

1.1.3 MEMORANDUM OF UNDERSTANDING WITH THE AUSTRALIAN SECURITIES COMMISSION

July 7, 1995

RE: MEMORANDUM OF UNDERSTANDING WITH THE AUSTRALIAN SECURITIES COMMISSION

In accordance with section 143.10 of the *Securities Act*, R.S.O. 1990, c. S.5, as am., this Memorandum of Understanding (MOU) entered into with the Australian Securities Commission on July 5, 1995 is being published in the Ontario Securities Commission Bulletin and will become effective subject to the approval of the Ontario Minister of Finance. The MOU provides a framework for mutual cooperation and the exchange of information in matters relating to the administration and enforcement of Ontario and Australian securities laws.

MEMORANDUM OF UNDERSTANDING

Introduction

1. The Australian Securities Commission and the Ontario Securities Commission, recognizing the increasing international activity in the securities markets and the corresponding need for mutual cooperation in matters relating to the administration and enforcement of Australian and Ontario securities laws, have reached the following understanding.

Definitions

2. For the purposes of this Memorandum of Understanding:

- (a) "Authority" means:
 - (i) the Australian Securities Commission;
 - (ii) the Ontario Securities Commission.

or

The Australian Securities Commission (ASC) is the national corporate, securities and futures regulator established under section 7 of the ASC Law. The ASC is responsible for the administration and enforcement of the Corporations Law, Corporations Regulations, ASC Law and ASC Regulations, which provide for the regulation of corporations and the securities and futures industries and markets. The ASC's power to exercise coercive powers on behalf of foreign regulators is governed by the *Mutual Assistance in Business Regulation Act 1992*.

The Ontario Securities Commission (OSC) is established under section 2 of the *Securities Act (Ontario)* to regulate and promote the efficiency of the securities market in Ontario. The OSC is

responsible for the administration and enforcement of the *Securities Act (Ontario)* and the *Commodity Futures Act (Ontario)*. Pursuant to paragraph 11(1)(b) of the *Securities Act (Ontario)*, the OSC may provide investigative assistance on behalf of foreign regulators.

- (b) "investment business" means any business which involves, in whole or in part:
 - (i) effecting transactions in securities for the accounts of others;
 - (ii) buying and selling securities for one's own account;
 - (iii) advising others for compensation, either directly or through publications or listings, as to the value of securities or as to the desirability of investing in, purchasing or selling securities;
 - (iv) engaging on behalf of an issuer of securities in matters relating to the issuance, registration, exchange and transfer of such securities;
 - (v) the management, promotion, offer or sale of any investment company or collective investment scheme; or
 - (vi) equivalent activities conducted by persons or entities.
- (c) "issuer" means any person who issues or proposes to issue any securities.
- (d) "laws and regulations" means the provisions of the laws, regulations, regulatory policies and rules applicable to matters within the jurisdiction of the Authorities concerning securities regulation including, without limitation:
 - (i) insider trading;
 - (ii) misrepresentation or the use of fraudulent, deceptive or manipulative practices in connection with the offer, purchase or sale of any security or the conduct of any investment business;
 - (iii) the duties of persons to comply with requirements to disclose notifiable interests in securities or changes in those interests or requirements relating to changes in corporate control;

- (iv) the making of false and misleading statements or any material omission in relation to any application or statement made to the Authorities;
 - (v) the duties of persons, issuers or investment businesses to make full and fair disclosure of information to investors;
 - (vi) the duties of investment businesses and securities processing businesses pertaining to their financial, operations or other requirements and their duties of fair dealing in the offer and sale of securities, the execution of transactions and the conduct of their businesses; and
 - (vii) the financial and other qualifications of those engaged in, or in control of, issuers, investment businesses, securities markets or securities processing businesses;
- (e) "person" includes a natural person, unincorporated association, partnership, or body corporate, trustee or legal entity, and such governments and their agencies that are subject to the laws and regulations.
 - (f) "requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding.
 - (g) "requesting Authority" means an Authority making a request under this Memorandum of Understanding.
 - (h) "securities market" means an exchange or other market, including an over-the-counter market, for equity securities, debt securities, bonds, options or other securities that is recognized, regulated or supervised by the Authorities.
 - (i) "securities processing business" means a clearing corporation or securities transfer agent.

General Principles

3. The purpose of the Memorandum of Understanding is to protect investors and to promote the integrity of the securities markets by providing a framework for cooperation, including channels for communication, increased mutual understanding, the exchange of information and investigative assistance permitted by laws and practices.
4. The Memorandum of Understanding does not modify or supersede any laws or regulatory requirements in force, or applying to, Australia or Ontario. The Memorandum of

Understanding does not create any rights enforceable by third parties. The Memorandum of Understanding does not affect arrangements under other Memoranda of Understanding.

Scope of Assistance

5. The Authorities intend that the fullest mutual assistance is provided within the Memorandum of Understanding. Such assistance will be provided to facilitate the exchange of information between the Authorities in connection with investigations to determine whether any person has violated the laws and regulations of the requesting Authority or to conduct of any enforcement proceedings related thereto.
6. Assistance available under this Memorandum of Understanding includes:
 - (a) providing access to information in the files of the requested Authority;
 - (b) obtaining information and documents from persons; and
 - (c) taking the evidence of persons.
7. The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this Memorandum of Understanding. Subject to such limitation, the Authorities intend to provide or otherwise facilitate the provision of assistance to the full extent permitted by law to accomplish the objective of this Memorandum of Understanding.
8. This Memorandum of Understanding 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.

Unsolicited Assistance

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

Requests for Assistance

10. Requests for assistance must be made in writing and addressed to the requested Authority's principal point of contact listed in Appendix A.
11. The request for assistance will specify the following:

- (a) a description in general terms of the subject matter of the request and of the facts of the matter including in particular:
 - (i) the conduct under investigation;
 - (ii) any periods of time to which the request relates;
 - (iii) the names, and last known addresses, of individuals to whom, or bodies corporate to which, the request relates or refers;
- (b) a description in general terms of the assistance sought;
- (c) the purpose for which the assistance is sought;
- (d) a copy of the legal provisions pertaining to the matter which is the subject of the request and a statement of the way in which the facts give rise to a belief or suspicion that the law has been, or may have been, contravened;
- (e) a statement as to whether the requesting Authority has sought, or could conveniently seek from another source the information, evidence or documents to which the request relates;
- (f) the purpose for which the information, evidence or documents is to be used or may at any future time be used; and
- (g) whether the requesting Authority desires to receive the information in a single transmission or as and when each item of information becomes available;
- (h) the name, telephone number, and fax number of an officer of the requesting Authority who is familiar with the subject matter of the request and who will be available to answer queries or clarify matters relating to the request if asked to do so by the requested Authority; and
- (i) the desired time period for the reply.

12. In urgent cases, a request for assistance and a reply to such a request 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 required by paragraphs 10 and 11.

Execution of Requests for Assistance

13. Each request will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of the Memorandum of Understanding. If the request cannot be

accepted completely, the requested Authority will consider whether other assistance may be provided.

14. In deciding whether to accept or decline a request, the requested Authority will take account of:
- (a) the laws and regulations of the jurisdiction of the requested Authority;
 - (b) whether the request involves an assertion of jurisdiction not recognized by the requested Authority; and
 - (c) whether it would be contrary to the public interest to provide the assistance sought.

Permissible Uses of Information

15. The information supplied under the Memorandum of Understanding will be used by the Authorities solely:
- (a) for the purpose stated in the request with respect to ensuring compliance with or enforcement of the laws and regulations of the requesting Authority, including the legal provisions specified in the request and related provisions; and
 - (b) for any purpose within the general framework of the use stated in the request and consistent with paragraph 5, including an investigation to determine whether any person has violated the laws and regulations, as defined in subparagraph 2(d), of the requesting Authority.
16. The requesting Authority will not use the information furnished pursuant to the Memorandum of Understanding for any purpose other than those stated in paragraph 15 unless it has first informed the requested Authority of its intention and the requested Authority has not objected to such intended use.
17. The Authorities will not:
- (a) pass the information furnished pursuant to this Memorandum of Understanding to any person, law enforcement or regulatory bodies; or
 - (b) inform any person, law enforcement or regulatory bodies of a request under the Memorandum of Understanding;
- unless:
- (c) such persons, agencies or bodies have responsibility for prosecuting, regulating or enforcing laws or regulations falling within the definition set out in subparagraph 2(d);

- (d) the purpose for passing such information to such person, agency or body falls within the areas set out in subparagraph 2(d); and
- (e) the passing of such information is not contrary to any undertaking in relation to the requested information required by the law of the jurisdiction of the requested Authority and provided by the requesting Authority.

Confidentiality

18. Each Authority will keep confidential to the extent permitted by law:
- (a) any request for information made under this Memorandum of Understanding and any matters arising in the course of its operation;
 - (b) any information provided under this Memorandum of Understanding.
19. The confidentiality obligations in paragraph 18 will not apply if:
- (a) disclosure of the material in question is necessary to carry out the request as specified in accordance with paragraph 11; or
 - (b) the Authority from which the request or information originates consents to the disclosure of that material.
20. If an Authority becomes aware that information provided under this 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.
21. Once the matter for which assistance has been requested under this Memorandum of Understanding has terminated, either Authority may require the return by the other Authority, to the extent permitted by law, of:
- (a) any material supplied under the Memorandum of Understanding;
 - (b) any copies of such material;
 - (c) anything disclosing the nature of such material, other than that which is generated as part of the deliberative or internal analytical process of the other Authority.
22. If an Authority has reason to believe that the other Authority has or is likely to use or disclose material referred to in paragraph 21 for purposes other than those for which it was supplied, it may require the return to the extent permitted by law of that material before such use or disclosure.

Consultations

- 23. The Authorities will consult in the event of a dispute over the meaning of any term used in this Memorandum of Understanding.
- 24. The Authorities may consult informally, at any time, about a request or proposed request.
- 25. The Authorities may consult and revise the terms of this Memorandum of Understanding in the event of a substantial change in the laws and regulations, practices, conditions or any other matter affecting its operation.
- 26. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum of Understanding.

Termination

- 27. This Memorandum of Understanding will continue to have effect until terminated by either Authority. An Authority may terminate this Memorandum of Understanding by giving 30 days' written notice to the other Authority that the understanding set out herein is not longer to have any effect.
- 28. If an Authority gives notice that this Memorandum of Understanding is to be terminated, it will continue to have effect with respect to all requests for assistance which are made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

Contact Points

- 29. All communications between the Authorities should be between the principal points of contact listed in Appendix A, unless otherwise agreed.
- 30. An Authority may change its principal point of contact by giving notice in writing to the other Authority, without the need for the re-signing of this Memorandum of Understanding.

Entry into Effect

- 31. This Memorandum of Understanding will be effective, after it is signed by the Australian Securities Commission and the Ontario Securities Commission, and on the date determined in accordance with section 143.10 of the *Securities Act (Ontario)*.

Signed this 5th day of July, 1995 in Toronto.

**AUSTRALIAN SECURITIES
COMMISSION**

**ONTARIO SECURITIES
COMMISSION**