

Filed as 9/1/97

See SL17A

**MEMORANDUM OF UNDERSTANDING**

In view of the fact that a number of banking organizations incorporated or licensed in the State of New York, United States ("US") and the United Kingdom ("UK") have material operations in each of their respective jurisdictions, the New York State Banking Department (the "NYSBD") and the Bank of England (the "Bank") have reached the following understanding in order to establish an arrangement for the sharing of supervisory information to facilitate the performance of their respective duties:

**SHARING OF INFORMATION**

1. The NYSBD will endeavour to notify the Bank and provide relevant information regarding a material supervisory concern that it may have in respect of:

- (a) a UK banking organization or any of its New York State-licensed branches, agencies, representative offices (collectively, "branches") or New York State-chartered subsidiaries; and
- (b) the UK branches or subsidiaries of a New York State-chartered US banking organization or of a US investment company chartered under Article XII of the New York State Banking Law (an "Article XII company").

2. The Bank will endeavour to notify the NYSBD and provide relevant information regarding a material supervisory concern that it may have in respect

of:

- (a) a New York State-chartered US banking organization or an Article XII company or any of their UK branches or subsidiaries; and
- (b) the New York State-licensed branches or New York State-chartered subsidiaries of a UK banking organization.

3. The term “material supervisory concern” encompasses a matter relating to

(a) whether the operations of a banking organization are conducted in a safe and sound manner and in conformance with applicable prudential standards;

(b) whether there has been evidence of a material violation of law; or (c) events that would have a material adverse effect on the financial stability of financial institutions in the country of the other authority. A material supervisory concern as described herein would include concerns that arise from actions of affiliates or associates of the banking organization.

4. Where remedial action is called for to address a material supervisory concern as described above, each authority will endeavour to notify the other prior to the appropriate action being taken and the supervisory concern addressed, or, as circumstances dictate, as soon thereafter as practicable.

5. In carrying out the undertakings of paragraphs 1(b), 2(b) and 4 in the case of a New York State-chartered US banking organization or an Article XII company, or a New York State-licensed branch, or a UK banking organization, facing serious financial difficulties that could have a material adverse impact on the operations of such banking organization in the respective host country, the NYSBD and the Bank recognize that close liaison between home and host authorities would be mutually advantageous. The NYSBD and the Bank will endeavour to communicate such information as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts by the home country authority to resolve the bank's difficulties and restore confidence in the bank.

6. In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the NYSBD signed by an authorized official of the Bank, the NYSBD may provide to the Bank information contained in reports of examination or inspection of the New York State-licensed branches or New York State-chartered subsidiaries of a UK banking organization; and any other confidential supervisory information regarding a UK banking organization or its New York State-licensed branches and New York State-chartered subsidiaries that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.

7. In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the Bank signed by an authorized official of the NYSBD, the Bank may provide to the NYSBD information contained in any reports concerning the UK branches or subsidiaries of a New York State-chartered US banking organization or the UK banking subsidiaries of an Article XII company; and any other confidential supervisory information regarding a New York State-chartered US banking organization or an Article XII company or their UK branches and subsidiaries that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.

8. When there is a need for expedited action, requests for information under paragraphs 6 and 7 may be initiated in any form, including orally, but shall be confirmed subsequently in writing. The authorities will endeavour to provide information as quickly as possible in such circumstances.

9. Each authority undertakes to provide to the other information: (a) reasonably required by the other to facilitate a determination whether a proposed branch or subsidiary meets the requirements for authorization in the host country or continues to meet the requirements for authorization, (b) regarding the extent and nature of its supervision on a consolidated basis of banking organizations with operations in the other country, and (c) concerning material changes in or

developments with respect to its supervisory regime. Such information may be supplied either upon request or at such times as the authorities may mutually agree.

### PERIODIC MEETINGS

Representatives of the Bank and the NYSBD will endeavour to meet at least annually to discuss general supervisory developments as well as issues concerning banking organizations which maintain operations in both New York and the United Kingdom. In addition, every effort will be made to encourage continuous and informal contacts between staff at the Bank and the NYSBD.

### NOTIFICATION OF OR REQUESTS FOR EXAMINATIONS IN THE HOST COUNTRY

1. The NYSBD will notify the Bank of plans to examine any branch or subsidiary of a New York State-chartered US banking organization or of an Article XII company located in the United Kingdom and the Bank will notify the NYSBD of plans to inspect any branch or subsidiary of a UK banking organization in New York. The authority in the country where such examinations or inspections are to take place may inform the examining or inspecting authority of any subject matter in which it has a particular concern or interest.

2. The Bank may request on an exceptional basis the NYSBD to conduct an examination of the New York offices of a UK banking organization and the NYSBD

may request on an exceptional basis the Bank to conduct an inspection of the UK offices of a New York State-chartered US banking organization or of an Article XII company. The Bank and the NYSBD will endeavour to establish the basis and terms upon which such examinations or inspections shall be conducted.

3. The host authority may accompany the home authority during an examination or inspection of a branch or subsidiary in the host country.

#### CONFIDENTIALITY

1. Any confidential supervisory information shared pursuant to this Memorandum shall be used only for lawful supervisory purposes.

2. To the extent permitted by law, the Bank shall hold confidential all information received from the NYSBD pursuant to this Memorandum and will not otherwise disclose such information other than as necessary to carry out its supervisory responsibilities.

3. To the extent permitted by law, the NYSBD shall hold confidential all information received from the Bank pursuant to this Memorandum and will not otherwise disclose such information other than as necessary to carry out its supervisory responsibilities.

4. Reports of examination or inspection shall remain the property of the authority providing such information. Subject to the provisions of paragraphs 1-3 above, if the NYSBD or Bank receives any legally enforceable demand for reports of examination or inspection provided pursuant to this Memorandum, the NYSBD or the Bank, as the case may be, will promptly notify the party that provided the reports and will cooperate in seeking to preserve the confidentiality of such reports.

5. Subject to the provisions of paragraphs 1-3 above, with regard to requests from third parties for confidential supervisory information other than reports of examination or inspection provided pursuant to this Memorandum, the party receiving such request shall notify the providing party as soon as feasible prior to releasing such information and shall solicit the providing party's views as to the propriety of providing such information to the third party.

6. The sharing of confidential supervisory information pursuant to this Memorandum is done in reliance on the foregoing assurances and shall not constitute a waiver of any legally cognizable privilege as to any person other than the parties to this Memorandum.

7. The NYSBD and the Bank, in providing confidential written materials pursuant to this Memorandum, shall mark every page of the material provided with

a legend reading as follows:

“CONFIDENTIAL - PROVIDED PURSUANT TO NYSBD/BOE MEMORANDUM OF UNDERSTANDING”

### GENERAL PROVISIONS

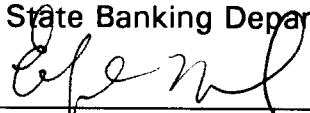
1. The provision of, or request for, information under this Memorandum may be denied (a) where compliance would require the Bank or NYSBD to act in a manner that would violate applicable law or any agreement entered into before the date of this memorandum, (b) on grounds of public interest or national security, or (c) when compliance with a request or provision of information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.
  
2. By executing this Memorandum, neither party waives any immunity from suit to which it may be entitled nor submits to the jurisdiction of any court that would not have been a court of competent jurisdiction if this Memorandum had not been executed.
  
3. No provision of this Memorandum shall give rise to the right on the part of any person, entity or governmental authority other than the NYSBD or the Bank, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum.



4. This Memorandum shall continue in effect for a period of one year from the latest date entered below and shall automatically be renewed each year subject to modification by the mutual consent of the NYSBD and the Bank, provided, however, that the provisions set forth under the headings "Confidentiality" and "General Provisions" shall not terminate with respect to any information provided or actions taken under this Memorandum prior to its termination.

CONFIRMED

New York State Banking Department

By   
Elizabeth McCaul  
First Deputy Superintendent

Dated: Dec 18/1996

Bank of England

By \_\_\_\_\_  
Oliver Page  
Deputy Director, Supervision  
and Surveillance

Dated: \_\_\_\_\_

## TRANSFER PROVISIONS OF BANK MOU TO FSA

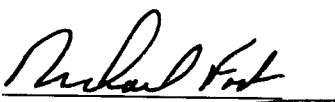

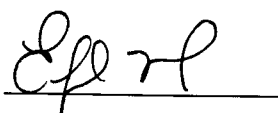
A Memorandum of Understanding was entered into between the Bank of England (the "Bank") and the New York State Banking Department (together constituting the "Authorities") on January 9, 1997. This provided for the sharing of supervisory information to facilitate the performance of the Authorities' respective duties relating to banking supervision.

The Authorities recognise that the Bank's responsibilities for supervising banks, listed money market institutions and related clearing houses will be transferred in 1998 to the Financial Services Authority (the FSA, previously known as the Securities and Investments Board). The transfer of banking supervision will take place following enactment of the Bank of England Bill, which will make consequential changes to the Banking Act 1987. The Bill received Royal Assent in April and the FSA will acquire its new powers to supervise banks on 1 June 1998.

The purpose of this side-agreement is to ensure that the co-operation provided for under the Memorandum of Understanding agreed between the Bank and the New York State Banking Department (NYSBD) on January 9, 1997 will continue after the transfer of banking supervision from the Bank to the FSA. The provisions of the MoU will, from the time of that transfer, cease to apply between the Bank and the NYSBD and continue in effect between the FSA and the NYSBD. From that date, all references to the Bank in the MoU should be taken as references to the FSA in its capacity as supervisor of banks under the Banking Act 1987 as amended.

The scope of this agreement is confined to ensuring continuity in the arrangements for sharing supervisory information between the NYSBD and the FSA in its future capacity as banking supervisor. Insofar as the FSA has existing MoUs with overseas regulators, including some banking supervisors, in relation to investment business, they will continue in existence for that purpose.

Following the transfer of banking supervision to the FSA, further legislation will be introduced under which the FSA will eventually become the single statutory financial regulator in the UK (the FSA already exercises statutory responsibilities in relation to the regulation of investment business). It may then be appropriate to discuss the need for a revised single MoU between the NYSBD and the FSA, taking into account the latter's wider responsibilities.

Signed on behalf of:	Bank of England	Financial Services Authority	New York State Banking Department
by	Michael Foot	Howard Davies	Elizabeth McCaul
Signature			
Date	<u>18 May 1998</u>	<u>18/5/98</u>	<u>21 May 98</u>



STATE OF NEW YORK  
BANKING DEPARTMENT  
TWO RECTOR STREET  
NEW YORK, NY 10006

May 26, 1998

Mr. Paul Wright  
Head of North America  
and Japan Division  
Supervision & Surveillance  
Bank of England  
London EC2R 8AH  
ENGLAND

Dear Mr. Wright:

At the Acting Superintendent's request, I am enclosing a fully executed copy of the Side Letter to accompany our Memorandum of Understanding.

Please let me know if you need anything else.

Very truly yours,

A handwritten signature in cursive script that reads "Kathleen A. Scott". A large checkmark is drawn above the signature.

Kathleen A. Scott  
Assistant Counsel

Enclosure

PADW 9682 2/6