

1.1.3 Notice of Memorandum of Understanding Concerning on-going Cooperation, Assistance and Information Sharing with the Financial Services Regulatory Authority of Ontario

**NOTICE OF MEMORANDUM OF UNDERSTANDING
CONCERNING ON-GOING COOPERATION, ASSISTANCE AND INFORMATION SHARING WITH
THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO**

December 3, 2020

The Ontario Securities Commission (OSC) has entered into a Memorandum of Understanding (the MoU) with the Financial Services Regulatory Authority of Ontario (FSRA). The purpose of the MoU is to support and facilitate on-going cooperation, assistance and information sharing between the OSC and FSRA.

The MoU is subject to the approval of the Minister of Finance. The MoU was delivered to the Minister of Finance on November 25, 2020.

Questions may be referred to:

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MEMORANDUM OF UNDERSTANDING

BETWEEN:

THE FINANCIAL SERVICES REGULATORY AUTHORITY OF ONTARIO (“FSRA”)

– and –

THE ONTARIO SECURITIES COMMISSION (“OSC”)

(Collectively “the Parties”)

PREAMBLE

WHEREAS FSRA is a non-share capital corporation and an agent of the Crown in right of Ontario, established as a financial services regulator pursuant to the *Financial Services Regulatory Authority of Ontario Act, 2016* (“*FSRA Act*”) and which is the successor organization to the Deposit Insurance Corporation of Ontario (“DICO”) following an amalgamation pursuant to section 2(1) of the *FSRA Act*;

AND WHEREAS pursuant to a Minister’s Transfer Order dated June 6th 2019, and the *FSRA Act*, FSRA was transferred substantially all of the operations, activities, affairs, assets, liabilities, rights and obligations of the Financial Services Commission of Ontario and amalgamated with the Deposit Insurance Corporation of Ontario;

AND WHEREAS FSRA’s mandate, as described in section 3 of the *FSRA Act*, is to *inter alia*: regulate and generally supervise the “regulated sectors” (as defined in the *FSRA Act*), contribute to public confidence in the regulated sectors, cooperate and collaborate with other regulators where appropriate, and to deter deceptive or fraudulent conduct, practices and activities within the regulated sectors;

AND WHEREAS the OSC is a regulatory agency which administers and enforces the *Securities Act*, R.S.O. 1990, c. S., as amended (the “*Securities Act*”) and the *Commodity Futures Act*, R.S.O. 1990, c.C.20, as amended (the “*Commodities Act*”), to protect investors, foster fair and efficient capital markets and commodity futures markets and contribute to the stability of the financial system and the reduction of systemic risk;

AND WHEREAS the purpose (the “Purpose”) of this Memorandum of Understanding (“MOU”) is to enhance the collaboration between the Parties by providing a framework for consultation and cooperation as well as the terms and conditions for Information sharing between the Parties;

AND WHEREAS FSRA and the OSC each have registration, licensing, compliance, investigation and enforcement authority and recognize the need for consultation, cooperation, and Information sharing to promote the effective regulation and supervision of any Persons that may be subject to one or both of their respective regulatory authority or jurisdiction;

AND WHEREAS this MOU is intended to facilitate the preservation of the highest level of confidentiality with respect to any Information exchanged pursuant to this MOU.

ARTICLE ONE: DEFINITIONS

1. In this MOU:

“**Applicable Law**” in relation to a Party means any law, regulation, decision, order or other legally binding obligation imposed by a court or tribunal in the Party’s province to which the Party is subject.

“**FIPPA**” means the *Freedom of Information and Protection of Privacy Act*, RSO 1990 c F 31.

“**Information**” means any and all information, including Personal Information as defined in FIPPA held by a Party. It does not mean information that is already known to the other Party before disclosure as part of this MOU, or information that is generally known to, or accessible by, the public.

“**Party**” means either FSRA or the OSC. Together, FSRA and the OSC are the “Parties.”

“**Person**” means a natural person, unincorporated association, partnership, corporation, association, organization, including a self-regulatory organization, society, syndicate, trust, trustee, executor, administrator or other legal representative.

“**Request**” means a request for Information made by either Party under Article Four of this MOU.

“**Requested Party**” means the Party to whom a Request is made under this MOU.

“Requesting Party” means the Party making a Request under this MOU.

ARTICLE TWO: GENERAL PROVISIONS

2. This MOU is a statement of intent to consult, cooperate and exchange Information between the Parties in a manner consistent with, and permitted by, the laws and regulations that govern the Parties. In the event of any conflict between this MOU and the laws and regulations, the laws and regulations will govern.
3. This MOU does not create any enforceable rights or legally binding obligations, and does not modify the responsibilities, authority or jurisdiction of either Party under law or regulation.

ARTICLE THREE: EXCHANGE OF INFORMATION

4. This MOU is not intended to apply universally. Instead, it only applies where a Party makes a Request pursuant to Article Four and the other Party agrees to fulfil the Request pursuant to Article Five, or in other circumstances as agreed upon between the Parties.
5. The assistance and exchange of Information may be made in response to a specific Request by the other Party, including but not limited to:
 - (a) as may be mutually agreed to by the Parties from time to time and on an ongoing basis;
 - (b) where regulatory action, including any investigation or enforcement proceeding in respect of a Person regulated by one or both of the Parties is taken, or may be taken;
 - (c) where a Party has within its possession or control any Information which may be of assistance to the other Party in carrying out its regulatory responsibilities, including any investigation, enforcement proceeding, compliance review or registration/licensing matter;
 - (d) on the conditions as agreed to by the Parties in writing; or
 - (e) where required by the Parties in order to carry out their respective mandates.

ARTICLE FOUR: REQUESTS FOR INFORMATION

6. All Requests under this MOU will be made in writing by the Requesting Party, including by electronic mail or other forms of written communication.
7. Each Request will be submitted using the form, and will specify the information set out, in Schedule “A” or in any other manner as mutually agreed to by the Parties.

ARTICLE FIVE: EXECUTION OF REQUESTS FOR INFORMATION

8. The Requested Party will confirm receipt of any Request and will make reasonable best efforts to fulfil the Request in a timely manner.
9. If a Request cannot be fulfilled entirely, the Requested Party will consider whether part of the Information requested, or any other relevant Information may be provided.
10. Before the Information is provided to the Requesting Party, the Requested Party should make reasonable best efforts to specify such restrictions on the use of the Information to be provided as the Requested Party considers to be reasonably required to comply with any Applicable Law, regulations or directive, having regard to the Requesting Party’s intended purpose.

ARTICLE SIX: JOINT INVESTIGATIONS & COMPLIANCE REVIEWS

11. Where the Parties undertake contemporaneous investigations or examinations, relating to enforcement, registration or licensing, of the same Person(s) under their respective jurisdictions, and where the Parties deem it appropriate, reasonable best efforts will be made to coordinate the work involved and the exchange of Information as contemplated in this MOU. Without limiting the generality of the foregoing, this may include coordination with respect to obtaining access to and copies of relevant books, records and documents, preparing reports, interviewing subjects and initiation of, or continuing, enforcement proceedings.
12. Where the Parties undertake contemporaneous compliance reviews related to Persons under their respective jurisdictions, and where the Parties deem it appropriate, reasonable best efforts will be made to coordinate the work involved and the exchange of Information as contemplated in this MOU. Without limiting the generality of the foregoing,

this may include coordination with respect to obtaining access to and copies of relevant books, records, documents, preparing reports, interviewing Persons and initiation, or continuing of, compliance reviews.

ARTICLE SEVEN: PERMISSIBLE USES

13. Subject to any restrictions specified by the Requested Party, the Parties will be entitled to use the Information obtained under this MOU for the purposes of:
 - (a) carrying out their respective mandates; and
 - (b) in the case of the OSC and in its discretion, sharing Information with the other members of the Canadian Securities Administrators, the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada.
14. The Parties confirm that the Requesting Party may use the Information in response to a Request under this MOU in connection with:
 - (a) any purpose set out in the Request, subject to any restrictions specified by the Requested Party;
 - (b) an investigation or enforcement action or proceeding, including any constitutionally mandated disclosure obligations; and
 - (c) compliance reviews of Persons and licensing and/or registration activities as may be applicable.
15. For greater specificity, the Parties reserve the right to place reasonable restrictions on the use of Information exchanged under this MOU, including Information obtained pursuant to powers of compulsion.
16. If a Party intends to use or forward share Information obtained under this MOU for any purpose that is neither permitted nor contemplated under this MOU nor specified in a Request, unless it is required to do so under Applicable Law and subject to the provisions of the *Securities Act*, it must first obtain the written consent of the Requested Party which shall not be unreasonably withheld. Such written consent may include conditions on the use of the Information as well as restrictions on forward sharing. If such consent is not obtained from the other Party, the Parties will consult to discuss the reason for withholding consent for such purpose and the conditions, if any, under which the intended disclosure might be allowed.

ARTICLE EIGHT: CONFIDENTIALITY OF INFORMATION

17. Except for disclosures in accordance with this MOU, including permissible uses in Article Seven (which includes disclosures which may be required under Applicable Law but are subject to the provisions of the *Securities Act*), the Parties undertake to keep Information provided under this MOU confidential and take all reasonable measures to preserve confidentiality and to safeguard against accidental or unauthorized access, use or disclosure, to the extent permitted by Applicable Law, and agree to maintain as confidential:
 - (a) any Request made under this MOU, the contents of such a Request, and any communications and other matters arising in the course of this MOU's operation. After consultation with the Requesting Party, the Requested Party may disclose the fact that the Requesting Party has made the Request if such disclosure is required to carry out the Request; and
 - (b) any Information received from the Requested Party under this MOU that has been identified by that Party as "confidential" ("Confidential Information").
18. To the fullest extent permitted by Applicable Law, the Parties will notify each other of any legally enforceable demand for Information provided under this MOU. Prior to compliance with such a demand, the Party subject to the demand will obtain the written consent of the other Party (which shall not be unreasonably withheld) and will assert all appropriate legal exemptions or privileges with respect to such Information as may be reasonably available. Such written consent may include reasonable conditions on the use of the Information as well as with whom it can reasonably be shared. If such consent is not obtained from the other Party, the Parties will consult to discuss the reason for withholding consent for such purpose and the conditions, if any, under which the intended disclosure might be allowed.
19. In the event a Party receives a request under the FIPPA for Information obtained under this MOU that may fall within the scope of section 17 of the FIPPA, the Party subject to the request will consider requesting that its designated head under the FIPPA transfer the request, in part or in full, as may be appropriate, to the other Party.
20. Nothing in this MOU shall be construed as a waiver of a solicitor-client privilege or any other legal privilege that may attach to any Information shared or received under this MOU.

21. For demands for Information provided under this MOU which relate to Confidential Information, the Parties agree to be bound by the specific confidentiality terms as described in this MOU.

ARTICLE NINE: LIABILITY

22. No Party shall be liable in any way for the accuracy of the Information it provides under this MOU.
23. A Requested Party shall not be liable in any way for any use made by the Requesting Party of the Information provided to it by the Requested Party.

ARTICLE TEN: AMENDMENTS

24. An amendment may be made to the terms of this MOU as the Parties deem necessary, but no amendment will be valid unless it is in writing and signed by each Party.

ARTICLE ELEVEN: TERMINATION AND SUCCESSOR AUTHORITY

25. Either Party may terminate this MOU by giving thirty (30) days' written notice to the other Party. However, this MOU will continue to have effect with respect to all Requests made before the thirty (30) day notice period expires and until all Requests made before or during the notice period have been fulfilled or otherwise addressed in accordance with Article Five of this MOU.
26. The Parties' obligations under Articles Eight and Nine survive the termination of this MOU and will continue to apply to any Information obtained or provided under this MOU.
27. Where the regulatory functions of a Party to this MOU are transferred or assigned to another authority or authorities, the terms of this MOU shall apply to the successor authority or authorities performing those regulatory functions without the need for any further amendment to this MOU or for the successor to become signatory to this MOU. This will not affect the right of any Party to terminate the MOU if it wishes to do so. The Parties shall work to ensure a seamless transition to any successor into the MOU, including the continued handling of outstanding requests made under this MOU.

ARTICLE TWELVE: EFFECTIVE DATE AND EXECUTION

28. In the case of the OSC, this MOU will become effective on the date determined in accordance with section 143.10 of the *Securities Act*. This MOU may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be deemed to be the original, and those counterparts will together constitute one and the same instrument. The Parties shall execute and deliver any and all such other instruments and shall take any and all such other actions as may be reasonable or necessary to carry out the intention of this MOU.

ARTICLE THIRTEEN: NOTICE

29. Any notices, Requests, inquiries or reports shall be delivered to each Party as follows:

To: Financial Services Regulatory Authority of Ontario
Attn: EVP, Legal and Enforcement
5160 Yonge Street, 16th Floor
Toronto, Ontario
M2N 6L9
Email: Jordan.Solway@fsrao.ca

To: Ontario Securities Commission
Attn: General Counsel
2200 - 20 Queen Street West
Toronto, Ontario
M5H 3S8

For requests directed to the Compliance and Registrant Regulation branch of the OSC: inquiries@osc.gov.on.ca

For requests directed to the Enforcement branch of the OSC: EXTERNALREQUESTS@osc.gov.on.ca

IN WITNESS WHEREOF the Parties have made this Agreement.

Financial Services Regulatory Authority of Ontario

“Mark White”

Mark White
Chief Executive Officer,
Financial Services Regulatory Authority of Ontario

Date: November 17, 2020

Ontario Securities Commission

“Grant Vingo”

D. Grant Vingo
Acting Chair and Chief Executive Officer
Ontario Securities Commission

Date: November 21, 2020

Schedule "A"

FORM FOR DRAFTING REQUESTS FOR INFORMATION
This request is being made pursuant to the provisions of the FSRA/OSC MOU concerning consultation and cooperation and the exchange of information.
Description of the facts underlying the investigation or request: <ul style="list-style-type: none"> > entities/individuals involved and whether regulated or not by the Requesting Party > type of scheme > location of investors > location of affected markets and whether regulated or not by the Requesting Party > timeframe of the suspected misconduct > nature of the suspected misconduct > location of assets > chronology of relevant events
Identification of the unique identifier, registration or license number for the individual or entity as is applicable
Describe how the Information requested will assist in developing the investigation.
Description of uses for which Information is sought, if other than in accordance with the provisions of the MOU.
Description of the Information needed or assistance sought (e.g., account opening documents, periodic account statements, trade confirmations, etc.).
Time period for which documents should be gathered.
Information useful for identifying the relevant Information (e.g., account number, name, address, date of birth of account holder, names of entities believed to control the accounts).
Sources of information (e.g., regulated individuals and entities, investors, clients, knowledgeable insiders).
Preferred form in which information should be gathered.
Confirm whether the Requesting Party intends to disclose the Information to a third party.
Special precautions.
Dates of previous requests in this matter.
Laws and regulations: <ul style="list-style-type: none"> > provisions of the laws that may have been violated > brief description of the provisions > explanation of how the activities being investigated may have constituted violations of such provisions
Responsibility for administering and enforcing the applicable laws.
Desired time for a reply.
Preferred manner in which information is to be transmitted (e.g., telephone, courier, email, computer disk and format).
Contact information for the Requesting Party: <ul style="list-style-type: none"> > name of contact > telephone and fax numbers > e-mail address
Other relevant information.