

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**BRITISH COLUMBIA SECURITIES COMMISSION**

**AND**

**SECURITIES AND FUTURES COMMISSION, HONG KONG**

**1. INTRODUCTION**

The British Columbia Securities Commission ("BCSC") and the Securities and Futures Commission, Hong Kong ("SFC") (the "Authorities"), recognising the increasingly close relationship between the financial markets and financial services sectors of British Columbia and Hong Kong and the corresponding need to establish and foster cooperation between the authorities responsible for regulating their respective securities, exchange contracts and futures contracts markets and services for the protection of investors and preservation of market integrity, have reached the following understanding.

## 2. FUNCTIONS OF EACH PARTY

### (a) British Columbia Securities Commission

The British Columbia Securities Commission (BCSC) is established under section 4 of the *Securities Act (British Columbia)*, S.B.C. 1985, c. 83 to administer and enforce the *Securities Act*. Pursuant to sections 125.1, 126(1)(b) and 137.1 of the *Securities Act*, the BCSC may obtain information and make a formal investigation to assist in the administration of the securities or exchange contracts laws of another jurisdiction and disclose facts, information and records to any body empowered by the laws of another jurisdiction to administer or regulate trading in securities or exchange contracts in that jurisdiction.

### (b) Securities and Futures Commission, Hong Kong

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. SCOPE

- (a) The Authorities will promote the fullest mutual assistance, to the extent permitted by the laws of British Columbia and Hong Kong, within the framework of this Memorandum, so that the Authorities may effectively perform their respective duties according to law. Under the foregoing general theme, the scope of this Memorandum will include the following:
- (i) insider dealing, market manipulation and other fraudulent practices in relation to listed companies, securities, exchange contracts, futures contracts, and other investment products;
  - (ii) supervising and monitoring the securities, exchange contracts and futures markets, their clearing and settlement activities, and ensuring compliance with the relevant laws and regulatory requirements;
  - (iii) enforcement of the laws and regulatory requirements relating to dealing in, arranging deals in, managing and advising on securities, exchange contracts, futures contracts, and other investment products;
  - (iv) enforcement of the laws and regulatory requirements relating to leveraged foreign exchange trading;
  - (v) promoting and securing the suitability of dealers, investment advisers, leveraged foreign exchange traders and other financial market practitioners, promoting high standards of fair dealing and integrity in their conduct of business;
  - (vi) ensuring compliance by issuers of and offerors for securities and exchange contracts, and directors, officers, shareholders and professional advisers of all companies listed, or applying for listing, on the exchanges of either British Columbia or Hong Kong, with any duties under any relevant laws and regulatory requirements and any obligation to make full, accurate and immediate disclosure of information relevant to investors;

- (vii) takeovers, mergers and share repurchases;
  - (viii) the disclosure of interests in the securities of companies;
  - (ix) breaches of companies legislation; and
  - (x) any other matters agreed upon by both Authorities;
- (b) Assistance available pursuant to this Memorandum includes but is not limited to:
- (i) providing access to information in the files of the Requested Authority;
  - (ii) taking testimony or statements of persons; and
  - (iii) obtaining information or documents from persons.

#### **4. PRINCIPLES**

- (a) This Memorandum 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) This Memorandum does not modify or supersede any laws or regulatory requirements in force in, or applying to, British Columbia or Hong Kong. This Memorandum does not create any legally enforceable rights or impose any legally binding obligations. This Memorandum does not affect any arrangements under other Memoranda to which either Authority may be a party;
- (c) The Authorities recognise the need for and desirability of providing mutual assistance and exchanging 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 contemplates the Requested Authority exceeding its legal authority;
- (ii) where the request is not in accordance with the provisions of this Memorandum; or
- (iii) on grounds of public interest or public policy.

## **5. REQUESTS FOR ASSISTANCE OR INFORMATION**

- (a) The Authorities may consult at any time about a request or proposed request.
- (b) Requests for information or other assistance will be made in writing in English. In urgent cases, requests may be in summary form to be followed within five business days by a full request. The full request will be signed by one of the contact persons set out in Appendix A.
- (c) Requests for information will specify:
  - (i) the information requested (including the identity and contact details of relevant persons);
  - (ii) the purpose for which the information is sought (including a citation of the laws or regulatory requirements pertaining to the matter which is the subject of the request);
  - (iii) a description of 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 party;

- (v) the relevance of the requested information to the specified laws or regulatory requirements;
  - (vi) the urgency of the matter and the desired time frame for the reply; and
  - (vii) in the case of the obtaining of testimony from a person, whether it is likely that criminal proceedings will be brought against that person.
- (d) In the event that it is considered likely that it will be necessary to disclose the information or testimony requested to a person or body, then the request should seek the consent of the Requested Authority to such onward disclosure.
- (e) Each request will be assessed by the Requested Authority to determine whether information can be provided under the terms of this Memorandum. 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.
- (f) The Requested Authority may, as a condition of agreeing that assistance is given under the Memorandum, 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.
- (g) The Requested Authority will accord to any person providing information in the context of a request under this Memorandum all of the rights and privileges of the laws of the jurisdiction of the Requested Authority.

- (h) Any documents or other materials provided under this Memorandum and any copies thereof must be returned on request, to the extent permitted by law.

**6. 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 for such information to be provided, on a voluntary basis even though no request has been made by the other Authority. The terms and conditions of this Memorandum will apply if the providing Authority specifies that the information is passed under this Memorandum.

**7. 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 this Memorandum in the performance of its regulatory functions. Any assistance or information provided under this Memorandum 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 provider of the assistance or information. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.
- (b) When a 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 this Memorandum 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.

8. **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 the relevant Authority upon written notice to the other Authority.

9. **TERMINATION**

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

10. **EFFECTIVE DATE**

Cooperation in accordance with this Memorandum will begin on the date of its signing by the Authorities.

Signed this 21st day of February 1996 in Vancouver, British Columbia, Canada.

**BRITISH COLUMBIA  
SECURITIES COMMISSION**

**SECURITIES AND FUTURES  
COMMISSION, HONG KONG**

Joyce C. Maykut Q.C.  
Vice Chair

Anthony Neoh Q.C.  
Chairman



APPENDIX A

**LIST OF CONTACT PERSONS**

**British Columbia Securities Commission**

Director, Compliance and Enforcement  
British Columbia Securities Commission  
1100, 865 Hornby Street  
Vancouver  
British Columbia  
V6Z 2H4 Canada  
Tel: 1-604-660-4800  
Fax: 1-604-660-2688

**Securities and Futures Commission, Hong Kong**

Mr. Gerard J McMahon  
Executive Director, Enforcement  
Securities and Futures Commission  
12th Floor  
Edinburgh Tower  
The Landmark  
15 Queen's Road Central  
HONG KONG  
Tel: (852) 2842-7605  
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  
Tel: (852) 2840-9246  
Fax: (852) 2521-7929