



CMVM

PRESIDENTE

Mr. Kurt Hauri
SWISS FEDERAL BANKING COMMISSION
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SWITZERLAND

Lisboa, May 6, 1999

Co-operation and information exchange between the Comissão do Mercado de Valores Mobiliários (CMVM) and the Swiss Federal Banking Commission (SFBC)

Dear Chairman Hauri,

We are writing to confirm that the CMVM is able to meet the conditions laid down in Article 38 of the Federal Act on Stock Exchanges and Securities Trading (SESTA). The following provides you with a general description of the CMVM's functions and we enclose copies of the relevant legislation which govern the confidentiality of information received by the CMVM in performing its functions and the ability of the CMVM to exercise its powers on behalf of foreign regulatory authorities. In short, the applicable legislation in relation to the matters are comparable to that of the SESTA.

A. Information Exchange by the SFBC

1. Use of information for Supervision of Securities Markets

Article 38 of Swiss Federal Act on Stock Exchange and Securities Trading requires that non-public information from the SFBC be used exclusively for the purpose of direct supervision of the securities markets and of securities dealers.

The CMVM is a public body whose duties are that of regulating, supervising, inspecting and promoting the securities markets and the activities carried out within those markets by all the agents concerned in accordance with Articles 9° and 12° of the Securities Market Code.

It is also one of CMVM's duties to assure international co-operation between the homologous authorities in accordance with Article 18° of the Securities Market Code.

In this regard, the CMVM would use information obtained from the SFBC exclusively to enforce the securities regulation.

The main laws enforced by the CMVM are the Portuguese Securities Market Code (Decree-Law 142-A of 10th April) as well as the Credit Institutions and Financial Companies Act (Decree-Law 298/92, of 31st December).

Other important regulation enforced by the CMVM concern the CMVM's regulations.

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2. CMVM's Confidential Treatment of Information from the SFBC

Article 38 Swiss Federal Act on Stock Exchanges and Securities Trading requires that the foreign authority be bound by an official or professional secrecy.

Non-public information and documents received by the CMVM from the SFBC are deemed non-public and confidential. They will be protected by secrecy provisions of Article 45º of the Portuguese Securities Market Code

3. Disclosure to Other Portuguese Authorities of Information Provided by the SFBC

Article 38 of the Swiss Federal Act on Stock Exchange and Securities Trading requires that supervisory authorities receiving non-public information from the SFBC do not publish or transmit this information to other individuals, authorities or bodies without the prior consent of the SFBC.

We confirm that we will ask the SFBC's prior consent before disclosing confidential information received from the SFBC, except where disclosure is mandatory under Portuguese law.

The Portuguese legislation recognise the right of a defendant in a action instituted by the CMVM or by the Portuguese Public Attorney to have reasonable access to the information upon which the government relies, or to information that otherwise is relevant to the government's allegations.

Under the Portuguese penal law and under the penal proceeding law the CMVM could be obliged, to disclosed confidential information in several cases (see Article 45º (3) of the Securities Market Code)-mainly when the facts on which the information relies are qualified as a crime under the Portuguese penal law.

If the facts are not qualified as crime under Portuguese penal law and if the CMVM is requested to supply information received from the SFBC to a Portuguese court, professional secrecy will be asserted, however a superior court might decree a breach of confidence.

Under the Portuguese Parliamentary Bill, all the Portuguese authorities, including the CMVM, could be requested to provide information to parliamentary committees which are carrying out formal parliamentary investigations. In such cases professional secrecy provisions should be asserted by the CMVM, however the committee might decree a breach of the confidence as well.



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Even in these cases, the CMVM will seek the SFBC's prior consent but the CMVM cannot refuse to make disclosure even in the absence of consent. However, if the SFBC withholds its consent to disclosure, the CMVM will use its best efforts to resist disclosure including by using legal means to challenge an order or by explaining to the requesting authority the reasons of the SFBC for not consenting and the negative consequences a forced disclosure might have on the future co-operation.

4. Form and content of information request

We will make requests in writing by mail or by fax and we will describe in our requests shortly the facts, the background and the subject of our investigation as well as the purposes for which we intend to use the requested information. We will enclose all provisions whose eventual violation we are investigating. If we intend to transfer the information to third parties we will specifically bring this to your attention. We will describe as precisely as possible the requested information.

B. Information Exchange by the CMVM

We like to reaffirm our intention to co-operate with the SFBC and, in particular, we note that, upon receiving a request from the SFBC for assistance in connection with an investigation into potential violations of laws or rules relating to securities matters that the SFBC administers or enforces, the CMVM is legally authorised to provide assistance in accordance with the aforementioned Article 18° of the Securities Market Code.

We are asking the SFBC to make its requests in writing by mail or by fax.

The requests should contain the following chapters:

- a general description of both the subject matter of the request and the purpose for which the assistance or information is sought;
- a general description of the assistance, documents, information, testimony or statements of persons sought by the SFBC;
- any information in the possession of the SFBC that might assist the CMVM in identifying the persons or entities believed by the SFBC to possess the information sought, or the places where such information may be obtained;
- the legal provisions pertaining to the matter that is the subject of the request; and



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- the desired time period for the reply.

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 above.

We hope this letter will contribute to strengthen and reinforce the co-operation between the SFBC and the CMVM.

Yours sincerely

José Nunes Pereira