

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
ONTARIO SECURITIES COMMISSION
AND
SECURITIES AND FUTURES COMMISSION

INTRODUCTION

The Ontario Securities Commission ("OSC") and the Securities and Futures Commission in Hong Kong ("SFC") ("the Authorities"), recognizing the increasingly international activity between the financial markets and financial services sectors of Ontario and Hong Kong and the corresponding need to establish and foster cooperation between the Authorities responsible for regulating their respective financial markets and services for the protection of investors and preservation of market integrity, have reached the following understanding.

FUNCTIONS OF EACH AUTHORITY

- (a) Ontario Securities Commission
The OSC is established under section 2 of the *Securities Act (Ontario)*, R.S.O. 1990, c. S.5 as am. to regulate and promote the efficiency of the securities and futures markets in Ontario. The OSC is primarily responsible for the administration and enforcement of the *Securities Act (Ontario)* and the *Commodity Futures Act (Ontario)*, R.S.O. 1990, c. C. 20 as am. Pursuant to paragraphs 11(1)(b) and 12(1)(b) of the *Securities Act (Ontario)*, respectively, the OSC may provide investigative assistance and conduct financial examinations on behalf of foreign regulators.
- (b) Securities and Futures Commission
The SFC is the Commission established by the Securities and Futures Commission Ordinance to regulate securities and futures markets and leveraged foreign exchange trading in Hong Kong. The functions of the SFC include administering securities, futures and leveraged foreign exchange trading legislation for the protection of investors and maintenance of the integrity of the markets; administering all relevant requirements to ensure full disclosure to and fair treatment of public shareholders and investors; supervising and monitoring the activities of the Exchange Companies and clearing houses of Hong Kong to ensure that they discharge their responsibilities in a professional and impartial manner; regulating dealers, leveraged foreign exchange traders, investment advisers and other registered persons; and encouraging the development

of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere.

3. GENERAL PRINCIPLES

- (a) The Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities to enforce or secure compliance with the laws and regulatory requirements of their respective jurisdictions.
- (b) The Memorandum of Understanding does not create any legally enforceable rights nor impose any legally binding obligations. The Memorandum of Understanding does not modify or supersede any laws or regulatory requirements in force in, or applying to, Ontario or Hong Kong. The Memorandum of Understanding does not affect any arrangements under other Memoranda to which either Authority may be a party.
- (c) The Authorities recognize the need for and desirability of providing mutual assistance and the exchange of information to assist each other in securing compliance with their respective laws or regulatory requirements. A request for assistance may be denied, however, by the requested Authority:
 - (i) where the request would require the requested Authority to act in a manner that would violate its laws;
 - (ii) where the request is not made in accordance with the provisions of the Memorandum of Understanding; or
 - (iii) on the grounds of public interest.

4. SCOPE OF ASSISTANCE

- (a) Within the framework of the Memorandum of Understanding, the Authorities hereby agree to promote mutual assistance and the exchange of information, to the extent permitted by the laws of Ontario and Hong Kong, to ensure compliance with the laws, regulations and rules, and any addenda and amendments thereto, set out in Appendix A. Each Authority will administer and enforce its own relevant laws, regulations and rules and assist the other Authority to perform its functions in accordance with the terms of the Memorandum of Understanding. Appendix A may be updated by agreement between the Authorities without the need for a re-signing of the Memorandum of Understanding.

- (b) Assistance available pursuant to the Memorandum of Understanding includes but is not limited to:
 - (a) providing access to information in the files of the requested Authority;
 - (b) taking testimony and statements of persons; and
 - (c) obtaining information and documents from persons.

5. REQUESTS FOR ASSISTANCE

- (a) Requests for assistance will be made in writing in English and addressed to the requested Authority's principal point of contact listed in Appendix B.
- (b) Requests for assistance will specify the following:
 - (i) a general description of the information sought by the requesting Authority;
 - (ii) the purpose for which the information is sought;
 - (iii) a general description of the nature of the case and the conduct or suspected conduct which gives rise to the request;
 - (iv) the link between the specified laws or regulatory requirements and the regulatory function of the requesting Authority;
 - (v) the relevance of the requested information to the specified laws or regulatory requirements;
 - (vi) in the case of the obtaining of testimony from a person, whether it is likely that criminal proceedings will be brought against that person.
 - (vii) the desired time period for the reply.
- (c) In urgent cases, a request for assistance may be effected by summary procedures or other means mutually agreed upon by the Authorities, provided that all such communications are confirmed in the manner prescribed by paragraphs 5(a) and 5(b) of the Memorandum of Understanding.

6. EXECUTION OF REQUESTS FOR ASSISTANCE

- (a) Each request will be addressed by the requested Authority to determine whether

information can be provided under the terms of the Memorandum of Understanding. In any case where the request cannot be accepted completely, the requested Authority will consider whether part of the information or assistance requested may be provided or whether there may be any other relevant assistance or information which might be provided.

- (b) The requested Authority may, as a condition of agreeing that assistance is given under the Memorandum of Understanding require the requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.
- (c) Any documents or other materials provided under the Memorandum of Understanding and any copies thereof must be returned on request, to the extent permitted by law.

7. UNSOLICITED INFORMATION

Where one Authority has information which will assist the other Authority in the performance of its regulatory functions, including any relevant information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the laws or regulatory requirements of the other Authority, the former may provide such information, or arrange such information to be provided, to the extent permitted by law, on a voluntary basis even though no request has been made by the other Authority. The terms and conditions of the Memorandum of Understanding will apply if the providing Authority specifies that the information is passed under the Memorandum of Understanding.

8. CONFIDENTIALITY AND USE OF INFORMATION

- (a) Assistance or information will be provided by an Authority only for the purposes of assisting the other Authority to the performance of its regulatory functions. Any assistance or information provided under the Memorandum of Understanding should be used by the recipient only for the purposes of performing its regulatory functions and should not be disclosed to any third parties without the prior consent of the requested Authority. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.
- (b) When the requesting Authority discloses information to another person, the

requesting Authority will obtain an undertaking from the other person that it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable demand.

- (c) If either Authority becomes aware that information passed under the Memorandum of Understanding may be subject to a legally enforceable demand to disclose, it will, to the extent permitted by law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action.
- (d) The requesting Authority, or any person who receives information under paragraph 8(b), will not use the information obtained from the requested Authority in a criminal prosecution without the prior approval of the requested Authority.

9. CONSULTATIONS

- (a) The Authorities will consult in the event of any uncertainty over the meaning of any terms used in the Memorandum of Understanding.
- (b) The Authorities may consult informally, at any time, about a request or proposed request.
- (c) The Authorities may consult and revise the terms of the Memorandum of Understanding in the event of a substantial change in laws, regulations, rules, practices, conditions or any other matter affecting its operation.
- (d) The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding.

10. CONTACT PERSONS

All communications between the Authorities should be between the principal points of contact as set out in Appendix B unless otherwise agreed. Appendix B may be amended by the relevant Authority upon written notice to the other Authority.

11. TERMINATION

Cooperation in accordance with the Memorandum of Understanding will continue until the expiration of 30 days after any Authority gives written notice to the other Authority of its intention to discontinue the cooperation. If any Authority gives such notice, cooperation in accordance with the Memorandum of Understanding will continue with respect to all requests for assistance that were made to such Authority before the effective date of notification until

the requesting Authority terminates the matter for which the assistance was requested.

12. ENTRY INTO EFFECT

- (a) The Memorandum of Understanding will become effective, after it is signed by the OSC and the SFC, and on the date determined in accordance with section 143.10 of the *Securities Act (Ontario)*.
- (b) Any Canadian securities regulatory authority may become a party to the Memorandum of Understanding by executing a counterpart thereof together with the SFC and providing notice of such execution to the other Canadian securities regulatory authorities which are parties to the Memorandum of Understanding.

Dated at Mexico City this 25th day of February, 1997.

**ONTARIO SECURITIES
COMMISSION**

"John A. Geller"

**SECURITIES AND FUTURES
COMMISSION**

"Anthony Neoh"

APPENDIX A

GOVERNING LAWS, REGULATIONS AND RULES

1. Hong Kong

Laws and Rules:

- (a) Securities and Futures Commission Ordinance;
- (b) Stock Exchanges Unification Ordinance;
- (c) Securities (Disclosure of Interests) Ordinance;
- (d) Securities (Insider Dealing) Ordinance;
- (e) Companies Ordinance;
- (f) Securities Ordinance;
- (g) Commodities Trading Ordinance;
- (h) Commodity Exchanges (Prohibition) Ordinance;
- (i) Protection of Investors Ordinance;
- (j) Leveraged Foreign Exchange Trading Ordinance;
- (k) Securities (Clearing Houses) Ordinance, General Rules of CCASS and CCASS Operational Procedures; and
- (l) all subsidiary legislation made under the above Ordinances.

SFC Codes:

- (a) Code of Takeovers and Mergers;
- (b) Code on Share Repurchases;
- (c) Code on Unit Trusts and Mutual Funds;
- (d) Code on Conduct for Persons Registered with the SFC; and
- (e) The Fit and Proper Criteria.

SEHK Rules:

- (a) Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Ltd.;
- (b) Rules of the Exchange; and
- (c) Individual listing agreements with listed issuers.

HKFE Rules:

- (a) Revised Rules and Regulations of the Hong Kong Futures Exchange Ltd.;
- (b) Hong Kong Futures Exchange Clearing Corporation Rules; and
- (c) Core Operational and Financial Risk Management Controls for Over-the-Counter Derivatives Activities of Registered Persons.

2. Ontario

Primary Statutes, Regulations and Rules made thereunder:

- (a) *Securities Act*, R.S.O. 1990, c. C.5 as am.
Regulation made under the *Securities Act*, R.R.O. 1990, Reg. 1015 as am.
Rules made under the *Securities Act*
- (b) *Commodity Futures Act*, R.S.O. 1990, c. C.20 as am.
Regulation made under the *Commodity Futures Act*, R.R.O. 1990, Reg. 90 as am.

APPENDIX B

LIST OF CONTACT PERSONS

The Securities and Futures Commission

Mr. Mark Dickens
Executive Director, Enforcement
Securities and Futures Commission
12th Floor, Edinburgh Tower, The Landmark
15 Queen's Road Central
Hong Kong

Tel: (852) 2840-9221
Fax: (852) 2521-7929

Alternate:

Ms. Helen Ho-Yan Lee
Director, Enforcement and International Relations
Securities and Futures Commission
12th Floor, Edinburgh Tower, The Landmark
15 Queen's Road Central
Hong Kong

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The Ontario Securities Commission

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Director, Enforcement
Ontario Securities Commission
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