

1.1.5 Notice of Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities

**NOTICE OF MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER REGULATED ENTITIES**

The Ontario Securities Commission, together with the Alberta and British Columbia Securities Commissions, recently entered into a Memorandum of Understanding with the UK Financial Conduct Authority concerning regulatory cooperation related to the supervision and oversight of regulated entities that operate in both the United Kingdom and Canada (the "Supervisory MOU"). The Supervisory MOU provides a comprehensive framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of cross-border regulated entities and enhances the OSC's ability to supervise these entities.

The Supervisory MOU is subject to the approval of the Minister of Finance. The Supervisory MOU was delivered to the Minister of Finance on July 8, 2013.

Questions may be referred to:

Tula Alexopoulos
Director
Office of Domestic and International Affairs
Tel: 416-593-8084
E-mail: talexopoulos@osc.gov.on.ca

MEMORANDUM OF UNDERSTANDING

Alberta Securities Commission
British Columbia Securities Commission
Ontario Securities Commission

Financial Conduct Authority

CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER REGULATED ENTITIES

1st June 2013

MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER REGULATED ENTITIES

PREAMBLE

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the **Alberta Securities Commission**, the **British Columbia Securities Commission**, the **Ontario Securities Commission** and the **Financial Conduct Authority** have reached this Memorandum of Understanding regarding mutual assistance in the supervision and oversight of regulated entities that operate in both (i) the United Kingdom and (ii) Alberta, British Columbia and/or Ontario. The FCA and the Canadian Authorities express, through this MoU, their willingness to cooperate in the interest of fulfilling their respective regulatory objectives particularly in the areas of investor protection and market confidence.

ARTICLE ONE

DEFINITIONS

For purposes of this Memorandum of Understanding ("**MoU**"):

1. "**Authority**" means:

- (a) The Financial Conduct Authority ("**FCA**") or
- (b) The Alberta Securities Commission ("**ASC**"), the British Columbia Securities Commission ("**BCSC**"), the Ontario Securities Commission ("**OSC**"), or any other Canadian securities regulatory authority which may become a party to this MoU in the manner set out in Article 8 (each a "**Canadian Authority**").

2. "**Requested Authority**" means:

- (a) Where the Requesting Authority is the FCA, any Canadian Authority to which the FCA's request is made; or
- (b) Where the Requesting Authority is a Canadian Authority, the Bank.

3. "**Requesting Authority**" means an Authority making a request under this MoU.

3A. "**Onward Receiving Authority**" means,

- (a) in respect of the FCA: the Prudential Regulation Authority and the Bank of England; and
- (b) in respect of any Canadian Authority: the Bank of Canada.

4. "**Person**" means a natural or legal person, unincorporated association, partnership, trust, company, or corporation.

5. **“Regulated Entity”** means a Person that is authorized, designated, recognized, qualified, registered or exempt (as appropriate), and supervised by any of the Authorities, which may include but is not limited to exchanges and clearing organizations.
6. **“Cross-Border Regulated Entity”** means a Regulated Entity:
- (a) of both (i) the FCA and (ii) any of the Canadian Authorities;
 - (b) of one Authority that has been expressly, or otherwise exempted from authorization, designation, recognition, qualification or registration (as appropriate) by the other Authority;
 - (c) of one Authority that is controlled by a Regulated Entity of the other Authority; or
 - (d) of one Authority that is physically established within the jurisdiction of the other Authority (including through a branch).
- For purposes of this MoU, references to jurisdiction will be determined as either the jurisdiction of the FCA or the jurisdiction of one of the Canadian Authorities.
7. **“On-Site Visit”** means any routine, sweep, or for-cause regulatory visit to the premises of, or inspection of the Books and Records of, a Cross-Border Regulated Entity by an Authority for the purposes of that Authority's ongoing supervision and oversight.
8. **“Books and Records”** means documents, books, electronic media, and records of, and other information about a Regulated Entity.
9. **“Local Authority”** means, in respect of an On-Site Visit, the Authority in whose jurisdiction the On-Site Visit takes place.
10. **“Emergency Situation”** means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Regulated Entity.
11. **“Applicable Laws and Requirements”** means any law, regulation or requirement to which an Authority is subject or administers, and where the context permits, includes:
- (a) relevant European legislation (whether or not transposed into UK domestic law); and
 - (b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority.

ARTICLE TWO

GENERAL PROVISIONS

12. This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Cross-Border Regulated Entities between the FCA and each Canadian Authority individually in a manner consistent with, and permitted by, Applicable Laws and Requirements. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal consultations, supplemented, when necessary, by more in-depth ad-hoc formal cooperation. The provisions of this MoU are intended to support such informal communication and formal cooperation as well as to facilitate the written exchange of non-public information where necessary in accordance with Applicable Laws and Requirements.
13. This MoU does not create any legally binding obligations, confer any rights, or supersede Applicable Laws and Requirements. This MoU does not confer upon any Person 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.
14. This MoU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MoU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of, or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of another Authority.
15. This MoU is intended to complement, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which

the Authorities at the time of the initial execution of this MoU are signatories, which covers information-sharing in the context of enforcement.

16. The Authorities intend, within the framework of this MoU, to provide each other with the fullest cooperation permissible under Applicable Laws and Requirements in relation to the supervision and oversight of Cross-Border Regulated Entities.
17. To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A.

ARTICLE THREE

SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION

18. **CONSULTATION.** The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult regularly regarding general supervisory issues, including regulatory, oversight or other related developments relevant to the operations, activities, and regulation of Cross-Border Regulated Entities.
19. The Authorities recognize in particular the importance of close cooperation in the event a Cross-Border Regulated Entity that is systemically important experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
20. It is anticipated that cooperation between the Authorities will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
 - (a) The initial application with one Authority for authorization, designation, recognition, qualification, registration or exemption therefrom (as appropriate) by a Regulated Entity that is authorized, designated, recognized, qualified or registered (as appropriate) by the other Authority;
 - (b) The ongoing supervision and oversight of a Cross-Border Regulated Entity; and
 - (c) Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Regulated Entity by one Authority that may impact the operations of a Cross-Border Regulated Entity in the jurisdiction of the other Authority.
21. **ADVANCE NOTIFICATION.** Each Authority intends, to the extent practicable and as appropriate in the particular circumstances, to endeavor to inform the other Authorities in advance of, or as soon as possible thereafter of:
 - (a) Pending regulatory changes relating to a Cross-Border Regulated Entity in the jurisdiction of one Authority that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity in the jurisdiction of the other Authority;
 - (b) Any material event of which an Authority is aware that could adversely and directly impact the financial or operational stability of a Cross-Border Regulated Entity. Such events include any known material changes in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Regulated Entity;
 - (c) The status of efforts to address any material financial or operating difficulties experienced by a Cross-Border Regulated Entity; and
 - (d) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorization, designation, recognition, qualification or registration or exemption therefrom (as appropriate), concerning or related to a Cross-Border Regulated Entity.
22. The determination of what constitutes a "significant impact", "material event" or "material change" shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.
23. **EXCHANGE OF INFORMATION.** Upon written request and to the extent that it is able to do so in accordance with Applicable Laws and Requirements, the Requested Authority intends to provide the Requesting Authority with information that is not otherwise available to the Requesting Authority but is required by the Requesting Authority to fulfill its supervision and oversight responsibilities and ensure compliance with its laws and regulations. The information covered by this paragraph may include, without limitation:

- (a) Information relevant to the financial and operational condition of a Cross-Border Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal control procedures;
 - (b) Relevant regulatory information, including, for example, interim and annual financial statements, information drawn from regulatory reports and filings, and notices that a Cross-Border Regulated Entity has submitted to an Authority; and
 - (c) Relevant regulatory information prepared by an Authority as a result of its oversight and supervisory activities regarding Cross-Border Regulated Entities, for example, examination reports and filings.
25. **PERIODIC MEETINGS.** Representatives of the Authorities intend to meet periodically, to update each other on their respective functions and regulatory supervision and oversight programs and to discuss issues of common interest relating to the supervision and oversight of Cross-Border Regulated Entities including: contingency planning and crisis management, the adequacy of existing cooperative arrangements, any systemic risk concerns, default procedures, and the possible improvement of cooperation and coordination between the Authorities. Such meetings may be conducted over conference call or on a face-to-face basis, as judged appropriate by the Authorities.

ARTICLE FOUR

ON-SITE VISITS

26. Where necessary in order to fulfill its supervision and oversight responsibilities and to ensure compliance with Applicable Laws and Requirements, it is intended that an Authority seeking to conduct an On-Site Visit of a Cross-Border Regulated Entity in the jurisdiction of the other Authority will consult and work collaboratively with the Local Authority. In particular, it is intended that:
- (a) the Authority seeking to conduct an On-Site visit will provide advance notice (if practicable) to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it in accordance with Applicable Laws and Requirements, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit;
 - (b) the Local Authority will give reasonable assistance to the Authority conducting the On-Site Visit;
 - (c) the Authorities will consult on and, where desired and permitted by Applicable Laws and Requirements, may agree to conduct an On-Site Visit jointly.

ARTICLE FIVE

EXECUTION OF REQUESTS FOR ASSISTANCE

27. To the extent possible, a request for information pursuant to Article Three should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request for information generally should specify the following:
- (a) The information sought by the Requesting Authority;
 - (b) A general description of the matter which is the subject of the request and the purpose for which the information is sought; and
 - (c) The desired time period for reply and, where appropriate, the urgency thereof.
28. In an Emergency Situation, the Authorities intend to notify each other as soon as possible of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. The positions and phone numbers to be used for this contact are included in the attached Appendix. During an Emergency Situation, requests for information under this MoU may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

ARTICLE SIX

PERMISSIBLE USES OF INFORMATION

29. The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Cross-Border Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority.
30. This MoU is intended to complement, but does not alter the terms and conditions of the existing arrangements between the Authorities at the time of the initial execution of this MoU concerning cooperation in securities matters, as set forth in Paragraph 15. The Authorities recognize that while information is not to be gathered under the auspices of this MoU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In cases where a Requesting Authority seeks to use information obtained under this MoU for enforcement purposes, such use will be subject to the terms and conditions of the arrangements referred to in Paragraph 15 to the extent applicable.

ARTICLE SEVEN

CONFIDENTIALITY OF INFORMATION AND ONWARD-SHARING

31. Except for disclosures in accordance with the MoU, including permissible uses of information under Article Six, each Authority will keep confidential to the extent permitted by Applicable Laws and Requirements information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU.
32. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MoU (including a legally enforceable demand addressed to a Canadian Authority from a Finance Minister to whom that Canadian Authority is accountable under Applicable Laws and Requirements), as soon as practicable unless not permitted by Applicable Laws and Requirements. Prior to compliance with the legally enforceable demand, the Requesting Authority will assert all appropriate legal exemptions or privileges with respect to such non-public information as may be available.
33. Other than in response to a legally enforceable demand, a Requesting Authority may only disclose non-public information received under this MoU to a non-signatory to this MoU if such disclosure is made in accordance with Applicable Laws and Requirements and for the supervisory, oversight and compliance purposes contemplated by this MoU, and (in each case before disclosing the non-public information, except in the case of disclosures described in paragraph 33A) if the following procedure is followed:
 - (a) the Requesting Authority informs the Requested Authority of the identity of each recipient to whom the non-public information will be disclosed, and the purpose of the disclosure;
 - (b) the Requesting Authority obtains the written consent of the Requested Authority (and such consent may be subject to restrictions or conditions with which the Requesting Authority shall comply); and
 - (c) the Requesting Authority confirms that each recipient agrees to, and has the legal authority to, maintain a level of confidentiality in respect of the non-public information that is at least equivalent to that which the Requesting Authority is subject to (including, where relevant, restrictions or conditions imposed on it by the Requested Authority).
- 33A. This paragraph sets out an exception to the procedure set out at paragraph 33(a)-(c) in respect of non-legally compelled disclosures of information by a Requesting Authority to an Onward Receiving Authority. A Requesting Authority may share any non-public information it receives under this MoU with an Onward Receiving Authority provided that:
 - (a) such disclosure is made in accordance with Applicable Laws and Requirements;
 - (b) such disclosure is for the purposes of the public functions of the Requesting Authority or the Onward Receiving Authority;
 - (c) the Onward Receiving Authority is required to maintain a level of confidentiality in respect of the non-public information that is at least equivalent to that which the Requesting Authority is subject to (including, where relevant, restrictions or conditions imposed on it by the Requested Authority).

34. If consent referred to at 33(b) is not obtained from the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding consent to such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
35. The Authorities intend that the sharing or disclosure of non-public information will not constitute a waiver of privilege or confidentiality of such information.
36. The restrictions of this Article do not apply to an Authority's use of information it obtains directly from a Cross-Border Regulated Entity whether during an On-Site Visit or otherwise. However, where that information is provided to the Requesting Authority pursuant to an information-sharing request under this MoU, the restrictions in this MoU apply to the use and disclosure of the information by that Requesting Authority.

ARTICLE EIGHT

AMENDMENTS

37. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MoU, including annexes to cover specific situations, should that be judged necessary. This MoU may be amended with the written consent of all of the Authorities referred to in paragraph 1.
38. Any additional Canadian securities regulatory authority may become a party to this MoU by executing a counterpart hereof, subject to the prior consent given by the FCA and providing notice of such execution to the other Canadian Authorities which are signatories to this MoU.

ARTICLE NINE

EXECUTION OF MOU

39. Cooperation in accordance with this MoU will take effect on the date this MoU is signed by the Authorities except that in the case of the OSC it will take effect on the date determined in accordance with Ontario Applicable Laws and Requirements (and such date shall be notified by the OSC to the other Authorities as soon as practicable).

ARTICLE TEN

TERMINATION

40. Cooperation in accordance with this MoU will continue until the expiration of 30 days after the FCA or any Canadian Authority gives written notice to each of the other Authorities referred to paragraph 1 of its intention to terminate the MoU. Where such notice is given cooperation will continue in accordance with this MoU with respect to all requests for assistance that were made under the MoU before the date of such notice until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Articles Six and Seven. If any Canadian Authority terminates the MoU in accordance with this Article, the MoU shall remain effective as between the FCA and the remaining Canadian Authorities.

“David Lawton”

Name: David Lawton
Director of Markets
For the UK Financial Conduct Authority
Date: 06/06/13

“William S. Rice”

Name: William S. Rice, Q.C.
Title: Chair
For the Albert Securities Commission
Date: 26/06/13

“Howard Wetston”

Name: Howard Wetston, Q.C.
Title: Chair
For the Ontario Securities Commission
Date: 24/06/13

“Brenda M. Leong”

Name: Brenda M. Leong
Title: Chair and Chief Executive Officer
For the British Columbia Securities Commission
Date: 26/06/13

Appendix "A"

CONTACT OFFICERS

UK FINANCIAL CONDUCT AUTHORITY

25 The North Colonnade
Canary Wharf, London E14 5HS

Attention: Manager of OTC Derivatives & Post Trade Policy

Telephone: ●
Fax: ●
Email: ●

ALBERTA SECURITIES COMMISSION

Suite 600, 250-5th Street SW Calgary, Alberta
T2P OR4
Canada

Attention: General Counsel

Telephone: (403) 297-4698
Fax: (403) 355-4479
Email: kari.horn@asc.ca

BRITISH COLUMBIA SECURITIES COMMISSION

P.O. Box 10142, Pacific Centre
701 West Georgia
Vancouver, BC
V7Y 1L2
Canada

Attention: Secretary to the Commission

Telephone: (604) 899-6534
Fax: (604) 899-6506
Email: commsec@bcsc.bc.ca

ONTARIO SECURITIES COMMISSION

20 Queen Street West
22nd Floor, Box 55 Toronto, ON M5H 3S8

Attention: Director, Office of Domestic and International Affairs

Telephone: (416) 593-8084
Fax: (416) 595-8942
Email: talexopoulos@osc.gov.on.ca
