

1.1.3 Notice of Memorandum of Understanding with the China Securities Regulatory Commission

Memorandum of Understanding with the China Securities Regulatory Commission

The Ontario Securities Commission, together with the British Columbia, Alberta and Quebec Securities Commissions, has entered into a Memorandum of Understanding (MOU) with the China Securities Regulatory Commission (CSRC) as of March 21, 2003. The MOU is being published today in the Bulletin in accordance with section 143.10 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, and will become effective, subject to the approval of the Ontario Minister of Finance, within 60 days after this publication.

The purpose of the MOU is to promote investor protection and the integrity of the securities and futures markets by providing a framework for cooperation, including channels of communication, and increasing mutual understanding and the exchange of regulatory and technical information. The MOU is also a necessary condition for Canadian companies to participate in joint ventures in the securities and fund management business in China. The completion of this MOU therefore opens new business opportunities in China for Canadian financial firms.

Questions may be referred to:

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- The Commission des valeurs mobilières du Québec was established under the *Securities Act*, R.S.Q., c. V-1.1.

3. In this Memorandum of Understanding (hereinafter referred to as "MoU"), "Authorities" mean the CSRC and the participating members of the CSA.

4. The CSRC and the participating members of the CSA, recognizing the increasing international activities in the securities and futures markets and the corresponding need for mutual cooperation between the relevant authorities have, after friendly consultation, reached the following understanding.

II. PRINCIPLES

1. The purpose of this MoU is to promote investor protection and integrity of the securities and futures markets by providing a framework for cooperation, including channels of communication, increasing mutual understanding and exchange of regulatory and technical information.

2. This MoU serves as a basis of cooperation for the Authorities and does not create any binding international legal obligations, nor does it modify or supersede any laws, regulations or regulatory requirements in force in or applying to People's Republic of China or the jurisdiction of each participating member of the CSA. It does not affect any arrangements under other MoUs.

3. The performance of the provisions of this MoU shall be consistent with domestic laws, regulations and conventions of the respective jurisdictions of the Authorities and within the availability of respective resources of the Authorities, and shall not be contrary to the public interests of the jurisdiction of the requested Authority.

III. SCOPE

1. The Authorities agree to promote mutual assistance and the exchange of information to assist them to perform their respective functions including in the following areas:

- a) Ensuring that issuers and offerors of securities make full and fair disclosure of information relevant to investors;
- b) The enforcement of the laws and rules relating to issuing, dealing in, arranging deals in, managing and advising on securities and futures contracts and other investment products;
- c) Promoting and securing the fitness and properness of brokers/dealers and

advisers in securities and futures markets, and promoting high standards of fair dealing and integrity in the conduct of business of these institutions and professionals;

- d) Supervising and monitoring the trading, clearing and settlement, and other activities of securities and futures markets, and their compliance with relevant laws and regulations;
- e) Detecting market manipulation, insider dealing and other deceptive and fraudulent practices concerning securities issuing and trading, the activities of listed companies, and trading of futures contracts, options and other investment products;
- f) Technical cooperation and assistance;
- g) Other matters agreed upon by the Authorities.

2. Assistance available under this MoU includes:

- a) providing access to information in the files of the requested Authority;
- b) taking the evidence of persons; and
- c) obtaining information and documents from persons.

3. 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 jurisdiction of each Authority for the provision of such information are observed.

IV. REQUESTS AND EXECUTION

1. Requests will be made in writing in the English language. In urgent cases, requests may be made in summary form to be followed within 10 business days by a full request.

2. Requests should specify:

- a) the information requested;
- b) a description of the conduct or suspected conduct which gives rise to the request;
- c) the purpose for which the information is sought (including details of the laws or regulatory requirements pertaining to the matter which is the subject of the request);
- d) the link between the specified laws or regulatory requirements and the

- regulatory functions of the requesting Authority;
- e) the persons or entities suspected by the requesting Authority to possess the information sought, or the place where such information may be obtained, if this is within the knowledge of the requesting Authority;
 - f) to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure;
 - g) the desired time period for the reply;
 - h) whether a criminal proceeding is being considered or has been initiated in the jurisdiction of the requesting Authority.
3. The requested Authority will deal with the request in a reasonable time.
4. Each request will be assessed 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 there may be any relevant information which can be given.
5. In deciding whether to accept or decline a request, the requested Authority will consider:
- a) whether the request relates to the breach of laws or regulations which have no close parallel in the jurisdiction of the requested Authority;
 - b) whether broadly equivalent assistance would be available from the requesting Authority;
 - c) whether the request involves an assertion of a jurisdiction not recognized by the requested Authority;
 - d) whether it would be contrary to the national or public interest of the jurisdiction of the requested Authority;
 - e) whether a criminal proceeding has already been initiated in the jurisdiction of the requested Authority based upon the same facts and against the same persons or the same persons have already been the subjects of final punitive sanctions on the same charges by the competent authorities of the requested Authority.
6. If a testimony from a designated person is taken, the testimony will be taken in the same manner

and to the same extent prescribed by the laws and regulations in the jurisdiction of the requested Authority.

- 7. The requested Authority is not obliged to provide any information which may be used in the jurisdiction of the requesting Authority in a manner which would be prohibited in the jurisdiction of the requested Authority.
- 8. Any document or other material provided in response to a request under this MoU and any copies thereof must be returned to the requested Authority on request.
- 9. No testimony obtained under compulsion of statute and no documents produced under compulsion of statute, provided to the requesting Authority pursuant to the MoU, may be used in a criminal, civil or other prosecution without the prior consent from the requested Authority.

V. CONFIDENTIALITY

- 1. The assistance or information will be provided under this MoU by the Authorities only for the purposes of assisting each other in the performance of their regulatory functions relevant to the scope of this MoU. To the extent permitted by law, each Authority will keep confidential any request for information made under the MoU and any matter arising in the course of its operation. Such assistance or information will not be disclosed by the recipient to third parties without the consent of the Authority providing the assistance or information.
- 2. When the requesting Authority discloses information obtained under the MoU from a requested Authority to another person, the requesting Authority will obtain an undertaking from the other person that the other person will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable demand.
- 3. If either Authority becomes aware that information passed under this MoU may be subject to a legally enforceable demand to disclose, it will, to the extent permitted by law, inform the other Authority of this situation. The Authorities will then discuss and determine the appropriate courses of action.

VI. TECHNICAL COOPERATION

The respective Authorities intend to work together to identify and address, subject to the availability of personnel and resources, the training and technical assistance required to facilitate the development of the regulatory framework for securities and futures markets in their jurisdictions.

VII. CONSULTATION

1. The Authorities will consult in the event of a dispute over the meaning of any term used in this MoU.
2. The Authorities may consult, at any time, about a request or proposed request.
3. The Authorities may consult and revise the terms of the MoU in the event of a substantial change in the laws, regulations or practices affecting the operation of the MoU.
4. To improve the cooperation under this MoU, the Authorities will conduct consultations and discussions on the implementation of the MoU periodically or when necessary.

VIII. UNSOLICITED ASSISTANCE

To the extent permitted by the laws and regulations of its jurisdiction, each Authority will use reasonable efforts to provide each other Authority with any information it discovers which gives rise to a breach, a suspicion of a breach, or anticipated breach of the laws or regulations of each other Authority.

IX. CONTACT PERSONS

All communications between the Authorities should be between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may be amended by written notice from either Authority without the need for resigning this MoU.

X. ENTRY INTO EFFECT

1. This MoU will be effective after it is signed by the participating members of the CSA and the CSRC and in the case of Ontario, on a date determined in accordance with applicable legislation.
2. Any other member of CSA intending to participate in this MoU can submit a formal written request to the CSRC and provide notice to the other participating members of CSA. It becomes a party to this MoU on the date the CSRC issues a letter of consent.

XI. TERMINATION

This MoU may be terminated as to one Authority by that Authority giving thirty days' written notice to the other Authorities, however, the MoU shall remain valid between the other signatory Authorities. This MoU will continue to have effect with respect to all requests for assistance that are made before the effective date of termination.

SIGNED AS OF THIS 21st DAY OF March 2003.

IN DUPLICATE IN THE CHINESE AND ENGLISH LANGUAGES, BOTH VERSIONS BEING EQUALLY AUTHENTIC. IN THE EVENT OF ANY DISCREPANCY BETWEEN DIFFERENT VERSIONS OF THIS MEMORANDUM OF UNDERSTANDING, THE ENGLISH LANGUAGE VERSION SHALL PREVAIL.

Shang Fulin, Chairman
China Securities Regulatory Commission

Stephen P. Sibold, Q.C., Chair
Alberta Securities Commission

Douglas M. Hyndman, Chair
British Columbia Securities Commission

David A. Brown, Q.C., Chair
Ontario Securities Commission

Pierre Godin, Chair
Commission des valeurs mobilières du Québec

Gilbert Charland, Secrétaire général associé
Secrétariat aux Affaires Intergouvernementales
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APPENDIX A

CONTACT PERSONS

CHINA SECURITIES REGULATORY COMMISSION

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