

MEMORANDUM

TO: David Fielder
Office of the Inspector General

FROM: Personal Privacy
Office of International Affairs

DATE: July 20, 2009

SUBJECT: Framework for Cooperation with United Kingdom Financial
Services Authority

Per your request, we are providing you with additional information regarding the framework for cooperation with the United Kingdom's Financial Services Authority (UK FSA) as established in the following Memoranda of Understanding (MOUs):

- 1991 Bilateral Enforcement MOU with the UK FSA
- 2002 IOSCO Multilateral MOU
- 2006 Supervisory MOU with the UK FSA

I. The 1991 Bilateral Enforcement MOU with the UK FSA

In 1991, the SEC, the UK Department of Trade and Industry (UK DTI), and the UK Securities and Investments Board (SIB) entered into a Bilateral MOU. See http://sec.gov/about/offices/oia/oia_bilateral/ukingdom_enfcoop.pdf

The 1991 Bilateral MOU provides that the SEC can request and obtain information about, but not limited to, the following matters:

- a) Insider trading in relation to any security;
- b) Misrepresentations or the use of fraudulent, deceptive or manipulative practices in connection with the offer, purchase or sale of any security;
- c) The making of a false or misleading statements or any material omission in any application or report made to the SEC, CFTC, DTI, or SIB;
- d) The conduct of investment businesses¹ or securities processing businesses;²
- e) The reporting requirements imposed on these businesses;
- f) The financial and other qualifications of those engaged in or in control of these

¹ Defined in paragraphs 1(b) of the 1991 Bilateral MOU to include investment businesses, investment companies, other collective investment undertakings and their equivalents, investment banks, merchant banks, brokers, dealers, jobbers, investment advisers and investor advisory services.

² Defined in paragraph 1(c) of the 1991 Bilateral MOU to mean clearing corporations or securities transfer agents.

- businesses;
- g) The duty to comply with reporting requirements of persons³ whose securities or sponsored depository receipts in respect of such securities are registered or publicly traded;
 - h) The disclosure of interests in the securities of companies; and
 - i) The duties of issuers⁴ of and offerors for securities to make full and fair disclosure of information relevant to investors.

Pursuant to the 1991 Bilateral MOU, the SEC can request the UK FSA to provide the following types of assistance, among others:

- a) Access to information in the UK FSA files;
- b) Questioning or taking the testimony of persons in the UK on behalf of the SEC⁵;
- c) Obtaining specified information and documents from persons in the UK;
- d) Conducting compliance inspections or examinations of investment or futures businesses; and
- e) Permitting SEC staff to participate in the UK FSA's inspections and taking of testimony.

Pursuant to the 1991 Bilateral MOU, the SEC has requested the following types of information, among others, from the UK FSA:

- a) Order tickets, execution reports, confirmations, ledgers, notes, memoranda, telephone records, and correspondence concerning all transactions with the given date range;
- b) Documents providing the identity of the beneficial owners of brokerage accounts, and documents sufficient to identify all persons or entities having control over, or otherwise authorized to make decisions affecting those accounts;
- c) Bank account opening documents, account statements for specified time periods, signature cards, special instructions, and communications between a UK bank and the holder or beneficial owner of the account;
- d) Trading instructions, trading authorizations, margin agreements, option agreements;
- e) Checks, cashier's checks, money orders, wire transfers, wire transfer instructions, wire transfer receipts and authorizations, deposit slips, receipts, withdrawal slips, transfer forms, transmittal notices, and letters of authorization relating to UK bank accounts;

³ Defined in paragraph 1(e) of the 1991 Bilateral MOU to be a natural person, unincorporated association, or body corporate, government, or political subdivision, agency, or instrumentality of a government.

⁴ Defined in paragraph 1(f) of the 1991 Bilateral MOU to mean a person who issues or proposes to issue any security.

⁵ The 1991 Bilateral MOU replaced the earlier 1986 Bilateral MOU on the Exchange of Information with the UK Department of Trade and Industry, the predecessor to the UK FSA. See http://sec.gov/about/offices/oia/oia_bilateral/ukingdom_enfcoop.pdf. Under the terms of the 1986 Bilateral MOU, the UK FSA was limited in using its compulsory power on behalf of the SEC, and SEC staff was restricted in terms of the inquiries the SEC could make in the UK.

- f) Electronic trade runs indicating purchases, sales, and short sales of securities;
- g) All correspondence regarding redemption requests;
- h) Financial statements, balance sheets, income statements, engagement letters, management representation letters, “to do” lists and post-audit review notes;
- i) Documents concerning investment advisory or other services provided;
- j) Documents related to due diligence and securities valuations;
- k) Documents sufficient to identify customers of investment firms;
- l) Notes, memoranda, correspondence, and other documents concerning all client complaints; and
- m) Contracts, agreements, and other documents concerning the relationships between US companies and UK entities.

The 1991 Bilateral MOU does not limit the UK FSA’s assistance to the above matters. Rather, the 1991 Bilateral MOU provides that the UK FSA will provide the fullest possible assistance to the SEC under UK laws and national policy. However, the UK FSA may deny the SEC’s request for assistance on grounds of public interest or where the UK FSA considers that the request would seriously pose a conflict with and prejudice sovereign interests.

Under the 1991 Bilateral MOU, the UK FSA can provide assistance irrespective of whether the UK FSA has an independent investigative interest in the matter. In addition, under the 1991 Bilateral MOU, the UK FSA has an obligation to provide the SEC any information obtained through the regular exercise of its power when the UK FSA recognizes such information as “clearly giving rise to a suspicion of a breach” of any US securities law or regulation. Under the terms of the 1991 Bilateral MOU, the SEC can also make enquiries of, or seek information from, a person in the UK on a voluntary basis without first having to make a request to the UK FSA pursuant to the 1991 Bilateral MOU.

Under the 1991 Bilateral MOU, the information which the UK FSA has provided to the SEC can be used to secure compliance with US securities laws, to conduct civil or administrative enforcement proceedings, or for use in a criminal prosecution, among other uses.

II. The 2002 IOSCO MMOU

In 2002, the International Organization of Securities Commissions (IOSCO) created the Multilateral Memorandum of Understanding (MMOU), the first global multilateral information-sharing arrangement among securities regulators. The MMOU establishes the minimum international benchmarks for information for information-sharing in enforcement matters. See, <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD126.pdf>. The SEC became an IOSCO MMOU signatory in 2002 and the UK FSA became a signatory in 2003.

The MMOU provides that the SEC can request and obtain information about the following matters and activities, among other things:

- a) Insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities and derivatives, including solicitation practices, handling of investor funds and customer orders;
- b) The registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
- c) Market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
- d) Markets, exchanges, and clearing and settlement entities.

Pursuant to the MMOU, SEC staff can request the following types of information from the UK FSA:

- a) Information and documents held in the files of UK FSA;
- b) Contemporaneous records sufficient to reconstruct all securities and derivatives transactions, including records of all funds and assets transferred into and out of bank and brokerage accounts relating to these transactions;
- c) Records that identify the beneficial owner and controller, and for each transaction, the account holder; the amount purchased or sold; the time of the transaction; the price of the transaction; and the individual and the bank or broker and brokerage house that handled the transaction;
- d) Information identifying persons who beneficially own or control non-natural persons⁶ organized in the UK FSA's jurisdiction; and
- e) In accordance with UK laws, the taking or compelling of a statement, or testimony under oath.

The MMOU specifically provides that assistance under the MMOU is not limited to the items above.

Under the MMOU, the UK FSA can provide assistance to the SEC irrespective of whether it has an independent investigative interest. The MMOU does allow the UK FSA to deny an SEC request for assistance if the UK is conducting a parallel criminal investigation, on the grounds of public interest or essential national interest. The MMOU provides that signatories to the MMOU will make all reasonable efforts to provide each other with any information that they consider likely to be of assistance in securing compliance with applicable laws and regulations without prior request.

III. The 2006 Supervisory MOU with the UK FSA

In March 2006, the SEC and the UK FSA entered into an arrangement Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight

⁶ Defined in paragraph 5 of the MMOU to mean a natural or legal person, or unincorporated entity or association, including corporations and partnerships.

and the Supervision of Financial Services Firms. See http://sec.gov/about/offices/oia/oia_multilateral/ukfsa_mou.pdf.

The 2006 Supervisory focuses on the exchange of information with the UK FSA outside of the enforcement context. The 2006 Supervisory MOU does not alter existing understandings between the SEC and the UK FSA in the areas of enforcement, such as the 1991 Bilateral enforcement MOU and the 2002 IOSCO MMOU. Rather, the 2006 Supervisory MOU facilitates the sharing of regulatory oversight information, including information in regulators' files, information contained in inspection reports, and the use of joint inspections. In cases where the SEC wishes to use information obtained under the 2006 Supervisory MOU for enforcement purposes, the SEC must seek the prior consent of the UK FSA.

The SEC may use non-public information obtained under the 2006 Supervisory MOU solely for conducting oversight of the entities listed below, and seeking to ensure compliance with the laws or regulations of the SEC.

Under the 2006 Supervisory MOU, the SEC can request information about:

- a) Unincorporated associations, partnerships, trusts, investment companies or corporations, or natural persons subject to the oversight of one or both of the SEC or UK FSA, where those entities conduct investment, securities, asset management, securities processing, insurance, or banking business (collectively "financial services business") in both the United States and the UK, and who has its global headquarters in the United States or the UK;
- b) Legal entities or sub-groups of the entities listed above, including affiliates, branches or subsidiaries, regulated by the SEC and/or the UK FSA; and
- c) Legal entities that conduct financial services business and are authorized or registered with both the SEC and the UK FSA.

Under the 2006 Supervisory MOU, the SEC may request that the UK FSA share information based on documents held in the UK FSA's files regarding oversight of the operations or activities of the entities listed above in categories a, b, and c above. That information includes, but is not limited to:

- a) Information relevant to the financial and operational condition of an entity, including, for example, capital structure, liquidity and funding profiles, and internal controls procedures; and
- b) Relevant regulatory information, including, for example: interim and annual financial statements; information drawn from regulatory reports and filings; early warning notices that an entity is required to submit to the UK FSA; and information drawn from UK FSA examination reports.

Under the 2006 Supervisory MOU, to the extent practicable and as appropriate in the particular circumstances, the UK FSA endeavors to inform the SEC in advance of, among other matters, any material event, such as known changes in the operating environment,

operations, management, or systems and controls, that could adversely impact US markets or the stability of an SEC regulated entity.

Under the 2006 Supervisory MOU, the UK FSA has agreed that it will provide to the SEC, without advance request, copies of inspection reports of financial services businesses that are involved in asset management, including investment advisors, investment fund managers, fund administrators, fund trustees, investment companies, and investment funds, that are authorized or registered with both the SEC and the UK FSA

The 2006 Supervisory MOU also allows the SEC to conduct on-site visits (any routine, sweep, or for-cause regulatory visit to, or inspection of the books, records, and premises) of entities listed above in categories a and b, provided that those entities are located in the UK and have their global headquarters in the United States, or are entities authorized or registered with both the SEC and the UK FSA. Under the 2006 Supervisory MOU, the UK FSA assists the SEC during these on-site visits in the UK by reviewing, interpreting, and analyzing the contents of public and non-public books and records; and obtaining information from directors and senior management, among other items.

In addition to the 2006 Supervisory MOU, in 1997, the SEC entered into an arrangement for supervisory cooperation with the Bank of England (BOE)⁷, see http://sec.gov/about/offices/oia/oia_bilateral/ukingdom_boe.pdf. The 1997 Supervisory MOU provides for a procedure to obtain supervisory information, such as the current financial position of a firm, portfolio and credit information, and counterparty exposures, in “emergency situations.”

⁷ The BOE’s supervisory responsibilities over banks and money market institutions transferred to the UK FSA. As such, the BOE’s obligations under the 1997 Supervisory MOU became the obligations of the UK FSA.