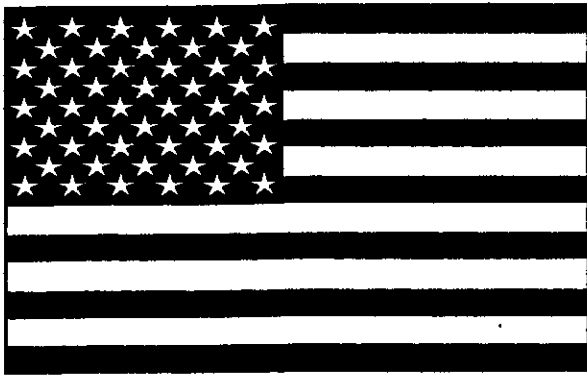
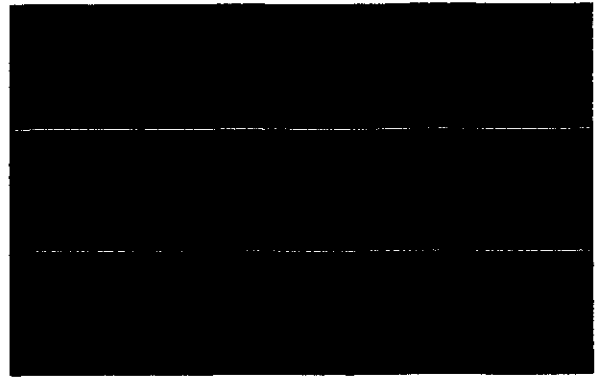


# MEMORANDUM OF UNDERSTANDING



*The United States  
Securities and Exchange Commission*



*The German Bundesaufsichtsamt  
für den Wertpapierhandel*

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

*Washington, D.C.  
October 17, 1997*

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN THE**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**AND THE**

**GERMAN BUNDESAUFSICHTSAMT FÜR DEN WERTPAPIERHANDEL**

**CONCERNING CONSULTATION**

**AND COOPERATION IN THE**

**ADMINISTRATION AND ENFORCEMENT OF**

**SECURITIES LAWS**

Washington, D.C. -- October 17, 1997

The United States Securities and Exchange Commission and the German Bundesaufsichtsamt für den Wertpapierhandel, 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 of their respective countries, have reached the following understanding:

**ARTICLE I: DEFINITIONS**

For the purposes of this Memorandum of Understanding:

- (a) "Authority" means:
  - (i) the Securities and Exchange Commission of the United States, or
  - (ii) the Bundesaufsichtsamt für den Wertpapierhandel of Germany. The Bundesaufsichtsamt für den Wertpapierhandel is responsible, among other things, for cooperation with foreign authorities in matters relating to the supervision of securities exchanges, which are generally in the competence of the respective German states (Länder) where the exchanges are located.
- (b) (i) "requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding.
- (ii) "requesting Authority" means an Authority making a request under this Memorandum of Understanding.
- (c) Except where otherwise noted, "State" means:
  - (i) the United States of America, or

- (ii) the Federal Republic of Germany.
- (d) "person" means a natural person, unincorporated association, partnership or body corporate; or a government, political subdivision, agency, instrumentality of a government, or any equivalent authority.
- (e) "issuer" means a person who issues or proposes to issue any security.
- (f) "investment business" means any business that involves, in whole or in part, effecting transactions in securities 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 or collective investment scheme; or equivalent activities conducted by persons or entities.
- (g) "securities processing business" means a clearing agency or securities transfer agent.
- (h) "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.

- (i) "laws or regulations" means the provisions of the laws, or regulations promulgated thereunder, of the United States and/or Germany, concerning:
  - (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 in the conduct of investment businesses;
  - (iii) the duties of persons to comply with reporting requirements or requirements relating to changes in corporate control;
  - (iv) 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;
  - (v) the making of a false or misleading statement or any material omission in any application or report made to the Authorities;
  - (vi) the duties of persons, issuers, or firms conducting investment businesses to make full

and fair disclosure of information relevant to investors;

- (vii) the duties of securities markets, firms conducting investment businesses 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
- (viii) the financial and other qualifications of those engaged in, or in control of, issuers, securities markets, or securities processing businesses.

The laws or regulations identified in subparagraphs (i) - (viii) represent examples of matters for which assistance will be available under this Memorandum of Understanding and are not intended to limit the Memorandum of Understanding as it may apply to other laws, regulations, and regulatory policies of the States of the Authorities concerning securities.

**ARTICLE II: ESTABLISHMENT OF A FRAMEWORK FOR CONSULTATIONS 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 Germany; the

coordination of market oversight; and the administration of United States and German securities laws or regulations.

**ARTICLE III: MUTUAL ASSISTANCE FOR THE EXCHANGE OF INFORMATION**

**Section 1: SCOPE OF ASSISTANCE**

1. The Authorities will provide the fullest mutual assistance, to the extent permitted by the laws of the United States and Germany, within the framework of this Memorandum of Understanding. Such assistance will be provided to facilitate the enforcement of the laws or regulations 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; the inspection or examination of investment businesses; and the conduct of investigations, litigation or prosecution where information located within the jurisdiction of the requested Authority is needed to determine whether, or prove that, the laws or regulations of the State of the requesting Authority may have been violated. Such assistance will be provided without regard to whether the type of conduct described in the request for assistance would constitute a violation of the laws or regulations of the State of the requested Authority.

2. Assistance available pursuant to this Memorandum of Understanding includes, but is not limited to:

- (a) providing access to information in the files of the requested Authority;
- (b) taking statements of persons;

- (c) obtaining information and documents from persons; and
- (d) conducting compliance inspections or examinations of investment businesses, securities processing businesses, and securities markets..

3. Where a request for assistance is made pursuant to this Memorandum of Understanding, and the requested Authority does not have the power to provide the requested assistance, the requested Authority will use all reasonable efforts to obtain the aid of other governmental agencies in order to provide the requested assistance.

**Section 2: GENERAL PRINCIPLES FOR PROVIDING ASSISTANCE**

1. This Memorandum of Understanding 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 any laws or regulations of their respective jurisdictions, as defined herein. This Memorandum of Understanding does not impose any legally binding obligation on the Authorities or supersede domestic law.

2. This Memorandum of Understanding does not affect any right of either Authority arising under the law of its State or any other arrangement to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, the laws or regulations of its State.

3. No provision of this Memorandum of Understanding shall be construed as conferring upon any person or authority other than those designated herein a right, directly or indirectly, to



obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.

4. The Authorities recognize the need for and desirability of providing mutual assistance and exchanging information to assist each other in securing compliance with the laws or regulations of their respective States. 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 the laws of the State of the requested Authority;
- (b) where the request is not in accordance with the provisions of this Memorandum of Understanding;
- (c) if the release of the information could affect the sovereignty, the security or the public order of the requested Authority; or
- (d) in insider trading cases, if a criminal proceeding has already been initiated in the State of 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 State of the requested Authority. If 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 State of the requested Authority, the

authorities will consult regarding the issue of cooperation.

Where a request for assistance is denied or opposed, or where assistance is not available under the law of the State of the requested Authority, the requested Authority will provide the reasons why the assistance is not being granted, and consult pursuant to Section 7.

**Section 3:       REQUESTS FOR ASSISTANCE**

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

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, 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 or entities believed by the requesting Authority to possess the information sought, or the places where such information may be obtained;
- (d) the legal provisions pertaining to the matter that is the subject of the request; and
- (e) the desired time period for the reply.

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

**Section 4: EXECUTION OF REQUESTS**

1. Access to information held in the files of the requested Authority will be provided upon the request of the requesting Authority pursuant to Section 3 of this Article.

2. When requested by the requesting Authority, the requested Authority will take the 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 requesting Authority may, in its discretion, request a transcript of the statement. The requested Authority also may require the production of other evidence from other parties designated by the requesting Authority.

3. The obtaining of statements, the gathering of documents, and the response to a request under this Memorandum of Understanding 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.

4. Notwithstanding any other provision of this Memorandum of Understanding, any person providing statements, information, or documents as a result of a request made under this Memorandum of Understanding will be entitled to all the applicable rights

and privileges of the laws of the State of the requested Authority. Assertions regarding rights and privileges arising exclusively pursuant to the laws of the State of the requesting Authority will be preserved for consideration by the courts in the State of the requesting Authority.

5. When requested by the requesting Authority, an examination will be conducted of the books and records of a firm conducting an investment business or its custodian or agent, a securities market, or a securities processing business.

**Section 5: PERMISSIBLE USES OF INFORMATION**

1. The requesting Authority may use non-public information furnished in response to a request for assistance under this Memorandum of Understanding solely:

- (a) for the purposes 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) for purposes within the general framework of the use stated in the request, including conducting a civil or administrative proceeding, assisting in a self-regulatory organization's surveillance or enforcement activities, 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.

2. To use the information for any purpose other than those stated in paragraph 1 of this Section, the requesting Authority must first inform the requested Authority of its intention and provide it the opportunity to oppose the use. If the use of the information is opposed by the requested Authority, the Authorities agree to consult pursuant to Section 7 on the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed.

Section 6: CONFIDENTIALITY OF REQUESTS AND INFORMATION

1. Except for disclosures in accordance with Section 5 of this Article, each Authority will keep confidential to the extent permitted by law requests made under this Memorandum of Understanding, the contents of such requests, and any other matters arising under this Memorandum of Understanding.

2. In all cases, the requesting Authority shall keep confidential any information received pursuant to this Memorandum of Understanding to the same extent as such information would be kept confidential in the territory of the State of the requested Authority, except in the case where the information provided must be disclosed in the course of its use pursuant to Section 5 of this Article.

3. To the extent possible, the requesting Authority will notify the requested Authority of any legally enforceable demand for non-public information furnished under this Memorandum of Understanding prior to compliance, and will assert such

appropriate legal exemptions or privileges with respect to such information as may be available.

4. To the extent permitted by the law, the Authorities may, by mutual agreement, make an exception to the principles set forth in paragraphs 1 through 3 of this Section.

**Section 7: CONSULTATION REGARDING MUTUAL ASSISTANCE  
PURSUANT TO THIS MEMORANDUM OF UNDERSTANDING**

1. In any case of dispute over the meaning of any term used in this Memorandum of Understanding, the Authorities will define such term in accordance with the relevant laws of the State of the requesting Authority.

2. The Authorities will consult with each other regarding this Memorandum of Understanding 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 of Understanding;  
or
- (b) a change in market or business conditions, or in the legislation governing the matters set forth in paragraph letter (i) of Article I, or any other circumstance that 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.

**Section 8: UNSOLICITED ASSISTANCE**

To the extent permitted by the laws or regulations of the respective States, 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 or regulations of the State of the other Authority.

**ARTICLE IV: FINAL PROVISIONS**

**Section 1: EFFECTIVE DATE**

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

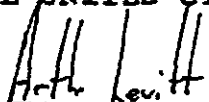
**Section 2: TERMINATION**

Cooperation in accordance with this Memorandum of Understanding 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 of Understanding will continue with respect to all requests for assistance that were made before the effective date

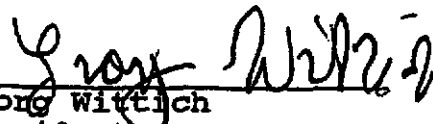
of notification until the requesting Authority terminates the matter for which assistance was requested. In the event of termination of this Memorandum of Understanding, information obtained under this Memorandum of Understanding will continue to be treated confidentially in the manner prescribed under Article III, Section 6.

SIGNED in Washington, D.C., this 17th day of October, 1997.

FOR THE SECURITIES AND  
EXCHANGE COMMISSION OF  
THE UNITED STATES:

  
\_\_\_\_\_  
Arthur Levitt  
Chairman

FOR THE BUNDESAUFSICHTS-  
AMT FÜR DEN WERTPAPIER-  
HANDEL OF GERMANY:

  
\_\_\_\_\_  
Georg Wittich  
President



**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

German Bundesaufsichtsamt für den Wertpapierhandel  
Nibelungenplatz 3  
60318 Frankfurt am Main  
GERMANY

Attention: Head of the Division for International Affairs

Tel.: 011-49-69-959-52-128  
FAX: 011-49-69-959-52-299

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