

27 August 2004

**MEMORANDUM
OF
UNDERSTANDING**

Gibraltar

**Financial Services
Commission and the
Commissioner of the
Financial Services
Commission**

UNITED KINGDOM

**Financial Services
Authority**

Financial Services Authority
General Counsel's Division
7th Floor
25 The North Colonnade
Canary Wharf
London E14 5HS
Phone: (44)(0) 20 7066 1000
Fax: 44 (0) 20 7066 0031

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Memorandum of Understanding (“MoU”)

Between

**Financial Services Commission, Gibraltar (“FSC”), the
Financial Services Commissioner
 (“Commissioner”) and Financial Services Authority (“FSA”)**

Recitals

- A. The FSC is a statutory body corporate established by the Financial Services Commission Ordinance 1989. The Commissioner is appointed under section 8 of the Financial Services Commission Ordinance 1989 by the Governor, acting with the approval of the Foreign and Commonwealth Secretary,

The functions of the FSC are to keep under review the operation of Gibraltar legislation and the effectiveness of supervision of financial services; to monitor the extent to which Gibraltar legislation and supervision complies with European Union obligations and supervisory standards governing financial services in the United Kingdom where Community law applies; to protect the public against financial loss arising out of dishonesty, incompetence or malpractice; to advise the Government of Gibraltar and the Government of the United Kingdom on matters concerning financial services; and to draw up codes for regulating the terms of service of persons employed by the Commission.

The Commissioner, who is also the Commissioner of Banking and the Commissioner of Insurance and the Authority for the purposes of Investment Services, is the Chief Executive Officer of the FSC and is charged with the responsibility of supervising institutions carrying on finance business in or from within Gibraltar. He is required to ensure that such supervision complies with any applicable obligation Gibraltar has as a constituent of the European Union and to establish supervisory standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.

- B. The FSA is the United Kingdom’s national financial services and markets regulator. As such it administers the Financial Services and Markets Act 2000 (“FSMA”) which provides among other things for the supervision of financial services, financial products and financial markets. Also, in its capacity as the competent authority (i.e. the UK Listing Authority) under Part VI of FSMA, the FSA is responsible for regulating listed issuers and their corporate advisers.
- C. The FSC, the Commissioner and the FSA wish to enter into this MOU to provide a formal basis for co-operation, including for the exchange of information and investigative assistance. The FSC, the Commissioner and the FSA believe such co-operation will enable them to more effectively perform their functions.

Operative Part

Interpretation

1. In this MoU, unless the context requires otherwise:
 - “administering” an applicable law, regulation or requirement includes enforcing the same;
 - "applicable laws, regulations and requirements" means any law, regulation or requirement applicable in [name of Country] and/or in the United Kingdom, and where the context permits includes:
 - (a) relevant European legislation that has not yet been transposed into UK domestic law;
 - (b) any law, regulation or requirement applicable in a [name of Country] or the United Kingdom; and
 - (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;
 - “Authority” means the FSC, the Commissioner]or the FSA;
 - “Commissioner” means the Financial Services Commissioner of the Financial Services Commission Gibraltar;
 - “FSA” means the Financial Services Authority;
 - “FSC” means the Financial Services Commission Gibraltar;
 - “permitted onward recipient” means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;
 - “person” means a natural person, legal entity, partnership or unincorporated association.

Purpose and Principles

2. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information and investigative assistance.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to Gibraltar or the United Kingdom. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

Provision of Unsolicited Information

5. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

Requests for Assistance

6. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and overall policy. Assistance may include for example:

- (a) providing information in the possession of the requested Authority;
- (b) confirming or verifying information provided to it for that purpose by the requesting Authority;
- (c) exchanging information on or discussing issues of mutual interest;
- (d) obtaining specified information and documents from persons;
- (e) questioning or taking testimony of persons designated by the requesting Authority;
- (f) conducting inspections or examinations of financial services providers or arranging for the same; and
- (g) permitting the representatives of the requesting Authority to participate in the conduct of enquiries made by or on behalf of the requested Authority pursuant to paragraphs (e) - (f) above.

Procedure for Requests

7. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business days. To facilitate assistance, the requesting Authority should specify in any written request:
 - (a) the information or other assistance requested (identity of persons, specific questions to be asked etc.);
 - (b) if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
 - (c) the purpose for which the information or other assistance is sought;
 - (d) to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of Appendix 1; and
 - (f) any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

Assessing Requests

8. Each request for assistance will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the requested

Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.

9. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:
 - (a) whether the request conforms with this MoU;
 - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
 - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
 - (d) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Authority's jurisdiction to give the assistance sought;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the further matter set out in clause 2 of Appendix 1;
 - (f) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
 - (g) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
10. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 9 in the discretion of the requested Authority.

Contact Points

11. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MOU should be directed.

Further Provisions

12. The further provisions set out in:
 - (a) Appendix 1 will apply in relation to actual or possible enforcement matters;
 - (b) any other Appendices covering specific areas of financial services or specific issues, as agreed in writing by the Authorities, will apply.

Costs

13. If the cost of fulfilling a request is likely to be substantial, the requested Authority may, as a condition of agreeing to give assistance under this MoU, require the requesting Authority to make a contribution to costs.

Confidentiality

14. An Authority that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted under its applicable laws, regulations and requirements. The recipient Authority will endeavour to consult with the other Authority if it proposes to pass on information to another person. The recipient Authority will endeavour to comply with any restrictions on the use of information that are agreed when the information is provided.
15. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.

Consultation

16. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
17. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the requesting and the requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

Commencement

18. This MoU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving 30 days advance written notice to the other Authority. It may be amended by agreement in writing.

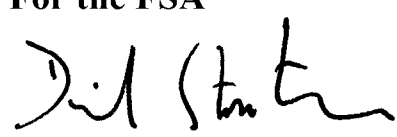
Executed by the Parties:

**For the FSC and the
Commissioner**


Marcus Killick
Chairman and Commissioner

Date: *27 August 2004*

For the FSA


David Strachan
Director

Date: *27 August 2004*

Appendix 1: Further Procedures for Enforcement Matters

Further details to be contained in requests for assistance

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be contained in the request:
 - (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority;
 - (d) the relevance of the requested assistance to the specified rule or law; and
 - (e) whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the country of the requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

Further ground for denial of request

2. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further matter may be taken into account by the requested Authority in determining whether to fulfil the request in whole or in part:
 - whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach the subject-matter of the request.

Requests to Sit in

3. If, following a request from the requesting Authority, the requested Authority conducts an interview of any person, the requested Authority may permit a representative of the requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the requested Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the requested Authority.

Joint Investigations

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions,

may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.

5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.
6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to FSC, the Commissioner for a joint investigation should be made, through the Enforcement Officer. Suggestions to the FSA should be made to the Director, Enforcement.

Rights of persons preserved

8. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

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¹ Further Appendices may be necessary if the other Regulator is the supervisor of recognised schemes referred to in s274 of FSMA or a recognised overseas investment exchange or a recognised overseas clearing house referred to in s292 of FSMA. In many cases this will not be relevant.