

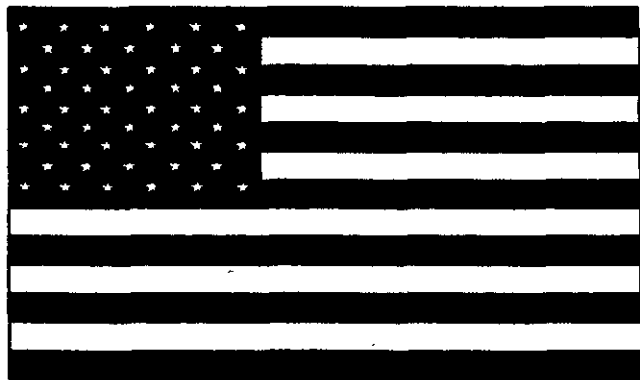
MEMORANDUM OF UNDERSTANDING

*Concerning Consultation
and Cooperation in the
Administration and Enforcement of
Securities Laws*

and

DECLARATION

*On Cooperation and Supervision
of
Cross-Border Investment Management Activity*



*The United States
Securities and Exchange Commission*



*The Hong Kong
Securities and Futures Commission*

*Washington, D.C.
October 5, 1995*

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

AND THE

HONG KONG SECURITIES AND FUTURES COMMISSION

CONCERNING CONSULTATION

AND COOPERATION IN THE

ADMINISTRATION AND ENFORCEMENT OF

SECURITIES LAWS

October 5, 1995

The United States Securities and Exchange Commission and the Hong Kong Securities and Futures Commission, recognizing the increasing international activity in the securities markets and the corresponding need for mutual cooperation as a means for improving their effectiveness in administering and enforcing the securities laws, regulations or rules of their respective countries, have reached the following understanding:

1: DEFINITIONS

For the purposes of this Memorandum of Understanding (Memorandum):

1.1 "Authority" means:

1.1.1 the United States Securities and Exchange Commission; or

1.1.2 the Hong Kong Securities and Futures Commission.

1.2 "Requested Authority" and "Requesting Authority" mean:

1.2.1 "Requested Authority" means an Authority to whom a request is made under this Memorandum; and

1.2.2 "Requesting Authority" means an Authority making a request under this Memorandum.

1.3 "person" means a natural person, unincorporated association, partnership, or body corporate; or a government, government subdivision, agency, instrumentality of a government, or any equivalent authority.

1.4 "issuer" means a person who issues or proposes to issue any security.

- 1.5 "investment business" means any business that involves, in whole or in part, effecting transactions in securities, including foreign currency options and warrants traded on a securities exchange, for the accounts of others; buying and selling securities for one's own account; 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; engaging on behalf of an issuer of securities in matters relating to the issuance, registration, exchange, or transfer of such securities; the management, promotion, offer or sale of any investment company, investment arrangement where there is a pooling, or collective investment scheme; or equivalent activities conducted by persons or entities.
- 1.6 "securities processing business" means a clearing agency, share registrar or securities transfer agent.
- 1.7 "securities market" means an exchange or other market, including an over-the-counter market, for equity securities, debt securities, options, or any other security that is recognized, regulated or supervised by the Authorities.
- 1.8 "laws", "regulations" and "rules" mean the provisions of the laws of the United States and Hong Kong and regulations promulgated thereunder, and rules promulgated by the Authorities, concerning:

- 1.8.1 insider trading;
- 1.8.2 misrepresentation or the use of fraudulent, deceptive, or manipulative practices in connection with the offer, purchase, or sale of any security, or in the conduct of investment businesses;
- 1.8.3 the duties of persons to comply with reporting requirements or requirements relating to changes in corporate control;
- 1.8.4 takeovers and mergers of corporations, acquisitions of and notifications of interests in securities (including powers to control the voting rights attached to securities and powers to dispose of securities), and associations and agreements in relation to securities and control over bodies corporate;
- 1.8.5 the making of a false or misleading statement or any material omission in any application or report made to the Authorities;
- 1.8.6 the duties of persons, issuers, or investment businesses to make full and fair disclosure of information relevant to investors;
- 1.8.7 the duties of investment businesses, securities markets, and securities processing businesses pertaining to their financial, operational 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

1.8.8 the financial and other qualifications of those engaged in, or in control of, issuers, investment businesses, securities markets, or securities processing businesses.

The laws, regulations and rules identified in 1.8 represent examples of matters for which assistance will be available under this Memorandum and are not intended to limit the Memorandum as it may apply to other laws, regulations, rules and regulatory policies of the United States and Hong Kong concerning securities.

2: ESTABLISHMENT OF A FRAMEWORK FOR CONSULTATION REGARDING MATTERS OF MUTUAL INTEREST

The Authorities intend to consult periodically about matters of mutual interest in order to enhance cooperation and to protect investors by ensuring the stability, efficiency, and integrity of the securities markets of the United States and Hong Kong; the coordination of market oversight; and the administration of United States and Hong Kong securities laws, regulations and rules. The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the securities markets of the United States and Hong Kong while avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.

3: MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION

3.1: SCOPE OF ASSISTANCE

3.1.1 The Authorities will provide the fullest mutual assistance, to the extent permitted by the laws of the United States and Hong Kong, within the framework of this Memorandum. Such assistance will be provided to facilitate the enforcement of the laws, regulations or rules applicable to: securities markets and their members; market surveillance and oversight; the granting of licenses, authorizations, waivers or exemptions for the conduct of investment businesses; and the conduct of investigations, litigation or prosecutions where information located within the jurisdiction of the Requested Authority is needed to determine whether, or to prove that, the laws, regulations or rules of the Requesting Authority may have been violated.

3.1.2 Assistance available pursuant to this Memorandum 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.

3.2: GENERAL PRINCIPLES FOR PROVIDING ASSISTANCE

3.2.1 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, regulations or rules of their respective jurisdictions, as defined herein.

3.2.2 This Memorandum does not modify or supersede any laws, regulations or rules in force in, or applying to, the United States 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.

3.2.3 The Authorities recognize the need for and desirability of providing mutual assistance and exchanging information to assist each other in securing compliance with their respective laws, regulations or rules. A request for assistance may be denied, however, by the Requested Authority:

- (a) where the request would require the Requested Authority to act in a manner that would violate its laws;
- (b) where the request is not in accordance with the provisions of this Memorandum; or
- (c) on grounds of public interest.

Where a request for assistance is denied or opposed, or where assistance is not available under the law of the Requested Authority, the Requested Authority will provide the reasons

why the assistance is not being granted, and consult pursuant to 3.7.

3.3: REQUESTS FOR ASSISTANCE

3.3.1 Requests for assistance will be made in writing and addressed to the Requested Authority's contact officer listed in Appendix A.

3.3.2 Requests will specify:

- (a) a general description of both the subject matter of the request and the purpose for which the assistance or information is sought;
- (b) a general description of the assistance, documents, information, testimony, or statements of persons sought by the Requesting Authority;
- (c) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons believed by the Requesting Authority to possess the information sought, or the places where such information may be obtained;
- (d) the provisions of laws, regulations or rules pertaining to the matter that is the subject of the request and the role of the Authority in relation to the administration or enforcement of such laws, regulations or rules;

(e) to whom, if anyone, other than those bodies listed in Appendix B, onward disclosure is likely, and the reasons for such disclosure; and

(f) the desired time period for the reply.

3.3.3 In urgent circumstances, a request for assistance and a reply to such request may be effected by summary procedures, such as by means of communication other than the exchange of letters, provided that all such communications are confirmed in writing in the manner prescribed in 3.3.

3.4: EXECUTION OF REQUESTS

3.4.1 Access to information held in the files of the Requested Authority will be provided upon the request of the Requesting Authority pursuant to the procedures set forth in 3.3.

3.4.2 When requested by the Requesting Authority, the Requested Authority will take the testimony or statements of persons involved, directly or indirectly, in the activities underlying the request, or possessing information that may assist in carrying out the request. The Requested Authority also may require the production of other evidence from any other person to the extent necessary to satisfy the request. The Requesting Authority may, in its discretion, request the taking of the testimony or statements of specific persons.

3.4.3 The obtaining of testimony or statements and the gathering of documents in response to a request under this

Memorandum will be conducted in accordance with the procedures of the Requested Authority and by persons designated by the Requested Authority, unless otherwise agreed by the Authorities.

3.4.4 Notwithstanding 3.4.3, when the Requesting Authority believes it is necessary, testimony or statements will be taken under oath or affirmation and a transcript will be made. In addition, a representative of the Requesting Authority may be present at the taking of testimony or statements and may prescribe, to a designated representative of the Requested Authority, specific questions to be asked of any witness.

3.4.5 Notwithstanding any other provision of this Memorandum, any person providing testimony, statements, information, or documents as a result of a request made under this Memorandum will be entitled to all the applicable rights and privileges of the laws of the Requested Authority. Assertions regarding rights and privileges arising exclusively pursuant to the laws of the Requesting Authority will be preserved for consideration by the courts in the Requesting Authority.

3.4.6 In addition to participating in the taking of testimony or statements pursuant to 3.4.4, the Requesting Authority may submit to the Requested Authority a request, with reasons, that a person or persons designated by the

Requesting Authority be permitted to conduct the testimony or take a statement of any person.

- (a) The request may be granted, modified or denied by the Requested Authority in its discretion.
- (b) Where the Requested Authority grants a request which specifies that the law of the Requesting Authority requires the opportunity for counsel for the witness or any party to the proceeding to pose questions to the witness, the Requested Authority will use its best efforts to ensure that such an opportunity will be given.
- (c) 3.7 applies to the denial of a request referred to in 3.4.

3.5: PERMISSIBLE USES OF INFORMATION

3.5.1 The Requesting Authority may use the information furnished solely:

- (a) for the purposes stated in the request with respect to ensuring compliance with, or enforcement of, the laws, regulations or rules of the Requesting Authority, including the legal provisions specified in the request and related provisions; and
- (b) for the purposes within the general framework of the use stated in the request, including conducting a civil or administrative

enforcement proceeding, assisting in a self-regulatory organization's market surveillance, market oversight or enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the provisions specified in the request.

3.5.2 In order to use the information furnished for any purpose other than those stated in 3.5.1, the Requesting Authority will first notify the Requested Authority of its interest in such use. The Requested Authority will advise its views within 14 days and, if necessary, the Authorities will consult pursuant to the provisions of 3.7 to ensure full consideration of both their views on the proposed use. Fourteen day advance notification need not be provided where disclosures are made to persons having the legal power to compel disclosure; in such cases, notification will be provided according to 3.6.4.

3.6: CONFIDENTIALITY OF REQUESTS AND INFORMATION

3.6.1 To the extent permitted by law, except for disclosures in accordance with 3.5, including disclosures to those persons listed in Appendix B, and disclosures that are absolutely necessary to carry out the request:

- (a) each Authority will keep confidential requests made under this Memorandum, the contents of

such requests, and any other matters arising during the operation of this Memorandum, including consultations between the Authorities, and unsolicited assistance; and

(b) the Requesting Authority will keep confidential any information received from the Requested Authority pursuant to this Memorandum.

3.6.2 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.

3.6.3 Except as contemplated by 3.5, the Requesting Authority will not offer the information to, and shall use its best efforts to ensure that it is not obtained by, any other person. To ensure confidentiality of any information provided by a Requested Authority in response to a request under this Memorandum, where appropriate, the Requested Authority will in good faith determine and represent that such public disclosure of the information would violate its laws. Unless otherwise agreed, if such information is obtained by any other person the Requesting Authority will use its best efforts to ensure that such information will not be used by that person in any way that involves disclosure to any other person.

3.6.4 The Requesting Authority will notify the Requested Authority of any legally enforceable demand for information prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

3.6.5 In response to a request by the Requested Authority, and to the extent permitted by law, as soon as the Requesting Authority has terminated the matter for which assistance has been requested under this Memorandum or the material provided is no longer required for the conduct of the matter, it will return to the Requested Authority all documents and copies thereof not already disclosed in proceedings referred to in 3.5 and all other material disclosing the contents of such documents, other than material that is generated as part of the investigative, deliberative or internal analytical process of the Requesting Authority.

**3.7: CONSULTATION REGARDING MUTUAL ASSISTANCE
PURSUANT TO THIS MEMORANDUM**

3.7.1 In any case of dispute over the meaning of any term used in this Memorandum, the Authorities will define such term in accordance with the relevant laws, regulations or rules of the Requesting Authority.

3.7.2 The Authorities will consult with each other regarding this Memorandum with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of:

- (a) a denial by one Authority of, or opposition by one Authority to, a request or proposal made by the other Authority pursuant to this Memorandum; or
- (b) any circumstance that makes it necessary or appropriate to amend or extend this Memorandum in order to achieve its purposes, such as a change in market or business conditions, or a change in the legislation governing the matters set forth in 1.8.

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

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

3.8: UNSOLICITED ASSISTANCE

To the extent permitted by their respective laws, each Authority will use reasonable efforts to provide the other Authority with any information it discovers that gives rise to a suspicion of a breach, or anticipated breach, of the laws of the other Authority.

3.9: COSTS OF INVESTIGATION

The Requested Authority may, as a condition of agreeing to give or continuing to give assistance 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

satisfying a request is or is likely to be substantial, or where a substantial imbalance has arisen in the cumulative costs incurred as a consequence of satisfying two or more requests.

4: FINAL PROVISIONS

4.1: EFFECTIVE DATE

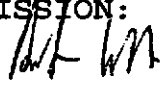
Cooperation in accordance with this Memorandum will begin on the date of its signing by the Authorities.

4.2: 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 terminates the matter for which assistance was requested.

Signed at Washington, D.C., this 5th day of October, 1995.

FOR THE UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION:



Arthur Levitt
Chairman

FOR THE HONG KONG SECURITIES AND
FUTURES COMMISSION:



Anthony Nash
Chairman

APPENDIX A

CONTACT OFFICERS

United States Securities and Exchange Commission
450 5th Street N.W.
Washington, D.C. 20549
U.S.A.

Attention: Director, Office of International Affairs

Tel: (202) 942-2770

Fax: (202) 942-9524

Hong Kong Securities and Futures Commission
12th Floor, Edinburgh Tower
15 Queen's Road Central
The Landmark, Hong Kong

Attention: Executive Director, Enforcement Division

Tel: 011-852-284-276-05 or 092-22 or 276-66

Fax: 011-852-252-179-29

APPENDIX B

For the SEC:

U.S. Department of Justice

Attorney general of any State and State criminal authorities

Administrator of securities laws of any State

Self-regulatory organizations subject to the SEC's jurisdiction (e.g., National Association of Securities Dealers, New York Stock Exchange)

U.S. Commodity Futures Trading Commission

Securities Investor Protection Corporation

Municipal Securities Rulemaking Board

U.S. Department of Treasury

Federal banking authorities (e.g., Board of Governors of the Federal Reserve System, Comptroller of the Currency, Federal Deposit Insurance Corporation)

State Bar Associations, State Accountancy Boards

State licensing organizations for professionals

For the SFC:

The Financial Secretary and the Financial Services Branch

Inspectors appointed by the Financial Secretary

Hong Kong Monetary Authority

Independent Commission Against Corruption

Royal Hong Kong Police Force

The Attorney General's Chambers

The Stock Exchange of Hong Kong Ltd.

Hong Kong Futures Exchange Ltd.

Insider Dealing Tribunal

DECLARATION ON COOPERATION AND SUPERVISION OF CROSS-BORDER INVESTMENT MANAGEMENT ACTIVITY

The U.S. Securities and Exchange Commission, an independent agency established pursuant to the Securities Exchange Act of 1934, and the Hong Kong Securities and Futures Commission, an independent agency established pursuant to the Securities and Futures Commission Ordinance of 1989,

Sharing the goal of promoting investor protection;

Observing the growth of global securities markets and cross-border financial activity, including, in particular, the dramatic increase in cross-border investment management activity and the continuous development and innovation in financial products and activities in the investment management arena; and

Believing that, in light of these developments it is appropriate to formalize and systematize mechanisms that currently exist and are operating for sharing information and conducting supervisory reviews or examinations, where an Authority is located in one jurisdiction and an Investment Management Person is located in another;

Hereby make the following Declaration:

DEFINITIONS

1. For the purposes of this Declaration:

(a) "Associated Persons" means persons and entities affiliated or associated with, or doing business relating to the investment management activities of, Investment Management Persons and subject to the supervision of the Authorities;

(b) "Authority" means the U.S. Securities and Exchange Commission ("SEC") or the Hong Kong Securities and Futures Commission ("SFC");

(c) "Books and Records" means documents, books and records of, and other information about, Investment Management Persons;

(d) "Dual Registrants" means Investment Management Persons that are authorized by or registered with both Authorities or who are authorized by or registered with one Authority and manage or advise funds authorized by the other Authority;

(e) "Inspection Report" means a report, prepared by an Authority, summarizing the results of a review or examination of an Investment Management Person;

(f) "Inspecting Authority" means the Authority performing an On-Site Inspection;

(g) "Host Authority" means the Authority in whose jurisdiction an Investment Management Person is located;

(h) "Investment Management Persons" means investment advisers, investment fund managers, fund administrators, investment companies and investment funds, subject to the respective laws and regulatory requirements of the United States or Hong Kong, and their Associated Persons;

(i) "On-Site Inspection" means any review or examination by the Inspecting Authority, at the premises of the Investment Management Person, of the Books and Records and premises of the Investment Management Person.

SCOPE OF SUPERVISORY COOPERATION

2. The Authorities intend to provide to each other the fullest possible cooperation in assisting in the enforcement of their respective laws and regulatory requirements governing Investment Management Persons. It is anticipated that such cooperation will include assistance in the oversight of Investment Management Persons located in the jurisdiction of a Host Authority and subject to the regulatory oversight of the other Authority.
3. Assistance under this Declaration may include:
 - (a) exchanging information concerning Investment Management Persons; and
 - (b) assisting in the conduct of On-Site Inspections of Investment Management Persons.
4. The Authorities intend to keep each other advised of significant changes in the laws and regulatory requirements relevant to their cooperation under this Declaration. Nothing in this Declaration limits, expands or affects the respective jurisdictions of the Authorities.
5. To facilitate cooperation under this Declaration, the Authorities hereby designate contact persons as set forth in Attachment A.

EXCHANGE OF INFORMATION

6. The Authorities intend to provide each other and update on a regular basis a list identifying the names of Dual Registrants.

7. Each Authority intends to notify the other of the commencement of a review or examination of a Dual Registrant identified on the list referred to in Paragraph 6 above.
8. The Authorities intend to provide to each other, on a routine basis and without advance request, copies of Inspection Reports of Dual Registrants.
9. Each Authority intends to provide the other, upon request and consistent with the laws and regulatory requirements which govern it, assistance in obtaining information concerning the contents of public and non-public Books and Records relating to Investment Management Persons. Such assistance may include, without limitation:
 - (a) cooperation and consultation in reviewing, interpreting and analyzing such Books and Records and Inspection Reports; and
 - (b) obtaining information from the officers, directors, and other personnel of Investment Management Persons.
10. Each Authority intends, upon request and consistent with the laws and regulatory requirements which govern it, to provide other information located in its jurisdiction that may be relevant to the other Authority's review, examination or determinations pertaining to registration or authorization status of Investment Management Persons.

INSPECTIONS

11. The Authorities intend to comply with the following procedure for an On-Site Inspection: The Inspecting Authority will notify the Host Authority of its intent to perform an On-Site Inspection in the jurisdiction of the Host Authority by providing a copy of the notice or request for Books and Records that it issues to the Investment Management Person prior to the time that such notice or request is issued. In routine reviews or examinations, the Inspecting Authority will provide notice to the Host Authority one week prior to the Inspecting Authority's notification of the Investment Management Person. In routine reviews or examinations, two weeks prior notice will be given to the Investment Management Person of the On-Site Inspection. In other cases, the Authorities may agree to vary these notice periods.
12. In its discretion, the Host Authority may accompany the Inspecting Authority during the On-Site Inspection and, to the extent permitted by law, assist in all aspects of the On-Site Inspection. Such assistance may include, without limitation:
 - (a) compiling, reviewing, interpreting and analyzing Books and Records;

- (b) interpreting and understanding the internal controls and other procedures of the Investment Management Person; and
- (c) obtaining such other information as may be relevant to the On-Site Inspection.

APPLICABILITY OF MOU

- 13. This Declaration is being made within the framework of the Memorandum of Understanding, dated October 5, 1995 (the "MOU"), between the SEC and the SFC, and nothing contained herein modifies or amends the MOU.
- 14. Materials and information provided hereunder are to be kept confidential and governed by the provisions of Section 3.6 of the MOU.

CONSULTATIONS

- 15. The Authorities intend to engage in regular consultations regarding investment management activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation.

Signed at Washington, D.C., this 5th day of October, 1995.

FOR THE UNITED STATES
SECURITIES AND EXCHANGE
COMMISSION:



Arthur Levitt
Chairman

FOR THE HONG KONG SECURITIES AND
FUTURES COMMISSION:



Anthony Neoh
Chairman

ATTACHMENT A

The U.S. Securities and Exchange Commission designates as its contact person:

**Director
Office of International Affairs
United States Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549
U.S.A.**

**Tel: (202) 942-2770
Fax: (202) 942-9524**

The Hong Kong Securities and Futures Commission designates as its contact person:

In respect of Exchange of Information:

**Director
Investment Products
Hong Kong Securities and Futures Commission
12th Floor, Edinburgh Tower
15 Queen's Road Central
The Landmark, Hong Kong**

**Tel: 011-852-28409263
Fax: 011-852-28770318**

In respect of Inspections:

**Director
Intermediaries Supervision
Hong Kong Securities and Futures Commission
12th Floor, Edinburgh Tower
15 Queen's Road Central
The Landmark, Hong Kong**

**Tel: 011-852-28427642
Fax: 011-852-25265304**