

1.1.2 Notice of Memorandum of Understanding on the Cooperation of Competent Authorities for the Supervision of Credit Rating Agencies

**NOTICE OF MEMORANDUM OF UNDERSTANDING
ON THE COOPERATION OF COMPETENT AUTHORITIES
FOR THE SUPERVISION OF CREDIT RATING AGENCIES**

On March 7, 2012, the Ontario Securities Commission, together with the Québec Autorité des marchés financiers and the British Columbia Securities Commission, entered into a Supervisory Memorandum of Understanding (the "Supervisory MOU") with the European Security Markets Authority ("ESMA") concerning the regulatory cooperation related to the supervision of credit rating agencies that operate in both the European Union and Canada.

The purpose of the Supervisory MOU is to recognise, in light of the cross-border activities of certain credit rating agencies and the global nature of credit ratings generally, the importance of ongoing supervisory and enforcement-related cooperation in this area. The Supervisory MOU sets forth the terms and conditions and a framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of credit rating agencies which operate across our jurisdictions.

The Supervisory MOU is subject to the approval of the Minister of Finance. It was delivered to the Minister of Finance on March 13, 2012. The Minister has a 60-day statutory period within which he may approve or reject the MOU. We requested that the Minister consider an expedited decision on the Supervisory MOU by April 20, 2012. If the Minister approves the Supervisory MOU by this date, it will come into force on April 20, 2012.

Questions may be referred to:

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March 16, 2012

**MEMORANDUM OF UNDERSTANDING
ON THE COOPERATION OF COMPETENT AUTHORITIES
FOR THE SUPERVISION OF THE CREDIT RATING AGENCIES**

The European Securities and Markets Authorities (ESMA) and the Canadian Authorities as described herein who are responsible for supervising Credit Rating Agencies (“CRAs”) in their respective jurisdictions recognise in light of the cross-border activities of certain CRAs and the global nature of ratings generally, the importance of ongoing supervisory and enforcement-related cooperation in this area and considering in particular

- that CRAs play an important role in global financial markets, as their credit ratings are used by investors, borrowers, issuers and governments as part of making informed investment and financing decisions;
- that many jurisdictions have determined that CRAs shall be regulated and have therefore introduced regulatory regimes to that end; and
- that the EU Regulation on Credit Rating Agencies (“EU Regulation”) has introduced “endorsement” and “certification” mechanisms for the benefit of CRAs established outside the European Community. Both mechanisms require that cooperation arrangements are in place between ESMA and the Canadian Authorities;

have reached the following legally not binding understanding:

Article 1 – Definitions

For purposes of this MoU, the following definitions apply:

1. “Authority or Authorities” means a regulator responsible for supervising CRAs that is a party to this MoU and includes:
 - (a) The European Securities and Markets Authorities (“ESMA”), or
 - (b) The Autorité des marchés financiers (“AMF”), the Ontario Securities Commission (“OSC”) and the British Columbia Securities Commission (“BCSC”) (individually a “Canadian Authority”, or collectively the “Canadian Authorities”).
2. “Assistance” means any activity conducted by a Requested Authority for the purpose of supporting a Requesting Authority in discharging its legal and regulatory duties and responsibilities in respect of CRAs and their ratings.
3. “Cooperation” means all kinds of
 - (a) Co-ordination,
 - (b) Ongoing Assistance, and
 - (c) Assistance.
4. “Credit Rating Agency” (“CRA”) means a legal person or a group of legal persons (group of CRAs) registered and regulated in any jurisdiction whose occupation includes the issuance of opinions regarding creditworthiness on a professional basis.
5. “Co-ordination” means consultation amongst Authorities on CRAs whether on an ad-hoc or periodic basis for the purpose of exchanging relevant supervisory information and agreeing if possible on common approaches to supervisory activity and enforcement action with regard to CRAs.
6. “Cross Border CRA” means a CRA or a CRA belonging to the same group which is identified for the purposes of this MOU as being such, as set out in Article 4 and which is subsequently agreed to be listed in Appendix B.
7. “Laws and Regulations” means all legally binding national, provincial, European, and international rules or legislations concerning the regulation and supervision of CRAs and groups of CRAs applicable in the jurisdictions of the Authorities, that fall within the competence of the Authorities.
8. “Ongoing Assistance” means all assistance including the provision of information or documents provided by one Authority to another Authority with or without a specific request.

9. "Requesting Authority" means the Authority making a request for assistance under this MoU.
10. "Requested Authority" means the Authority to whom a request for assistance is made under this MoU.

Article 2 – General Principles

1. This MoU sets forth the Authorities' intent to cooperate with each other in executing the Laws and Regulations applicable in the respective Authorities' jurisdictions in relation to the discharge of their responsibilities in relation to CRAs to the fullest extent legally permissible. The Authorities recognize the importance and desirability of cooperation for the purpose of effectively supervising CRAs and enforcing, and securing compliance with, the relevant Laws and Regulations.
2. The provisions of this MoU do not create legally binding obligations or supersede legally binding national, provincial, European, or international rules and/or legislations.
3. This MoU does not authorise or prohibit an Authority from taking measures other than those identified herein to obtain information necessary to ensure enforcement of, or compliance with, the relevant Laws and Regulations.
4. This MoU does not confer upon any person not an Authority, the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU.
5. As the provisions of this MoU are not legally binding on the Authorities, they may not give rise to any legal claim on behalf of an Authority or third parties in the course of their practical implications.
6. The Authorities represent that the Laws and Regulations in their respective jurisdictions prevent interference with the content of credit ratings and credit rating methodologies.
7. Where a request for assistance is denied or not available under domestic law, the Requested Authority will provide the reasons for not granting the cooperation and consult pursuant to Article 9.

Article 3 – Scope

1. The Authorities will, within the framework of this MoU, provide each other with the fullest cooperation permissible to supervise Cross Border CRAs and enforce compliance with the relevant Laws and Regulations. Cooperation may be denied:
 - (a) where the cooperation would require an Authority to act in a manner that would violate domestic law;
 - (b) where a request for assistance is not made in accordance with Articles 7 and 8;
 - (c) on grounds of public interest or essential national interest; or
 - (d) where the information to be disclosed is not subject to guarantees of professional secrecy/confidentiality amongst the Authorities.
2. The Authorities recognise and agree that the need to cooperate with each other under the terms of this MoU in discharging their legal responsibilities in respect of CRAs may be triggered by a number of different events including requests for assistance and may arise at any time.
3. Although it is not possible to set out an exhaustive list of what the events that may trigger the need for cooperation may be or when the need to cooperate may arise, it is anticipated that the need for intense cooperation will at least arise in the following circumstances:
 - (a) the initial application for recognition, authorisation, designation or registration by a Credit Rating Agency also operating in another Authority's jurisdiction (Article 4);
 - (b) the ongoing supervision of Cross Border CRAs (Article 5);
 - (c) the assessment of the need to and the subsequent taking of supervisory or enforcement action against Cross Border CRAs (Article 6); and
 - (d) when an Authority requests Assistance (Articles 7 and 8).

Article 4 – Application of CRAs for Recognition, Authorisation, Designation, or Registration

1. When a CRA applies for a recognition, authorisation, designation, or registration with an Authority, and the Authority considers that the CRA could be a Cross Border CRA, the Authority will accordingly notify ESMA or the Canadian Authority about the status of the CRA's recognition, authorisation, designation, or registration and will provide it with the information regarding the CRA's cross border operations.
2. Following the initial sharing of information, the Authorities will consult with each other regarding whether or not they consider this CRA to be a Cross Border CRA and if it is regarded as such, add it to the list of Cross Border CRAs in Appendix B.
3. The Authorities will cooperate with each other in order to enable a full assessment of the Cross Border CRA's application for recognition, authorisation, designation, or registration. Such cooperation may take a number of different forms, but will without an additional separate request in any event include the provision of the information listed in paragraph 4.
4. The Authorities receiving a notice in accordance with paragraph 1 will provide where required to the notifying Authority upon receipt the following:
 - (a) information and documents held on file regarding the following:
 - i. All documents about the organization and rating processes provided to the notified Authority by the Cross Border CRA in question in their latest available version.
 - ii. Relevant documents provided to the notified Authority by the Cross Border CRA evidencing the CRA's eligibility for recognition under the notified Authority's CRA legal and regulatory regime.
 - iii. Views from the notified Authority regarding the Cross Border CRA's systems and controls, senior management and governance structures, management of conflicts of interest procedures and the rating process in general.
 - (b) a statement regarding whether or not the Cross Border CRA has been recognized, authorized, designated, or registered to conduct credit rating activities and is subject to supervision by the Authority and a meaningful description of the nature of such recognition, authorisation, designation or registration and supervision;
 - (c) information and documents regarding the nature of any supervisory and enforcement action that may have been taken regarding the Cross Border CRA's compliance or lack thereof with the relevant Laws and Regulations; and
 - (d) The Laws and Regulations on which the recognition, authorisation, designation, or registration was based and the supervision is based including a translation of the relevant Laws and Regulations into English.
5. The Authorities will also cooperate in the recognition, authorisation, designation, or registration process in any other manner not specified above in order to facilitate a full assessment of the CRA's application for registration, authorisation or recognition.

Article 5 – Ongoing Supervision of Cross Border Credit Rating Agencies

1. The Authorities agree that they will cooperate with each other in discharging their ongoing supervisory responsibilities in respect of Cross Border CRAs.
2. Such cooperation may take a number of different forms and includes:
 - (a) exchange of and consultation regarding the respective supervisory plans if such plans exist at least on an annual basis;
 - (b) notification of any material deviations from the agreed supervisory plan if it was exchanged;
 - (c) where appropriate, annual meetings;

- (d) provision of any information and documents that may have a significant impact on the ongoing supervision of Cross Border CRAs;
 - (e) assistance on the basis of requests for assistance;
 - (f) sharing of the outcome of any assessment by an Authority of a Cross Border CRA's compliance with its ongoing obligations;
 - (g) sharing information and documents about approaches to the supervision of Cross Border CRAs and notification of changes by the Authority of its approach to its supervision of the Cross Border CRA;
 - (h) immediate notification by the Authorities in respect of any action that may be taken against a Cross Border CRA that may have a direct impact on the CRA in question's eligibility for continued recognition, authorisation, designation or registration or its ability to continue to meet its ongoing obligations in the other Authorities' jurisdiction, including the actions set out in Article 6(2) :
3. The Authorities may agree on a bilateral basis to add to those areas not covered by Article 5(2) that trigger cooperation without an additional separate request between the Authorities.

Article 6 – Supervisory or Enforcement Actions against Cross Border Credit Rating Agencies

1. The Authorities will inform each other immediately when an enforcement or supervisory action has been taken against a Cross Border CRA together with a statement on whether this enforcement action is open to appeal.
2. In respect of the following the Authorities will immediately notify each other of:
- (a) the initiation of proceedings by the Authority with regard to the revocation of the Cross Border CRA's recognition, authorisation, designation or registration;
 - (b) the initiation of proceedings regarding the imposition of a temporary or permanent prohibition on the Cross Border CRA's issuing of credit ratings that are used in the other Authorities' jurisdiction for regulatory purposes;
 - (c) the initiation of proceedings regarding the suspension of the use, for regulatory purposes, of the credit ratings issued by the CRA;
 - (d) the initiation of proceedings regarding measures to ensure that the Cross Border CRA in question continues to comply with its legal requirements;
 - (e) notification of the initiation of proceedings by the Authority regarding the issuing of a public notice of a Cross Border CRA's breach of its ongoing obligations.
3. The Authorities will inform each other immediately when the following supervisory or enforcement actions have been taken with regard to a Cross Border CRA:
- (a) suspension of authorisation to issue credit ratings;
 - (b) referrals of matters for criminal prosecution;
 - (c) imposition of financial penalties;
 - (d) suspension of an individual who sits on the CRA's management or supervisory board;
 - (e) full or partial withdrawal of the CRA's recognition, authorisation, designation or registration;
 - (f) temporary prohibition on the CRA's issuing of credit ratings that are used in the other Authorities' jurisdiction for regulatory purposes;
 - (g) suspension of the use, for regulatory purposes, of the credit ratings issued by the CRA;
 - (h) issuing by the Authority of a public notice of a Cross Border CRA's breach of its ongoing obligations.

4. The Authorities will inform each other within a reasonable time period when the following supervisory or enforcement actions have been taken with regard to a Cross Border CRA:
 - (a) on-site inspection and its core findings;
 - (b) all measures by the Authority to ensure that the Cross Border CRA in question continues to comply with its legal requirements;
 - (c) recommendations to make improvements to the CRA's systems and controls.
5. The Authorities considering the circumstance of the case will inform each other in advance about any action and/or measure set out in paragraphs 1, 2 and 3 before the action and/or measure is taken.

Article 7 – Assistance

1. The assistance available under this MoU includes, but is not limited to:
 - (a) providing information and documents held in the files of the Requested Authority regarding the matters set forth in the request for assistance;
 - (b) obtaining information and documents regarding the matters set forth in the request for assistance;
 - (c) taking or compelling a person's statement, or, where permissible, testimony under oath, regarding the matters set forth in the request for assistance;
 - (d) conducting on-site inspections to gather information set forth in the request for assistance; and
 - (e) attending meetings.
2. Each Authority may upon request conduct on-site inspections of a Cross Border CRA's offices located within the territory of the other Authority's jurisdiction to the extent permitted by the laws, regulations and other relevant legal provisions in that jurisdiction. If such inspections are permitted in that jurisdiction, the Requesting Authority shall appropriately inform the Requested Authority prior to conducting an on-site inspection. Where applicable, the Authorities may agree to conduct joint inspections in which case these will be carried out under the control of the Authority in whose territory the inspection takes place.
3. In cases where the information and documents requested may be maintained by, or is available to, another authority within the country of the Requested Authority, the Authorities will to the extent legally possible endeavour to provide full assistance in obtaining the information and documents requested. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information so as to establish direct contact between the Requesting Authority and the other authority.

Article 8 – Requests for Assistance

1. Requests for assistance may be transmitted by telephone, and shall be made in writing, including email or facsimile and addressed to the contact person of the Requested Authority listed in Appendix A. Requests for assistance shall specify the following information:
 - (a) reference to the MoU;
 - (b) description of the facts underlying the request including the CRA, the individuals involved and the chronology of relevant events;
 - (c) any information including the sources of such information, known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying either the persons believed to possess the information or documents sought or the places where such information may be obtained;
 - (d) an indication of the sensitivity of the information or documents contained in the request and whether the Requesting Authority is content for the fact that it has made the request to be disclosed to persons whom the Requested Authority may need to approach for information;

- (e) description of the specific information or documents needed or assistance sought including the time period for which documents and other information should be gathered;
 - (f) description of how the specific information or documents requested will assist the Requesting Authority;
 - (g) the Laws and Regulations that may have been violated and that relate to the subject matter of the request;
 - (h) description of uses for which assistance is sought;
 - (i) whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the state of the Requested Authority in relation to the subject matter of the request;
 - (j) any other authority of whom the Requesting Authority is aware that it has an active interest in the subject matter of the request; and
 - (k) an indication of the urgency of the request, or the desired time period for the reply.
2. In cases of emergency, requests for assistance may be transmitted orally provided that these requests are confirmed in the manner required by this Article unless the Requested Authority agrees to waive such requirements.

Article 9 – Consultation

The Authorities will consult on an ongoing basis with each other regarding this MoU about matters of common concern with a view to improving its operation and resolving any issues that may arise as well as enhancing the cross border supervision and enforcement of CRAs. In particular, the Authorities will consult in the event of:

- (a) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this MoU;
- (b) a demonstrated change in the willingness or ability of an Authority to meet the provisions of this MoU; and
- (c) any other circumstance that makes it necessary or appropriate to consult, amend or extend this MoU in order to achieve its purposes.

Article 10 – Confidentiality and Permissible Uses of Information

1. Each Authority will keep all cooperation under this MoU, the contents of requests for cooperation, information exchanged under Articles 4, 5 & 6 and the non-public information or documents received and exchanged under this MoU as well as all consultations between Authorities confidential.
2. Any disclosure of confidential information by an Authority as permitted by laws, regulations and other relevant legal provisions in that jurisdiction or to ESMA or competent authorities that is permissible under the EU Regulation and necessary for the discharge of ESMA's duties thereunder shall not be deemed as a breach of confidentiality requirements in Article 10(1).
3. The Authorities will not disclose non-public documents and information received under this MoU, except as contemplated in paragraph 5 or in response to a legally enforceable demand. In the event of a legally enforceable demand, the Authority in question will notify the Authority which has transmitted the information prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and non-public information received under this MoU.
4. In the event of the termination of an Authority's participation in this MoU, the information and documents obtained under this MoU will continue to be treated confidentially according to this Article.
5. Any Authority may use non-public information and non-public documents furnished under this MoU solely
 - (a) for the purposes set forth in the request for assistance;

- (b) for securing compliance with or enforcement of Laws and Regulations;
 - (c) for the purposes of discharging any legal responsibility in respect of CRA's; or
 - (d) for a purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the Laws and Regulations administered by the Requesting Authority. This use may include enforcement proceedings which are public.
6. If a Requesting Authority intends to use information or documents furnished under this MoU for any other purpose than those stated in Paragraph 5, it must obtain the consent of the Requested Authority.

Article 11 – Amendments

- 1. The Authorities may by common written understanding make amendments to this MoU and add further Appendices to it.
- 2. Factual changes to the information in Appendices A and B can be made by each Authority by giving written notice to the other Authorities.

Article 12 – Entry into Effect and Termination

- 1. This MoU shall be effective as to the undersigned at the date set out below, and in the case of Ontario, on the date to be determined in accordance with legislation.
- 2. This MoU can be terminated by either of the Authorities at any time by giving, at least, thirty days prior written notice to each other Authority.

“Steven Maijor”
Steven Maijor
Chair
For European Securities and Markets Authorities (ESMA)
Date: March 7, 2012

“Mario Albert”
Mario Albert
President and Chief Executive Officer
For the Autorité des marchés financiers
Date: March 1, 2012

“Howard Wetston, Q.C.”
Howard Wetston, Q.C.
Chair
For the Ontario Securities Commission
Date: March 2, 2012

“Brenda M. Leong”
Brenda M. Leong
Chair and Chief Executive Officer
For the British Columbia Securities Commission
Date: March 1, 2012

Appendix A

List of Contact Persons

Country	Name of the Authority	Address	Name of Contact Person	Telephone Number	E-Mail	Fax
Europe – France	ESMA	103 rue de Grenelle 75007 Paris – France	Verena Ross Executive Director	+ 33 1 58 36 51 13	Verena.ross@esma.europa.eu	+ 33 1 58 36 43 30
Europe – France	ESMA	103 rue de Grenelle 75007 Paris, France	Felix Flinterman Head of CRA Unit	+ 33 1 58 36 59 12	Verena.ross@esma.europa.eu	+ 33 1 58 36 43 30
Canadian Authority	ONTARIO SECURITIES COMMISSION	20 Queen Street West, 19th Floor, Box 55 Toronto, Ontario M5H 3S8 Canada	Tula Alexopoulos, Director, Office of Domestic and International Affairs	416 593 8084	talaxopoulos@osc.gov.on.ca	416 595 8942
Canada Authority	AUTORITÉ DES MARCHÉS FINANCIERS	800, Square Victoria, 22nd Floor, Box 246 Montreal, QC H4Z 1G3 Canada	Louise Sorel, Corporate Secretary	514 395 0337 ext. 2517	louise.sorel@lautorite.qc.ca	514 864 6381
Canada Authority	BRITISH COLUMBIA SECURITIES COMMISSION	P.O. Box 10142, Pacific Centre 701 West Georgia Vancouver, BC V7Y 1L2 Canada	Ann Gander, Secretary to the Commission	604 899 6534	commsec@bcsc.bc.ca	604 899 6506

Appendix B

Cross Border CRAs

Name of Cross Border CRA