

**1.1.3 ONTARIO SECURITIES COMMISSION AND
 COMMISSIONE NAZIONALE PER LE
 SOCIETA E LA BORSA - MEMORANDUM
 OF UNDERSTANDING**

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..... ONTARIO SECURITIES COMMISSION

- AND -

**COMMISSIONE NAZIONALE PER LE SOCIETA E LA
 BORSA**

MEMORANDUM OF UNDERSTANDING

The Ontario Securities Commission and the Commissione Nazionale per le Società e la Borsa, recognizing the increasing international activity in securities markets and the corresponding need for mutual cooperation in matters relating to the administration and enforcement of Italian and Ontario securities laws, have reached the following understanding with respect to requests for assistance as set out herein between the Ontario Securities Commission and the Commissione Nazionale per le Società e la Borsa.

Article 1: Definitions

1. For the purposes of this Memorandum of Understanding:

- (a) "Authority" means:
- (i) the Ontario Securities Commission; or
 - (ii) the Commissione Nazionale per le Società e la Borsa.
- (b) "requested Authority" means: an Authority to whom a request is made under this Memorandum of Understanding.
- (c) "requesting Authority" means an Authority making a request under this Memorandum of Understanding.
- (d) "person" means a natural person, unincorporated association, partnership, body corporate, government, political subdivision, agency, instrumentality of a government, trustee or legal entity.
- (e) "issuer" means a person who issues or proposes to issue any security.
- (f) "investment businesses" means investment advisers, investment advisory services, investment companies, other collective investment undertakings, investment banks, brokers, dealers and equivalent entities.
- (g) "securities processing businesses" means clearing corporations or securities transfer agents.

(h) "laws or regulations" means the laws, regulations and regulatory policies applicable in the jurisdictions 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;
- (iii) the duties of persons to comply with periodic reporting requirements or requirements relating to changes in corporate control;
- (iv) the duties of persons, issuers or investment businesses to make full and fair disclosure of information relevant to investors;
- (v) the duties of investment businesses and securities processing businesses pertaining to both their financial, operational or other requirements and their duties of fair dealing in the offer and sale of securities and the execution of transactions; and
- (vi) the financial and other qualifications of those engaged in, or in control of, issuers, investment businesses or securities processing businesses.

Article 2: Scope of Assistance

1. The Authorities will provide the fullest mutual assistance to the extent permitted by law, as contemplated by this Memorandum of Understanding. Such assistance will be provided to facilitate the exchange of information between such Authorities relating to facts in connection with investigations to determine whether any person has violated the laws or regulations of the state of the requesting Authority, or the conduct of an enforcement proceeding or prosecution or any investigation related thereto.

2. Subject to paragraph 4 of this Article, assistance available under this Memorandum of Understanding includes:

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

3. 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.

4. Notwithstanding anything in this agreement, the Ontario Securities Commission will not provide access to or assist in the taking of compelled testimony taken under oath in Ontario except in accordance with the Canadian Charter of Rights and Freedoms.

Article 3: General Principles

1. This Memorandum of Understanding sets forth a statement of intent of the Authorities regarding the exchange of information between the Authorities.

2. The provisions of this Memorandum of Understanding do not create binding obligations under internal law and will not give rise to a right, directly or indirectly, on the part of any person, other than the Authorities, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.

3. Assistance under this Memorandum of Understanding may be denied by the requested Authority where:

- a) the execution of the request would prejudice the integrity, security, fundamental economic interests or public order of the requested Authority;
- b) the request is not in accordance with the provisions set out in this Memorandum of Understanding;
- c) the information requested concerns events that occurred before the date of effect of this Memorandum of Understanding; or
- d) a prosecution has already been initiated in the requested Authority based upon the same facts and against the same persons, or the same persons have already been finally sanctioned on the same charges by the competent Authorities of the requested Authority, unless the requesting Authority can demonstrate that the relief or sanctions sought in any such proceeding would not be duplicative of any relief or sanctions obtained in the requested Authority.
- e) the execution of the request would require the requested Authority to act in a manner which would violate the laws of the requested Authority.

Article 4: Requests for Assistance

1. Requests for assistance must be made in writing and addressed to the requested Authority's contact officer listed in Appendix A.

2. The request for assistance will specify the following:

- (a) the information sought by the requesting Authority;
- (b) a general description of both the matter which is the subject of the request and the purpose for which the information is sought;
- (c) the persons believed by the requesting Authority to possess the information sought, or the places where such information may be obtained, if the requesting Authority is knowledgeable thereof;
- (d) the legal provisions pertaining to the matter which is the subject of the request; and
- (e) the desired time period for the reply.

3. In the event of urgency, requests for assistance and replies to such requests will be effected by summary procedures or by means of communication other than the exchange of letters, provided that all such communications are confirmed in the manner prescribed in this Article.

Article 5: Execution of Requests

1. In making a request for assistance the requesting Authority may designate the persons whose testimony it wishes to be taken.

2. The statements from persons will be taken in the same manner and to the same extent as in investigations or other proceedings in the jurisdiction of the requested Authority. A person whose statement is taken pursuant to a request will have the right to have counsel present during the taking of the statement.

3. While it shall not be the normal practice, if the requested Authority consents, a representative designated by the requesting Authority may be present when a statement is taken and may prescribe specific questions to be asked.

4. If the requested Authority consents, a verbatim transcript may be made of the statement.

5. Access to information held in the file of the requested Authority will be provided upon request of the requesting Authority.

Article 6: Permissible Use of Information

1. The requesting Authority may use the information furnished solely:

- (a) for the purpose stated in the request with respect to ensuring compliance with or

enforcement of the laws or regulations of the requesting Authority including the legal provisions specified in the request and related provisions; and

- (b) subject to Article 2, Paragraph 4, for any purpose within the general framework of the use stated in the request and consistent with Article 2, paragraph 1, including an investigation to determine whether any person has violated the laws or regulations, as defined in article 1, paragraph 1(h), of the requesting Authority.

2. The requesting Authority will not use the information furnished for any purpose other than those stated in paragraph 1 of this article, unless it has first informed the requested Authority of its intention and the requested Authority has not objected to such intended use of the information. If the requested Authority opposes such use, the information may be used only under the conditions imposed by the requested Authority. If use of the information is opposed by the requested Authority, the Authorities agree to consult, pursuant to Article 8, concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

Article 7: Confidentiality of Requests

1. Each Authority will keep requests made under this Memorandum of Understanding, the contents of such requests, information gathered in response to requests, and any other matters arising during the operation of this Memorandum of Understanding, including consultations between the Authorities, confidential, to the extent permitted by law.

2. The Authorities will keep confidential, to the extent permitted by law, any information provided pursuant to this Memorandum of Understanding subject to the terms of this paragraph, unless it is disclosed in furtherance of the purpose for which it was requested under Article 6.

The Authorities may, by mutual arrangement, make an exception to the principles set forth in paragraphs 1 and 2 above, to the extent permitted by the law applicable to each Authority.

3. As soon as the requesting Authority has terminated the matter for which assistance has been requested under the Memorandum of Understanding, it will return to the requested Authority, to the extent permitted by law, all documents and copies thereof not already disclosed in proceedings referred to in Article 6 and other material disclosing the contents of such documents, other than material which is generated as part of the deliberative or internal analytical process of the requesting Authority.

4. Any document or any other material provided by an Authority in response to a request under this Memorandum of Understanding and any other material disclosing its contents, other than material which is generated as part of the

deliberative or internal analytical process of the requesting Authority, will not become the property of the requesting Authority, and must be returned to the requested Authority without delay on demand to the extent permitted by the law of the requesting Authority; provided that such demand may be made only if the requested Authority has reason to believe that the information has been or is likely to be disclosed or used otherwise than as contemplated by Article 6 above.

Article 8: Disputes and Consultations

1. In any case of dispute over the meaning of any term used in this Memorandum of Understanding, the parties will define the terms herein by mutual arrangement.

2. The Authorities will engage in consultations with respect to this Memorandum of Understanding with a view to improving its operation and resolving any matters which may arise. In particular, the Authorities will consult upon request in the event of:

- (a) a refusal by one Authority to comply with a request for information on the grounds set forth in paragraph 3 of Article 3; or
- (b) a change in market or business conditions, or in the legislation governing the matters set forth in paragraph 1 (h) of Article 1, or any other difficulty which makes it necessary or appropriate to amend or extend this Memorandum of Understanding in order to achieve its purposes.

3. The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum of Understanding.

4. Any of the conditions of this Memorandum of Understanding may be amended, relaxed or waived by mutual agreement.

Article 9: Unsolicited Assistance

1. To the extent permitted by the laws and regulations 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 or regulations of the other Authority.

Article 10: Costs of Investigation

1. If it appears that responding to a request for assistance under this Memorandum of Understanding will involve substantial costs being incurred by the requested Authority, the requested Authority and the requesting Authority will establish a cost sharing arrangement before continuing to respond to such request for assistance.

Article 11: International Law

1. The execution of this Memorandum of Understanding will not prejudice the respective positions of the Authorities and their governments concerning the principles of international law applicable to procedures for obtaining information located in another jurisdiction as contemplated in Article 3.

Article 12: Execution

1. This Memorandum of Understanding will be effective from the date of its execution by the Ontario Securities Commission and the Commissione Nazionale per le Società e la Borsa.

Article 13: Termination

1. This Memorandum of Understanding may be terminated by any Authority by that Authority giving 30 days notice to the other Authority that this Memorandum of Understanding is no longer in effect. If any Authority gives such notice, this Memorandum of Understanding 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.

October 19th, 1994.

"Commissione Nazionale Per Le
Società E La Borsa"

"Ontario Securities
Commission"

APPENDIX ACONTACT OFFICERS

Ontario Securities Commission
Suite 1800
20 Queen Street West
Toronto, Ontario M5H 3S8
Tel. (416) 593-8208
Attention: Executive Director

Commissione Nazionale per le Società e la Borsa
Via Isonzo n. 19/D
Rome 00198
Tel. (396) 8477381
Attention: Head of International Relations Office