

1.1.4 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**

On February 10, 2012, the Ontario Securities Commission, together with the Quebec Autorité des marchés financiers and the Alberta and British Columbia Securities Commissions, entered into a Memorandum of Understanding with the Australian Securities and Investments Commission ("ASIC") concerning regulatory cooperation related to the supervision of regulated entities that operate in both Australia and Canada (the "Supervisory MOU"). The OSC and ASIC have a long history of cooperation, particularly in securities enforcement matters. The Supervisory MOU would extend this cooperation beyond enforcement by setting a framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of regulated entities. This framework would enhance the OSC and ASIC's ability to supervise regulated entities that operate across our jurisdictions.

The Supervisory MOU is subject to the approval of the Minister of Finance. The Supervisory MOU was delivered to the Minister of Finance on February 13, 2012. Subject to the Minister's approval, the Supervisory MOU will take effect in Ontario on April 17, 2012.

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

February 17, 2012

MEMORANDUM OF UNDERSTANDING



Alberta Securities Commission

Autorité des marchés financiers

British Columbia Securities Commission

Ontario Securities Commission



**Australian Securities and
Investments Commission**

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

**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 Australian Securities and Investments Commission, the Autorité des marchés financiers, the Ontario Securities Commission, the Alberta Securities Commission and the British Columbia Securities Commission have reached this Memorandum of Understanding regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in Australia and Canada. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; fostering the integrity of, and maintaining confidence in, capital markets; and reducing systemic risk.

**ARTICLE ONE
DEFINITIONS**

For the purposes of this Memorandum of Understanding (**MOU**):

1. **"Authority"** means:
 - (a) The Australian Securities and Investments Commission (**ASIC**), or
 - (b) The Autorité des marchés financiers (**AMF**), the Ontario Securities Commission (**OSC**), the Alberta Securities Commission (**ASC**), the British Columbia Securities Commission (**BCSC**), or any other Canadian securities regulatory authority which may become a party to this MOU in the manner set out in Article Eight (individually a **Canadian Authority**, or collectively the **Canadian Authorities**).
2. **"Requested Authority"** means;
 - (a) Where the Requesting Authority is ASIC, the Canadian Authority to which a request is made under this MOU; or
 - (b) Where the Requesting Authority is a Canadian Authority, ASIC.
3. **"Requesting Authority"** means an Authority making a request under this MOU.
4. **"Person"** means a natural or legal person, or unincorporated entity or association, including corporations, partnerships, trusts and syndicates.
5. **"Regulated Entity"** means a Person that is authorized, designated, recognized, qualified, or registered, and supervised or overseen by one of the Authorities, which may include but is not limited to exchanges and other trading venues, brokers or dealers, investment advisers, investment fund managers, clearing agencies or houses, transfer agents, and credit rating agencies.
6. **"Cross-Border Regulated Entity"** means:
 - (a) a Regulated Entity of ASIC and any of the Canadian Authorities,
 - (b) a Regulated Entity in one jurisdiction that has been exempted from authorization, designation, recognition, qualification or registration by an Authority in the other jurisdiction,
 - (c) a Regulated Entity in one jurisdiction that is controlled by a Regulated Entity in the other jurisdiction, or
 - (d) a Regulated Entity in one jurisdiction that is physically located in the other jurisdiction.

For the purposes of this MOU, references to jurisdiction will be determined as either the jurisdiction of ASIC or the jurisdiction of one of the Canadian Authorities.
7. **"On-Site Visit"** means any routine sweep, or for-cause regulatory visit to or inspection of the Books and Records and premises of a Cross-Border Regulated Entity for the purposes of ongoing supervision and oversight.

8. **"Books and Records"** means documents, books, and records of, and other information about, a Regulated Entity.
9. **"Local Authority"** means the Authority in whose jurisdiction a Cross-Border Regulated Entity is physically located.
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. **"Government Entity"** means:
 - (a) ASIC's responsible minister or ministers, a House or Committee of the Parliament of Australia, the Australian Department of Treasury, the Australian Prudential Regulatory Authority, or the Reserve Bank of Australia, if the Requesting Authority is ASIC, and such other entities as agreed to by the signatories from time to time,
 - (b) The Québec ministère des Finances, if the Requesting Authority is the AMF,
 - (c) The Ontario Ministry of Finance, if the Requesting Authority is the OSC,
 - (d) The Alberta Ministry of Finance and Enterprise, if the Requesting Authority is the ASC,
 - (e) The British Columbia Ministry of Finance, if the Requesting Authority is the BCSC, and
 - (f) Such other entity, as agreed to by the signatories, as may be responsible for any other Canadian Authority which may become a party to this MOU in the manner set out in Article Eight.

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 in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. This MOU provides for consultation, cooperation and exchange of information related to the supervision and oversight of Cross-Border Regulated Entities between ASIC and each Canadian Authority individually. The Authorities anticipate that cooperation will be primarily achieved through ongoing informal consultations, supplemented, when necessary, by more in-depth cooperation, including through mutual assistance in obtaining information from Regulated Entities. The provisions of this MOU are intended to support such informal communication as well as facilitate the written exchange of non-public information where necessary in accordance with applicable laws.
13. This MOU does not create any legally binding obligations, confer any rights or supersede domestic laws. 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 (subject to the procedures described in Article Four), or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of another Authority.
15. This MOU complements, but does not alter the terms and conditions of the following existing arrangements concerning cooperation in securities matters:
 - (a) The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories, which covers information-sharing in the context of enforcement,
 - (b) Memorandum of Understanding (1996) between the Australian Securities Commission and the Commission des valeurs mobilières du Québec,
 - (c) Memorandum of Understanding (1995) between the Australian Securities Commission and the OSC,
 - (d) Memorandum of Understanding (1996) between the Australian Securities Commission and the ASC, and
 - (e) Memorandum of Understanding (1996) between the Australian Securities Commission and the BCSC.

16. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Cross-Border Regulated Entities. Following consultation, 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 the terms of the MOU, or
 - (c) On the grounds of the public interest.

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. The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult regularly at the staff level regarding:
- (a) General supervisory issues, including regulatory, oversight or other related developments,
 - (b) Issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities, and
 - (c) Any other areas of mutual supervisory interest.
19. Cooperation 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 an Authority for authorization, designation, recognition, qualification, registration or exemption therefrom by a Regulated Entity that is authorized, designated, recognized, qualified or registered by an Authority in the other jurisdiction,
 - (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 an Authority that may impact the operations of the entity in the jurisdiction of the other Authority.
20. Each Authority will, where practicable and reasonable, seek to inform the other Authorities in advance of, or as soon as possible thereafter, of:
- (a) Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity,
 - (b) Any material event of which the Authority is aware that could adversely and directly impact a Cross-Border Regulated Entity. Such events include known changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity, and
 - (c) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorization, designation, recognition, qualification or registration or exemption therefrom, concerning or related to a Cross-Border Regulated Entity.
21. To supplement informal consultations, upon written request, each Authority intends, subject to applicable laws, to provide the other Authorities with assistance in obtaining information, and interpreting such information, relevant to ensuring compliance with the laws and regulations of the Requesting Authority and that is not otherwise available to the Requesting Authority. The information covered by this paragraph includes, 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 and filings that a Cross-Border Regulated Entity is required to submit to an Authority, including, for example, interim and annual financial statements and early warning notices, and

- (c) Regulatory reports prepared by an Authority, including, for example, examination reports, findings, or information drawn from such reports regarding Cross-Border Regulated Entities.

ARTICLE FOUR ON-SITE VISITS

- 22. Where necessary in order to fulfill its supervision and oversight responsibilities and to ensure compliance with its laws and regulations, an Authority seeking to examine a Cross-Border Regulated Entity located in the jurisdiction of the Local Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit. Subject to applicable laws, the Authorities will comply with the following procedures before conducting an On-Site Visit:
 - (a) The Authority seeking to conduct an On-Site Visit will provide advance notice to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit,
 - (b) The Local Authority will endeavour to share any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity with the Requesting Authority,
 - (c) The Authorities intend to assist each other regarding On-Site Visits, including cooperation and consultation in reviewing, interpreting and analyzing the contents of public and non-public Books and Records and information obtained from directors and senior management of a Cross-Border Regulated Entity, and
 - (d) The Authorities will consult and, where permitted, conduct joint inspections or cooperate in other ways with a view to possibly leveraging resources in the oversight of a Cross-Border Regulated Entity.

ARTICLE FIVE EXECUTION OF REQUESTS FOR ASSISTANCE

- 23. 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.
- 24. In an Emergency Situation, the Authorities will endeavour to notify each other 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. During an Emergency Situation, requests for information 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

- 25. 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.
- 26. This MOU is intended to complement, but does not alter the terms and conditions of the existing arrangements between the Authorities 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, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the Requested Authority. Use will be subject to the terms and conditions of the arrangements referred to in Paragraph 15.

**ARTICLE SEVEN
CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

27. 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 law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
28. 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. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
29. In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MOU with other Government Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
- (a) The Requesting Authority will notify the Requested Authority, and
 - (b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Government Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
30. Except as provided in Paragraph 29, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is not obtained from the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
31. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

**ARTICLE EIGHT
AMENDMENTS**

32. 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 should that be judged necessary. This MOU may be amended with the written consent of all of the Authorities.
33. Any Canadian Authority may become a party to this MOU by executing a counterpart hereof, together with ASIC and providing notice of such execution to the other Canadian Authorities which are signatories to this MOU.

**ARTICLE NINE
EXECUTION OF MOU**

34. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities and, in the case of the OSC, on the date determined in accordance with applicable legislation.

**ARTICLE TEN
TERMINATION**

35. Cooperation in accordance with this MOU will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate the MOU. If an Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification 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.

"Greg Medcraft"

Greg Medcraft
Chairman
For the Australian Securities and Investments Commission
Date: February 10, 2012

"Mario Albert"

Mario Albert
President and Chief Executive Officer
For the Autorité des marchés financiers
Date: February 10, 2012

"Howard Wetston, Q.C."

Howard Wetston, Q.C.
Chair
For the Ontario Securities Commission
Date: February 10, 2012

"William S. Rice, Q.C."

William S. Rice, Q.C.
Chair
For the Alberta Securities Commission
Date: January 26, 2012

"Brenda M. Leong"

Brenda M. Leong
Chair and Chief Executive Officer
For the British Columbia Securities Commission
Date: January 25, 2012

APPENDIX "A"
CONTACT OFFICERS

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

100 Market Street
Sydney, New South Wales, Australia
GPO Box 9827, Sydney, New South Wales, Australia

Attention: Senior Executive Specialist International Strategy
Telephone: +61 2 2 9911 5246
Fax: +61 2 2 9911 2634
Email: Steven.Bardy@asic.gov.au

AUTORITÉ DES MARCHÉS FINANCIERS

800, Square Victoria, 22nd Floor, Box 246
Montreal, QC
H4Z 1G3
Canada

Attention: Corporate Secretary
Telephone: 514 395 0337 ext. 2517
Fax: 514 864 6381
Email: louise.sorel@lautorite.qc.ca

ONTARIO SECURITIES COMMISSION

20 Queen Street West, 19th Floor, Box 55
Toronto, Ontario
M5H 3S8
Canada

Attention: Director, Office of Domestic and International Affairs
Telephone: 416 593 8084
Fax: 416 595 8942
Email: talexopoulos@osc.gov.on.ca

ALBERTA SECURITIES COMMISSION

Suite 600, 250-5th Street SW
Calgary, Alberta
T2P 0R4
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
