

MEMORANDUM OF UNDERSTANDING

ON THE

EXCHANGE OF INFORMATION

BETWEEN

**THE COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS
OF PORTUGAL**

AND

**THE KOMISJA PAPIERÓW WARTOSCIOWYCH I GIEŁD
OF POLAND**

Lisboa, 27 May 1999

MEMORANDUM OF UNDERSTANDING

The Comissão do Mercado de Valores Mobiliários and the Polish Securities and Exchange Commission

Considering, in the light of the increasing international activity in the securities markets, the need for mutual co-operation and consultation in order to facilitate the performance of their functions in the matters mentioned hereinafter;

Considering the importance of ensuring compliance with and the enforcement of the securities laws and regulations of Portugal and of Poland;

Desiring to establish the fullest mutual assistance in order to facilitate the performance of the functions they are entrusted with in their respective States to enforce or secure compliance with any law or regulations, as that term is defined herein;


Have reached the following understanding:

Article 1: Purpose of the Memorandum of Understanding

The purpose of this memorandum of Understanding ("Understanding") is to establish a system for mutual assistance between the administrative Authorities designated hereinafter in order to facilitate the performance of the functions they are entrusted with, to promote the integrity of the securities markets by providing a framework for co-operation, including channel of communication, increased mutual understanding, the exchange of information and investigative assistance.

Article 2: Definitions

For the purposes of this understanding:

1. " Authority " means:
 - (a) Comissão do Mercado de Valores Mobiliários
 - (b) Polish Securities and Exchange Commission
2. " requested Authority " means an Authority to whom a request is made under this Understanding,
3. " requesting Authority " means an Authority making a request under this Understanding. 

4. " security " means a stock, bond, debenture, note negotiable, futures contracts, other derivative products, options and any financial products, or any other right, contract or document that falls within the jurisdiction of the Authorities,
5. " issuer " means a person who issues or proposes to issue any security,
6. " securities market " means an exchange or other market, including an over-the counter market, for equity securities, debt securities, bonds, options or any other security that is recognised, regulated or supervised by the Authorities.
7. " laws or regulations " mean the provisions of the laws, regulations and other regulatory requirements applicable in Portugal and in Poland.

Article 3: Scope of the Memorandum of Understanding

- 1) The Authorities intend to provide each other the maximum assistance possible to the extent permitted by their domestic law in response to requests resulting from the search for violation of the laws and regulations of the State of the requesting Authority. For this purpose the requested Authority will make use of the measures and the powers of its own further to the procedure in force in its State. The requested Authority will make available the information of which it disposes; if it has the necessary power it collects the information needed for the execution of the request.
- 2) If the request of assistance does not result from the search for violation of the laws and regulations, the requested Authority will make any effort to grant the solicited assistance to the requesting Authority; the authorities agree to consult each other in case of difficulties

Article 4: General principles

- 1) This Understanding serves as a basis of co-operation for the Authorities and does not create any binding international legal obligations, nor does it modify or supersede any laws, regulations or regulatory requirements in force in or applying to Portugal or Poland. The Understanding does not create any rights enforceable by third parties, nor does it affect any arrangements under other Memoranda of Understanding. The performance of the provisions of this Understanding shall be consistent with domestic laws, regulations and conventions of the respective countries of the Authorities and within the availability of respective resources of the Authorities, and the performance of the provisions shall not be contrary to the public interests of the country of the requested Authority.
- 2) Assistance under this Understanding may be denied where:
 - a) the execution of the request would prejudice the sovereignty, security, fundamental economic interests, or public order of the State of the requested Authority;
 - b) the request is not in accordance with the provisions set forth in this Understanding;
 - c) a criminal proceeding has already been initiated in the State of the requested Authority based upon the same fact 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.

Article 5: Requests for Assistance

- 1) Request 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 shall include the following:
 - a) the information sought by the requesting Authority;
 - b) a general description of both the matter that is the subject of the request and the purpose for which the information is sought;
 - c) the persons or entities suspected by the requesting Authority of possessing the information sought, or the places where such information may be obtained, if the requesting authority is knowledgeable thereof;
 - d) the laws and regulations pertaining to the matter that is the subject of the request and appropriate, the urgency thereof;
 - e) the desired time period for the reply and, where appropriate, the urgency thereof;
- 3) In the event of urgency, requests for assistance and replies to such requests may be transmitted by summary or emergency procedures provided that they are confirmed in the manner prescribed in paragraphs 1 and 2 of this Article.

Article 6: Execution of the Requests

Subject to Articles 1, 2, 3, 4 and 5 the requested Authority will provide the requesting Authority the information that it holds or that it may obtain by such means as may be determined by the requested Authority, in accordance with the applicable domestic rules.

Article 7: Permissible Use of Information

- 1) The requesting Authority may use the information furnished solely:
 - a) for purposes stated in the request, including ensuring compliance with enforcement of the law or regulations specified in the request and related provisions; and
 - b) for purposes with the general frame work for the use stated in the request including conducting a civil or administrative enforcement proceeding, or market surveillance, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the law and regulations specified in the request.
- 2) To use the information furnished for any purpose other than those stated in paragraph 1 of this Article, the requesting Authority must first inform the requested Authority of its intention and provide it the opportunity to oppose the use. If the requested Authority opposes the use, the information may used only under conditions imposed by the requested Authority.

Article 8: Confidentiality of Requests and Information Provided

- 1) Each Authority shall keep confidential, to the extent permitted by the law, requests made within the framework of this Understanding, the contents of such request, and any other matters arising during the operation of this Understanding, including consultations between the Authorities.
- 2) The requesting Authority shall keep confidential any information received pursuant to this 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 Article 7 above, and will not pass the said information to nobody else without prior consent of the requested Authority.

Article 9: Disputes and Consultations

- 1) In any case of dispute over the meaning of any term used in this Understanding, the Authorities shall define the terms herein by mutual arrangement.
- 2) The Authorities will keep the operation of this Understanding under continuous review and will consult 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 refusal by one Authority to comply with a request for information or a request to use the information in the grounds set forth in paragraph 2 of Article 7; or
 - b) a change in market or business conditions or in the laws or regulations or any other difficulty which makes it necessary to amend or extend this Understanding in order to achieve its purposes.
- 3) The Authorities may make arrangements on such practical measures as may be necessary to facilitate the implementation of this Understanding.

Article 10: Effective Date

This Understanding will be effective from the date of its signing by the Authorities.

Article 11: Cost Sharing

If it appears to the requested Authority that the response to a request for assistance under this Understanding will incur substantial costs, the requested Authority and the requesting Authority will establish a cost sharing arrangement before continuing to respond to such a request for assistance.

Article 12: Termination

This Understanding shall remain in force unless terminated by either Authority upon 30 days written notice to the other Authority.

Signed this 27th day of May, 1999 in six versions, two in Portuguese, two in Polish and two in English.

for the Comissão do Mercado de Valores
Mobiliários of Portugal

for the Securities and Exchange
Commission of Polish

José Nunes Pereira
Chairman

Jacek Socha
Chairman

APPENDIX A

CONTACT PERSONS

Comissão do Mercado de Valores Mobiliários

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