

6 July 2004

**MEMORANDUM
OF
UNDERSTANDING**

SWITZERLAND

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Commission**

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Memorandum of Understanding (“MoU”)

Between

Swiss Federal Banking Commission (“SFBC”) and Financial Services Authority (“FSA”)

Recitals

- A. The SFBC is a federal agency that is independent of the government of Switzerland and is responsible for administering the Banking Act 1934, the Securities Act 1995 and the Investment Funds Act 1994.
- B. Under Article 23 of the Banking Act 1934, the SFBC is responsible for the supervision of banks, investment funds, securities and derivatives exchanges, securities and derivatives dealers and the disclosure of qualified shareholdings in listed companies. The SFBC is also responsible for the regulation of public take-over bids.
- C. 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.
- D. The SFBC 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 SFBC 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 Switzerland 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 Switzerland 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 SFBC or the FSA;
 - “FSA” means the Financial Services Authority;
 - “SFBC” means the Swiss Federal Banking Commission;
 - “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, with respect to all the functions, including those described in the Recitals to this MoU, entrusted to the Authorities within their respective jurisdictions.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Switzerland 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 and is without prejudice to the operation of the arrangements regarding co-operation between the Authorities with regard to supervising and enforcing appropriate standards of conduct on the markets operated by virt-x Exchange signed in June 2001.

Provision of Unsolicited Information

4. 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

5. 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

6. 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 or entities known to possess information being requested, identity of persons to be interviewed, 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 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

7. 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.

8. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account factors including:
 - (a) whether the request conforms with this MoU;
 - (b) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
 - (c) 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; and
 - (d) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
9. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 8 or otherwise in the reasonable discretion of the requested Authority.
10. Where a request for assistance is denied, or where assistance is not available under applicable laws, regulations and requirements, the requested Authority will provide the requesting Authority with its reasons for not granting the assistance and the Authorities will consult pursuant to paragraph 20.

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 Procedures

12. The further procedures set out in Appendix 1 will apply in relation to actual or possible enforcement matters.

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 agrees to treat such information as confidential in accordance with the provisions of this MoU.

Permitted uses

15. An Authority that receives non-public information under this MoU may use that information for the purposes set forth in the request for assistance, and for its functions.

16. If an Authority intends to use information provided under this MoU for any purpose other than those contemplated in paragraph 15, it must obtain the prior consent of the other Authority.
17. The recipient Authority will endeavour to comply with any restrictions on the use or disclosure of information that are agreed when the information is provided.

Disclosure

18. The requesting Authority confirms that it will endeavour to seek consent from the requested Authority before disclosing non-public information it receives under this MoU.
19. If the requesting Authority is subject to a mandatory disclosure requirement or receives a legally enforceable demand for information under applicable laws, regulations and requirements, the requesting Authority will notify the requested Authority of its obligation to disclose and will endeavour to seek consent from the requested Authority before making a disclosure. If the requested Authority withholds its consent, the requesting Authority will use its best efforts to protect the confidentiality of non-public information obtained and, if necessary, will use all reasonable legal means to resist disclosure, including by asserting such appropriate legal exemptions or privileges with respect to that information as may be available, for example by advising the concerned court or requesting party of the possible negative consequences of a disclosure on future co-operation between the Authorities.

Consultation

20. 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.
21. 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.

Entry into Effect and Termination

22. This MoU will enter into force upon signature by both of the Authorities and shall continue to have effect unless terminated by either of the Authorities by giving 30 days written notice to the other Authority. In the event of such termination, non-public information passed under this MoU will remain confidential.

Executed by the Parties:

For the SFBC

Hauri

Dr Kurt Hauri, Chairman

Date:

11.2.03

Daniel Zuberbühler, Director

Date:

10 Dec 2004

For the FSA

Callum McCarthy

Callum McCarthy

Date:

6 July 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 that is 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.

Joint Investigations

4. Where circumstances arise which lead to an investigation in which the Authorities have a joint interest, the Authorities will consult as to the allocation of responsibilities and the appropriateness of conducting a joint investigation and co-ordinated enforcement action.

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 the SFBC for a joint investigation should be made to the Head of the Legal Department or the Head of the Markets and Exchanges Department. 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.