sanctions, information about compliance with OFAC requirements by banking organizations supervised by the OFR, and to the extent permitted by law, including the Right to Financial Privacy Act (12 U.S.C. 3401, *et seq.*) and Section 655.057, Florida Statutes, information about possible violations of OFAC sanctions by banking organizations supervised by the OFR.

The sharing of information under this MOU is intended to help OFAC in fulfilling its role as administrator and enforcer of economic sanctions and to assist the OFR in fulfilling its roles as banking organization supervisors.

#### B. Assessment of MOU Operations

The Agencies shall meet, as necessary, to discuss the operation of the MOU and to identify any issues or adjustments that may be required. During such meetings, OFAC will provide an update on how the information provided by the OFR under this MOU has

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<sup>1</sup> See 31 C.F.R. Part 501.

been used or applied by OFAC. The Agencies will also evaluate the effectiveness of the information sharing in meeting the goals outlined above.

### C. Accessibility

OFAC maintains a toll-free telephone hotline to address issues relating to interdicted items and general compliance questions, and will make that resource available to OFR as well as to the institutions it regulates.

## II. Provision of Information to OFAC by the OFR

To the extent permitted by law:

- A. The OFR will notify OFAC promptly of any apparent, unreported sanctions violations discovered in the course of an examination of a banking organization. The OFR will direct banking organizations it supervises to provide information directly to OFAC as required by OFAC regulations.
- B. When the OFR discovers significant deficiencies in a banking organization's policies, procedures, and processes for ensuring compliance with OFAC regulations, the OFR will timely notify OFAC of such deficiencies. For purposes of this MOU, a significant deficiency means: a systemic or pervasive compliance deficiency, reporting, or record keeping violation, including situations where a banking organization fails to take corrective action or otherwise appropriately respond to supervisory warnings or recommendations concerning OFAC compliance deficiencies or systemic violations.
- C. In cases where OFAC has initiated a review of a banking organization based on deficiencies identified in section II.B, or other evidence within OFAC's investigative purview, the OFR will provide to OFAC, upon OFAC's written request, information relating to the OFR's examination or supervisory findings regarding the banking organization's policies, procedures, and processes for ensuring compliance with OFAC regulations. Upon written request, OFAC may obtain such further or additional supervisory information, if reasonably available, relating to the above information as necessary to assist OFAC in carrying out its responsibilities.

## III. Provision of Information to the OFR by OFAC

To the extent permitted by law:

- A. After OFAC becomes aware of an apparent sanctions violation by a banking organization supervised by the OFR, OFAC will promptly provide the OFR with information about the

apparent violation. OFAC will also provide a copy of any correspondence between OFAC and the banking organization relating to apparent sanctions violations by the banking organization or to a pending or possible enforcement action against the banking organization.

- B. OFAC will also provide to the OFR notice of and appropriate documentation relating to the following:
- 1) Notice prior to any on-site investigation or audit of a banking organization and the results of such investigation or audit, e.g., an investigation or audit report, as soon as practicable after completion of the investigation or audit.
  - 2) Notice that a banking organization is undergoing an OFAC evaluation.
  - 3) OFAC's evaluation of an apparent violation by a banking organization.
  - 4) OFAC's enforcement determinations, including any decision to close an investigation without taking enforcement action, the issuance of a pre-penalty notice; or the issuance of a penalty notice.
  - 5) Notice prior to making public any enforcement action.
  - 6) Upon written request, the OFR may obtain such further or additional information, if reasonably available, relating to the above information as necessary to assist the OFR in carrying out its regulatory or supervisory responsibilities, including any regulatory or enforcement action.

#### **IV. Restrictions on Disclosure and Use of Information**

- A. 1) OFAC retains ownership of all information provided to the OFR under this MOU. The information provided by OFAC to the OFR is intended only for the OFR's official use in the supervision of the institutions that it regulates and is not for further disclosure outside the course of its supervisory activities. Information provided by OFAC under this MOU may be used by the OFR in investigative proceedings and examinations, and upon notice to OFAC, the OFR may base factual findings in its enforcement actions on factual information it obtains as a result of its review of information obtained from OFAC. The OFR will not make public use of any confidential information provided by OFAC under this MOU without the prior written approval of OFAC.
- 2) The OFR retains ownership of all confidential information provided to OFAC under this MOU. All information provided by the OFR to OFAC under this MOU shall be deemed confidential supervisory information and is subject to Florida's laws, regulations, and agreements governing the disclosure of such information.<sup>2</sup> OFAC will use information provided by the OFR under this MOU for official use only in

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<sup>2</sup> See, e.g., § 655.057, Fla. Stat. (2006).

accordance with the restrictions applicable to information shared by the OFR under those laws, regulations and agreements. OFAC will rely on OFR to specifically identify any disclosures or privacy restrictions applicable to information it shares with OFAC. OFAC will not make public use of any confidential information provided by the OFR under this MOU without the prior written approval of the OFR.

3) OFAC and the OFR will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the information received under this MOU and information derived therefrom.

4) OFAC agrees to promptly notify the OFR of any legally enforceable demand for information that the OFR provided to OFAC under the terms of the MOU. Information that the OFR provided to OFAC shall remain the property of the OFR, and any request for such information must be made to the OFR. In no event will OFAC disclose information that the OFR provided to it without giving the OFR the opportunity to protect its interests, including initiating proceedings.

5) The OFR agrees to promptly notify OFAC of any legally enforceable demand for information that OFAC provided to the OFR under the terms of this MOU. Information that OFAC provided to the OFR that is within the scope of Section 655.057(7), Florida Statutes (2006), shall remain OFAC's property, and any request for such information must be made to OFAC. With regard to any other information that OFAC provided to the OFR, the OFR will assert any defenses under Florida law that it deems applicable. In no event will the OFR disclose information that OFAC provided to it without giving OFAC the opportunity to protect its interests, including initiating proceedings.

6) OFAC and the OFR expressly reserve all evidentiary privileges and protections applicable to any information provided to one another under this MOU.

B. Disclosure to OFAC of confidential supervisory information that is jointly held by the OFR and a Federal Banking Agency ("FBA") shall be subject to the FBA's approval.

## **V. Civil Enforcement**

No provision of this MOU is intended to affect the respective enforcement authorities of the OFR, OFAC, or FBAs.

**VI. Term of MOU**

This MOU is effective upon signature by both the OFR and OFAC and will remain in effect until amended or replaced by signed, mutual agreement of both parties. This MOU may be terminated by the OFR or OFAC upon 30 days written notice.

This MOU may be executed in counterparts.

IN WITNESS WHEREOF, each of the parties hereto has caused this MOU to be executed by its duly authorized officer on the date indicated below.

**OFFICE OF FOREIGN ASSETS CONTROL**

  
By: Adam J. Szubin, Director

Dated: 8/16/07

**STATE OF FLORIDA, OFFICE OF FINANCIAL REGULATION**

  
By: Don B. Saxon, Commissioner

Dated: Aug. 1, 2007