

**1.1.2 Notice of Memorandum of Understanding – Cooperation and the Exchange of Information Related to the Supervision of Regulated Entities Operating in Ontario and Germany**

**NOTICE OF MEMORANDUM OF UNDERSTANDING  
COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF REGULATED ENTITIES  
OPERATING IN ONTARIO AND GERMANY**

The Ontario Securities Commission has recently entered into a Memorandum of Understanding with the German Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”) concerning regulatory cooperation related to the supervision and oversight of regulated entities operating in Ontario and Germany (the “MOU”). The MOU provides a comprehensive framework for consultation, cooperation and information-sharing related to the day-to-day supervision and oversight of regulated entities and enhances the OSC’s ability to supervise these entities.

The MOU is subject to the approval of the Minister of Finance.

Questions may be referred to:

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

**Ontario Securities Commission**

**Bundesanstalt für Finanzdienstleistungsaufsicht**

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 German Bundesanstalt für Finanzdienstleistungsaufsicht (collectively, "the Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of regulated entities that operate in both Ontario, Canada, and Germany. 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 investor protection, market integrity, and reducing systemic risk.

The Parties hereby agree as follows:

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "Authority" means:
  - a. In Ontario, Canada, the Ontario Securities Commission ("OSC"); and
  - b. In Germany, the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin").
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means the Authority to whom a request is made under this MOU.
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 BaFin, the German Banking Act ("Kreditwesengesetz") and related ordinances as parts of the German law, the Act on the Deutsche Bundesbank ("Bundesbank Act") the German Securities Trading Act ("Wertpapierhandelsgesetz"), the German Stock Exchange Act ("Börsengesetz"), the Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("EMIR") and related Regulatory Technical Standards as parts of the European Union ("EU") law and other applicable legal or regulatory requirements applicable in Germany, the Regulation (EU) No. 600/2014 of the European Parliament and of the Council on markets in financial instruments (MiFIR) and related Regulatory Technical Standards as parts of the EU law and other applicable legal or regulatory requirements applicable in Germany and the Capital Requirements Regulation ("CRR") and related Regulatory Technical Standards as parts of the EU law and other applicable legal or regulatory requirements applicable in Germany.
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 but is not limited to regulated markets, exchanges, Multilateral Trading Facilities ("MTFs"), Alternative Trading Systems ("ATSS"), and Organized Trading Facilities ("OTFs").
7. "Cross-Border Covered Entity" means:
  - a. A Covered Entity of both BaFin and the OSC;

- 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 OSC or the jurisdiction of BaFin.

- 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. "Exchange Supervisory Authority" ("ESA") means an authority of one of the Bundesländer (German federal states) that has statutory responsibility under the Börsengesetz over a Cross-Border Covered Entity organized in Germany.
- 11. "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.
- 12. "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
- 13. "Visiting Authority" means the Authority conducting an On-Site Visit.
- 14. "Governmental Entity" means:
  - a. If the Requesting Authority is the OSC:
    - (i) the Ministry of Finance – Ontario;
    - (ii) the Federal Ministry of Finance – Canada;
    - (iii) the Bank of Canada; and
    - (iv) 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 BaFin, the Bundesministerium der Finanzen (Federal Ministry of Finance); 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.

## ARTICLE TWO: GENERAL PROVISIONS

- 15. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with each of the Authorities' respective functions, responsibilities, oversight, supervision and mandates relating to Cross-Border Covered Entities. The cooperation and information sharing arrangements under this MOU will be interpreted and implemented in a manner and to the extent that is permitted by, and consistent with, the laws and requirements that govern each Authority. With respect to cooperation pursuant to this MOU, at the date this arrangement is executed, each Authority believes that no domestic secrecy or blocking laws or regulations should prevent it from providing assistance to any other 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 and apply for both sides equally.

16. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede domestic laws or regulations. 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 or preclude Authorities from sharing information or documents with each other with respect to Persons that are not Cross-Border Covered Entities, but may be subject to Laws and Regulations in Ontario, Canada and in Germany. 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 territory of another Authority.
18. This MOU is intended to complement but does not alter, except where explicitly noted, the terms and conditions of the following existing arrangements:
  - a. the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“IOSCO MMOU”) to which the OSC and BaFin are signatories, which covers primarily information sharing in the context of enforcement matters;
  - b. the *Memorandum of Understanding Concerning Cooperation And The Exchange Of Information Related To The Supervision Of Cross-Border Clearing Agencies Operating As Central Counterparties* (February 26, 2018), to which BaFin and the OSC are signatories; and
  - c. any arrangements that have been or may be entered into between the OSC and the European Securities and Markets Authority (“ESMA”) with regard to their respective responsibilities in connection with CCPs.
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 in writing 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 their supervision of 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 for registration, authorization, licensure, designation, recognition, qualification, or exemption therefrom, by a Cross-Border Covered Entity that is registered, authorized, licensed, designated, recognized, qualified or exempted therefrom, in the other jurisdiction;
  - b. The ongoing supervision and oversight of a Cross-Border Covered Entity including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards; and
  - c. Regulatory or supervisory actions or approvals taken by an Authority in relation to a Cross-Border Covered Entity 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 OSC and BaFin endeavor to inform the other Authority promptly, and where practicable in advance, of:
- a. Pending regulatory and/or legislative changes that may have a significant impact on the operations, activities, or reputation of a 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 financial or operational stability of a Cross-Border Covered Entity, including such events as any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Covered Entity, including such as material cyberattack, breach in security or material system failure, and 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;
  - c. The status of efforts of which the Authority is aware to address any material event that could adversely impact the financial or operational condition of a Cross-Border Covered Entity, as described in Subparagraph b; and
  - d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant registration, authorization, recognition, designation or licensure, or exemption therefrom, concerning a Cross-Border Covered Entity.
24. The determination of what constitutes “significant impact”, “material event”, “adversely impact”, “difficulties”, “material adverse effect”, “adverse material change”, “material” 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.
25. Paragraphs 23 and 24 shall not preclude the Authorities from entering into any further arrangements relating to notification regarding specific financial or operational issues related to a Cross-Border Covered Entity.

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

26. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide to the Requesting Authority the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority’s supervision and oversight of a Cross-Border Covered Entity, 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.
27. The cooperation covered by Paragraph 26 includes:
- 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**

28. Representatives of the Authorities intend to meet periodically, as appropriate, 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

29. 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.

30. In an Emergency Situation, the 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

31. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, Laws and Regulations, an Authority may need to conduct On-Site Visits to a Cross-Border Covered Entity physically located in the jurisdiction of the other Authority. The Authorities will consult and work collaboratively in conducting an On-Site Visit.
32. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
- a. The Visiting Authority will provide reasonable advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended time frame for, and the purpose and scope of, the On-Site Visit. Other than in exceptional circumstances, 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 will assist each other regarding On-Site Visits, including providing information that the Visiting Authority may request and 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 Visiting Authority during the On-Site Visit, or the Authorities may conduct joint visits where appropriate.

#### ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

33. 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.
34. 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 terms and conditions of the IOSCO MMOU, as amended from time to time.

35. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraph 33 and Paragraph 34, the Requesting Authority must first consult with and obtain the written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will discuss the reasons for withholding approval and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
36. 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 AND ONWARD SHARING**

37. Except as provided in Paragraphs 38-42, 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. In cases where the BaFin seeks to share non-public information obtained from the OSC pursuant to this MOU with an ESA, prior to sharing such information, the BaFin shall:
  - a. Consult with the OSC and work with the ESA to establish a written arrangement for sharing non-public information;
  - b. Provide the OSC with adequate assurances that:
    - i. The sharing of the non-public information between the BaFin and the ESA is required pursuant to Article 8, Paragraph 1 of the Börsengesetz and Article 6, Paragraph 2 of the Wertpapierhandelsgesetz;
    - ii. The information will be used by the ESA for a relevant supervisory purpose;
    - iii. The use and confidential treatment of the information will be governed by Article 10 of the Börsengesetz, except that the information may also be used for a relevant supervisory purpose and shall not be shared by the ESA with other parties without getting the prior written consent of the OSC; and
    - iv. To the extent possible, the BaFin intends to notify the OSC of any legally enforceable demand to the ESA for non-public information furnished under this MOU and shared with the ESA. Prior to compliance with the demand, the ESA will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
  - c. Provide the OSC with prompt notice of any relevant changes to German law or requirements and of any changes that would affect the sharing of non-public information obtained from the OSC pursuant to this MOU in accordance with a written arrangement with an ESA.
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 these circumstances and to the extent permitted by law:
  - a. The Requesting Authority will notify the Requested Authority; and
  - b. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will notify the Requested Authority and provide it with adequate assurances concerning the use and confidential treatment of the information by the Governmental Entity, 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. As required by EMIR, it may become necessary for BaFin to share non-public information obtained from the OSC under this MOU with the European Banking Authority, European Securities and Markets Authority, or the European Systemic Risk Board or, with regard to the implementation of the Single Supervisory Mechanism in the EU insofar as this is necessary for the BaFin on the basis of EU law in connection with Cross-Border Covered Entities, the European Central Bank in its function as banking supervisor (each an "EU Entity"). In these circumstances and to the extent permitted by law:
- a. BaFin will notify the OSC prior to sharing the information and indicate the purpose for which the information will be shared with an EU Entity; and
  - b. Prior to Bafin sharing the non-public information, BaFin will provide adequate assurances to the OSC concerning the EU Entity's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The EU Entity has confirmed that it requires the information and will use the information only for a purpose within the scope of its jurisdiction; and
    - ii. The information will not be shared by the EU Entity with other parties without getting the prior written consent of the OSC.
41. Except as provided in Paragraphs 37, 38, 39, 40 and 42, 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.
42. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. 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.
43. The Authorities intend that the sharing or the 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 information.

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

44. The Authorities intend periodically to review the functioning and effectiveness of the cooperation arrangements between the OSC and the BaFin 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.

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

45. 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**

46. 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.
47. 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**

48. 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 notice of termination, the relevant 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 this MOU before the expiration of the 30-day period until all such 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 described under Articles Six and Seven.

This MOU is executed in duplicate, this 21st day of October, 2019.

“Maureen Jensen”  
Chair and Chief Executive Officer  
Ontario Securities Commission

“Elisabeth Roegele”  
Chief Executive Director  
Bundesanstalt für Finanzdienstleistungsaufsicht

**APPENDIX A**

**CONTACT PERSONS**

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

**OSC**

Office of Domestic and International Affairs  
Ontario Securities Commission  
20 Queen Street West, 22nd Floor  
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Phone: (416) 593-8314  
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and inquiries@osc.gov.on.ca

Manager, Market Regulation  
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**BaFin**

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