

**MEMORANDUM OF UNDERSTANDING ("MOU")  
CONCERNING COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF CROSS-BORDER COVERED ENTITIES, among:**

**Ontario Securities Commission**

**Autoriteit Financiële Markten**

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 Ontario Securities Commission and the Autoriteit Financiële Markten (collectively, "**the Authorities**") have reached this Memorandum of Understanding regarding cooperation and the exchange of information in the regulation and oversight of regulated entities that operate on a cross-border basis in both (i) the Netherlands and (ii) Ontario, Canada. This MOU does not preclude information sharing or cooperation with respect to persons that are not specifically defined as covered by this MOU but that nonetheless may be subject to regulatory requirements in the Netherlands or Canada. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates regarding derivatives and/or securities markets particularly in the areas of: protecting investors and customers; fostering the integrity of and maintaining confidence in financial markets; and reducing systemic risk.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "**Authority**" means:
  - a. In the Netherlands, the Autoriteit Financiële Markten ("**AFM**"); and
  - b. In Canada, Ontario Securities Commission ("**OSC**"), or any other Canadian securities regulatory authority or Canadian derivatives authority that may become a party to the MOU in the manner set out in Article Eight (individually, a "**Canadian Authority**", or collectively, the "**Canadian Authorities**").
2. "**Requesting Authority**" means the Authority making a request under this MOU.
3. "**Requested Authority**" means:
  - a. Where the Requesting Authority is the AFM, the Canadian Authority to which a request is made under this MOU; or
  - b. Where the Requesting Authority is a Canadian Authority, the AFM.
4. "**Laws and Regulations**" means:
  - a. For the OSC, the *Securities Act* (Ontario) and related rules and regulations ("**OSA**") and successor legislation; the *Commodity Futures Act* (Ontario) and related rules and regulations ("**CFA**") and successor legislation; and other relevant requirements in Canada and Ontario; and
  - b. For AFM, Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("**EMIR**") and related EC Delegated Regulations as parts of the European Union ("**EU**") law; The Markets in Financial Instruments Directive 2014/65/EU ("**MIFID II**") and implementing legislation; Regulation (EU) No. 600/2014 on Markets in Financial Instruments ("**MiFIR**"); Regulation (EU) No 596/2014 on market abuse ("**MAR**") and the Dutch Act on Financial Supervision

("AFS," Wet op het financieel toezicht); and other relevant requirements in the Netherlands.

5. **"Person"** means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Covered Entity or Cross-Border Covered Entity.
6. **"Covered Entity"** means a Person that is, or that has applied to be, authorized, designated, recognized, qualified, registered, supervised, exempt or overseen by one or more of the Authorities pursuant to Laws and Regulations, which may include regulated markets, exchanges, Multilateral Trading Facilities ("MTFs"), and Alternative Trading Systems ("ATs").
7. **"Cross-Border Covered Entity"** means:
  - a. A Covered Entity of both the AFM and any one or more of the Canadian Authorities;
  - b. A Covered Entity in one jurisdiction that has been exempted from authorization, designation, recognition, qualification, or registration by an Authority in the other jurisdiction;
  - c. A Covered Entity in one jurisdiction that controls or is controlled by a Covered Entity located in the other jurisdiction; or
  - d. A Covered Entity in one jurisdiction that is physically located in the other jurisdiction.

For purposes of this MOU, references to jurisdiction will be determined as either the jurisdiction of the AFM or the jurisdiction of one of the Canadian Authorities.

8. **"Books and Records"** means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a Cross-Border Covered Entity.
9. **"Emergency Situation"** means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Covered Entity.
10. **"On-Site Visit"** means any regulatory visit as described in Article Five to the premises of a Cross-Border Covered Entity for the purposes of ongoing supervision and oversight including the inspection of Books and Records.
11. **"Local Authority"** means the Authority in whose jurisdiction a Cross-Border Covered Entity that is the subject of an On-Site Visit is physically located
12. **"Visiting Authority"** means the Authority conducting an On-Site Visit.
13. **"Governmental Entity"** means:
  - a. If the Requesting Authority is the OSC:
    - (i) the Ministry of Finance – Ontario; and
    - (ii) any provincial or territorial securities or derivatives regulatory authority in Canada which, from time to time, is or becomes a party to the Memorandum of Understanding respecting the Oversight of Exchanges and Quotation and Trade Reporting Systems dated July 3, 2014 as amended or supplemented from time to time;
  - b. If the Requesting Authority is the AFM:

- (i) Dutch Central Bank ("DNB"); and
    - (ii) the Dutch Public Prosecution Service (Openbaar Ministerie); and
  - c. Such other entity, as agreed to in writing by the Authorities, 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.
14. "IOSCO MMOU" means the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised from time to time) to which the OSC and AFM are signatories, which covers primarily information sharing in the context of enforcement matters.

## ARTICLE TWO: GENERAL PROVISIONS

15. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of Cross-Border Covered Entities. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, the legal requirements applicable to each Authority. With respect to cooperation pursuant to this MOU, no domestic secrecy or blocking laws or regulations should prevent an Authority from providing assistance to another Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation, including through mutual assistance in obtaining information related to Cross-Border Covered Entities. The provisions of this MOU are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws.
16. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede international law and/or 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.
17. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. 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 Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the jurisdiction of another Authority.
18. This MOU is intended to complement but does not alter the terms and conditions of the IOSCO MMOU.
19. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information to the other Authorities.

## **ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION**

### **General**

20. The Authorities recognize the importance of close communication concerning Cross-Border Covered Entities and intend to consult regularly, as appropriate, regarding:
  - a. General supervisory issues, including regulatory, oversight, or other related developments;
  - b. Issues relevant to the operations, activities, and regulation of Cross-Border Covered Entities; and
  - c. Any other areas of mutual supervisory interest.
21. The Authorities recognize in particular the importance of close cooperation in the event that a Cross-Border Covered Entity experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
22. 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 the AFM or a Canadian Authority for authorization, licensure, designation, recognition, qualification, registration, or exemption therefrom, by a Cross-border Covered Entity;
  - b. The ongoing supervision and oversight of a Cross-Border Covered Entity, including compliance with statutory and regulatory requirements in either jurisdiction or with international standards; and
  - c. Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Covered Entity by the AFM or a Canadian Authority that may impact the operations of the entity in the jurisdiction of the other Authority.

### **Event-Triggered Notification**

23. As appropriate in the particular circumstances, the AFM or the relevant Canadian Authority will use reasonable efforts to inform, respectively, the relevant Canadian Authority (or Authorities) or the AFM promptly, and where practicable in advance, of:
  - a. Pending regulatory changes that may have a significant impact on the Cross-Border Covered Entity, including those that may affect the rules or procedures of a Cross-Border Covered Entity;
  - b. Any material event of which the Authority is aware that could adversely impact the Cross-Border Covered Entity, including but not limited to:
    - (i) any known adverse material change in the ownership of a Cross-Border Covered Entity;
    - (ii) any known adverse material change in the operating environment of a Cross-Border Covered Entity;

- (iii) any known adverse material change in operations of a Cross-Border Covered Entity;
  - (iv) any known adverse material change in financial resources of a Cross-Border Covered Entity;
  - (v) any known adverse material change in management of a Cross-Border Covered Entity;
  - (vi) any known adverse material change in the systems and controls of a Cross-Border Covered Entity (including, for example, a material cyberattack, breach in security, or material system failure); and/or
  - (vii) the failure of a Cross-Border Covered Entity to satisfy any of its requirements for continued authorization, designation, recognition, qualification, or registration, or exemption therefrom, where that failure could have a material adverse effect in the jurisdiction of the other Authority and where the failure is known to the relevant Authority.
- c. The status of efforts to address any material financial or operating difficulties experienced by a Cross-Border Covered Entity as described in Subparagraph b of which the Authority is aware; and
  - d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant authorization, licensure, designation, recognition, qualification, registration, or exemption therefrom, concerning a Cross-Border Covered Entity.
24. The determination of what constitutes "significant impact", "material event", "adversely impact", "adverse material change", "material adverse effect", "market or settlement bank difficulties", "adversely affect", "material financial or operating difficulties", or "significant regulatory actions" for purposes of Paragraph 23 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

#### **Request-Based Information Sharing**

25. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide the Requesting Authority the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority's supervision and oversight of Cross-Border Covered Entities, including assistance in obtaining and interpreting information that is relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority and that is not otherwise available to the Requesting Authority. Such requests shall be made pursuant to Article Four of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.
26. The information covered by Paragraph 25 includes but is not limited to:
- a. Information relevant to the financial and operational condition of a Cross-Border Covered Entity including, for example, financial resources, risk management, and internal control procedures;
  - b. Relevant regulatory information and filings that a Cross-Border Covered Entity is required to submit to an Authority including, for example, interim and annual financial statements and event-specific notices; and

- c. Regulatory reports prepared by an Authority including, for example, examination reports, findings, or information contained in such reports regarding Cross-Border Covered Entities.

#### **Periodic Meetings**

27. Representatives of the Authorities intend to meet periodically, as appropriate and necessary, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of Cross-Border Covered Entities, including but not limited to: contingency planning and crisis management, the adequacy of existing cooperative arrangements, systemic risk concerns, and the possible improvement of cooperation and coordination among the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

#### **ARTICLE FOUR: EXECUTION OF REQUESTS FOR INFORMATION**

28. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person in Appendix A. A request generally should specify the following:
  - a. The information sought by the Requesting Authority;
  - b. A general description of the matter that is the subject of the request;
  - c. The purpose for which the information is sought; and
  - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information responsive to the request, as well as any subsequent communication among Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

29. In an Emergency Situation, the AFM and the relevant Canadian Authorities will endeavor to notify the other(s) as soon as possible of the Emergency Situation and communicate information as 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 FIVE: ON-SITE VISITS**

30. In fulfilling its supervision and oversight responsibilities and to ensure compliance with its Laws and Regulations, the AFM may need to conduct On-Site Visits to a Cross-Border Covered Entity located in Ontario, and a Canadian Authority may need to conduct On-Site Visits to a Cross-Border Covered Entity located in the Netherlands. Each Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit.
31. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
  - a. The Visiting Authority provides advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended timeframe for, and scope of, the On-Site Visit.

The Visiting Authority will notify the Local Authority prior to notifying the Cross-Border Covered Entity.

- b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the Cross-Border Covered Entity.
- c. The Authorities intend to assist each other regarding On-Site Visits, including providing information that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Cross-Border Covered Entity.
- d. The Authorities will consult with each other, and the Local Authority may in its discretion accompany or assist the other Authority during the On-Site Visit, or the Authorities may conduct joint visits where appropriate.

#### **ARTICLE SIX: PERMISSIBLE USES OF INFORMATION**

- 32. The Requesting Authority may use non-public information obtained under this MOU solely for the supervision and oversight of Cross-Border Covered Entities and seeking to ensure compliance with the Laws and Regulations of the Requesting Authority.
- 33. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, the Authorities may subsequently want to use the non-public information provided pursuant to this MOU for enforcement purposes. In cases where a Requesting Authority seeks to use non-public information obtained pursuant to this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, treatment of the non-public information will be in accordance with the use and confidentiality provisions of the IOSCO MMOU.
- 34. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 32 and 33, the Requesting Authority must first consult with and obtain the consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the 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. Following such consultation, the Requested Authority retains discretion to deny consent to the Requesting Authority.
- 35. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Cross-Border Covered Entity, whether during an On-Site Visit or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to an information-sharing request pursuant to Article Four of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

#### **ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION, DATA PROTECTION AND ONWARD SHARING**

- 36. The Authorities acknowledge that the transfer of personal data will take place in accordance with the conditions laid down in the relevant data protection legislation applicable in the jurisdictions of the Authorities.

37. Except for disclosures in accordance with this MOU, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
38. The Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU prior to complying with the demand. When complying with the demand, the Requesting Authority intends to assert all 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 information received under this Memorandum of Understanding.
39. As required by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MOU with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
  - a. The Requesting Authority intends to notify the Requested Authority; and
  - b. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction; and
    - ii. The information will not be shared by the Governmental Entity with other parties unless:
      - A. The Governmental Entity is required to do so by law; or
      - B. The Requested Authority has provided prior written consent.
40. Except as provided in Paragraphs 38 and 39, 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. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. 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 denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed. Following such consultation, the Requested Authority retains discretion to deny consent to the Requesting Authority.
41. The Authorities intend that the sharing or disclosure of non-public information, including 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 non-public information.



#### **ARTICLE EIGHT: AMENDMENTS**

42. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the AFM and the Canadian 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 referred to in Paragraph 1.
43. Any Canadian Authority may become a party to this MOU by executing a counterpart hereof together with the AFM and providing notice of such execution to the other Canadian Authorities that are signatories to this MOU.

#### **ARTICLE NINE: EXECUTION OF MOU**

44. 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: SUCCESSORS**

45. Where the relevant functions of a signatory 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 relevant functions without the need for any further amendment to this MOU or for the successor to become a signatory to the MOU. This will not affect the right of any Authority to terminate the MOU as provided hereunder. The Authorities shall work to ensure a seamless transition to any successor into the MOU, including the continued handling of outstanding matters.
46. Where regulatory functions have been assigned to another authority or authorities under paragraph 46, the successor authority may use non-public information previously obtained under this MOU if the successor authority uses and treats the information in accordance with the terms of this MOU.

#### **ARTICLE ELEVEN: TERMINATION**

47. 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, the parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MOU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Articles Six and Seven.
48. If any Canadian Authority terminates the MOU in accordance with this Article, the MOU shall remain effective between the AFM and the remaining Canadian Authorities (if any).

This MOU is executed in duplicate, this                      day of                      , 2019.

**Chair and Chief Executive Officer  
Ontario Securities Commission**

**Member of the Executive Board  
Autoriteit Financiële Markten**

## APPENDIX A

### CONTACT PERSONS

*In addition to the following contact information, the OSC and AFM will exchange confidential emergency contact telephone information.*

#### **OSC**

Office of Domestic and International Affairs

Ontario Securities Commission

20 Queen Street West, 22nd Floor

Toronto ON

M5H 3S8

Phone: (416) 593-8314

Email: [mourequest@osc.gov.on.ca](mailto:mourequest@osc.gov.on.ca)

and [inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

Manager, Market Regulation

Ontario Securities Commission

20 Queen Street West, 22nd Floor

Toronto ON

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Phone: (416) 593-3676

Email: [marketregulation@osc.gov.on.ca](mailto:marketregulation@osc.gov.on.ca)

#### **AFM**

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