

# **MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO DUALY REGULATED ENTITIES**

## **1. PURPOSE**

In view of the increase in cross-border operations and activities of financial markets and in particular, of the entities operating in the jurisdictions of the parties, the **Autorité des marchés financiers (“AMF”)** from the Province of Québec (Québec) in Canada and the **Financial Services Authority (“FSA”)** of the United Kingdom (UK) (together “the Authorities”) have entered into this Memorandum of Understanding (MOU) regarding consultation, cooperation and the exchange of information in order to promote effective supervision of a Dually Regulated Entity, and where appropriate to reduce any regulatory overlap. Through this MOU, the AMF and the FSA express their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering market integrity, and maintaining market confidence and systemic stability.

## **2. DEFINITIONS**

For purposes of this MOU:

“Authority” means the AMF or the FSA.

“Confidential information” means information relating to the business or affairs of any person that is received by one of the Authorities and which is not publicly available or in such form that it is possible to ascertain from it information relating to any particular person.

“Dually Regulated Entity” means an exchange or other trading venue, a broker, an investment manager, an investment fund manager, an investment fund or an investment firm that conducts activities in the UK and in Québec, has its global headquarters in the UK or in Québec, is authorized, designated, recognized, qualified, registered or exempted, as appropriate, in the relevant jurisdiction and, as such, is subject to the supervision or oversight of both of the Authorities. The AMF and the FSA may add other types of entities by a supplemental letter to this MOU.

“Emergency Situation” means the occurrence of an event that could materially impair the financial or operating condition of a Dually Regulated Entity and may include but is not limited to adverse developments in financial markets which potentially jeopardize the stability of the financial system in either Québec, or the UK.

“Host Authority” means the Authority in the jurisdiction in which the On-Site Visit takes place.

“Inspecting Authority” means the Authority performing an On-Site Visit.

“On-Site Visit” means any routine, sweep, or for-cause regulatory visit to, or inspection of the information and premises of a Dually Regulated Entity for the purposes of ongoing supervision or oversight;

“Person” means a natural person, legal person, unincorporated association, partnership, trust, body or another group of persons that is not constituted as a legal person.

“Requested Authority” means the Authority to whom a request is made under this MOU; and

“Requesting Authority” means the Authority making a request under this MOU.

### **3. GENERAL PROVISIONS**

- 3.1 This MOU does not modify or supersede any laws or regulatory requirements in force in, or applying to Québec or the UK. It is a statement of intent of the Authorities and is not intended to create any binding legal obligations, or to fetter the discretion of the Authorities in any way in the discharge of their functions. It is also not intended to prejudice the individual responsibilities or autonomy of any Authority.
- 3.2 This MOU is a statement of intent to consult, cooperate and exchange information in a manner consistent with, and permitted by, the laws and regulations that govern the Authorities in connection with the oversight of Dually Regulated Entities. It is anticipated that cooperation will be achieved primarily through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MOU are not intended to discourage or hinder such informal and oral communication.
- 3.3 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 supervision or oversight that is located in the territory of the other Authority.
- 3.4 This MOU is intended to supplement, but does not alter the terms of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information to which the AMF and FSA are signatories, which covers information-sharing in the context of investigations.
- 3.5 The Authorities intend to review the functioning and effectiveness of cooperation arrangements between them periodically 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 both Authorities.

- 3.6 To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set out in the Appendix.

#### **4. SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND EXCHANGE OF INFORMATION**

- 4.1 The Authorities recognise the importance of close communication concerning the activities of Dually Regulated Entities to the objectives of effective supervision, and intend to consult regularly regarding general supervisory developments and issues relevant to the operations, activities and regulation of such Dually Regulated Entities.
- 4.2 The Authorities recognise that cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory interest may arise:
- 4.2.1 an initial application with an Authority for authorisation, designation, recognition, or in the case of the AMF, qualification or registration or exemption therefrom by a Person that is authorised, designated, recognised, qualified or registered by the other Authority;
  - 4.2.2 the ongoing supervision and oversight of a Dually Regulated Entity;
- 4.3 To the extent practicable and as appropriate in the particular circumstances, including the status of efforts to address any difficulties experienced by a Dually Regulated Entity, each Authority will endeavor to inform the other Authority of:
- 4.3.1 pending regulatory changes relating to a Dually Regulated Entity that may have a significant impact on the operations, activities, or reputation of a Dually Regulated Entity in the other jurisdiction;
  - 4.3.2 any significant event relating to a Dually Regulated Entity that could adversely impact the stability of a Dually Regulated Entity in the other jurisdiction, including changes in ownership, financial resources, operations or activities, management, or systems and controls; and
  - 4.3.3 enforcement or regulatory or supervisory actions or sanctions or approvals taken in relation to a Dually Regulated Entity by an Authority that may impact the activities of the entity in the jurisdiction of the other Authority.
- 4.4 To the extent necessary to supplement periodic and ad hoc oral consultations, upon written request, each Authority intends to provide to the other Authority its cooperation in assisting with the oversight of a Dually Regulated Entity and ensuring compliance with the laws and regulations of the Requesting Authority.
- 4.5 It is anticipated that such requests will relate to Confidential Information that is not otherwise available to the Requesting Authority and which is relevant to ensuring compliance with the laws and regulations of the Requesting Authority. This assistance

includes, without limitation, providing information based upon documents held in the files of the Requested Authority relevant to the Requesting Authority's oversight of the operations or activities of a Dually Regulated Entity.

- 4.6 The Requested Authority will provide assistance in obtaining and interpreting such information. Such information may include, without limitation:
  - 4.6.1 Information relevant to the financial and operational condition of a Dually Regulated Entity, including, for example, corporate structure, capital and liquidity funding profiles, and internal controls procedures;
  - 4.6.2 Relevant regulatory information, including, for example, interim and annual financial statements, information drawn from regulatory reports and filings, notices that a Dually Regulated Entity is required to submit to an Authority; and
  - 4.6.3 Relevant regulatory information prepared by an Authority as a result of its oversight and supervisory activities regarding a Dually Regulated Entity.
- 4.7 If the Requesting Authority asks to obtain regulatory or other information prepared by or held in the files of the Requested Authority or other information located in the Requested Authority's jurisdiction that may be relevant to the Requesting Authority's oversight of a Dually Regulated Entity, it will be incumbent on the Requesting Authority to specify why direct access is required to information in this form.

## **5. EXECUTION OF REQUESTS FOR ASSISTANCE**

- 5.1 A request for written information pursuant to Section 4 should be made in writing where possible, and addressed to the relevant contact person in the Appendix. A request should specify the following:
  - 5.1.1 the information sought by the Requesting Authority;
  - 5.1.2 a general description of the matter which is the subject of the request and the purpose for which the information is sought; and
  - 5.1.3 the desired time period for reply and, where appropriate, the urgency thereof.
- 5.2 In Emergency Situations, 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. In the event of an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing.

## **6. CONFIDENTIALITY OF INFORMATION AND PERMITTED USES**

- 6.1. Each Authority intends to keep confidential to the extent permitted by law information shared under this MOU, and in particular Confidential Information shared under this MOU.
- 6.2. The Requesting Authority should use Confidential Information obtained under this MOU solely for conducting oversight of Dually Regulated Entities, and seeking to ensure compliance with the laws and regulations of the Requesting Authority. Where the Requesting Authority is required by law to disclose Confidential Information obtained from the Requested Authority, it shall notify the Requested Authority in writing, unless prohibited to do so by law. In the case of any legally enforceable demand, prior to compliance with the demand, the Requesting Authority will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 6.3. In cases where an Authority seeks to share Confidential Information obtained under this MOU with another regulatory authority, including a relevant self-regulatory organisation, prior to providing the information to the third authority, the Requesting Authority undertakes to:
  - 6.3.1 consult with the Requested Authority;
  - 6.3.2 provide assurances to the Requested Authority that the third authority has confirmed that it requires the Confidential Information for a relevant supervisory purpose related to an affiliate of a Dually Regulated Entity; and
  - 6.3.3 obtain confirmation that the third authority is bound by information sharing provisions related to supervisory matters which govern the use and confidentiality of any Confidential Information it receives from third parties.
- 6.4. If the conditions described in subparagraphs 6.3.2 and 6.3.3 are not met, the Requesting Authority must consult further with the Requested Authority with a view to obtaining its consent, prior to providing Confidential Information obtained under this MOU to a third authority. In considering whether to grant consent, the Requested Authority will take into account the Requesting Authority's obligations under domestic laws and regulations. The Requested Authority will also take into account the urgency of the request and respond in a timely manner.
- 6.5. Before using Confidential Information supplied under this MOU for any purpose other than those stated in Paragraph 6.2, the Requesting Authority must first inform the Requested Authority of the intended use. As necessary, the Authorities will consult to discuss the reasons for any denial by the Requested Authority of such use and the circumstances under which such use might be allowed.

- 6.6 The Authorities recognise that while information is not to be gathered under the auspices of this MOU specifically for enforcement purposes, subsequently the Authorities may have cause to use the information obtained for law enforcement. In cases where an Authority seeks to use information obtained under this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, the Authority seeking to use the information should seek the prior consent of the other Authority.
- 6.7 The Authorities intend that the sharing or the disclosure of Confidential Information including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

## **7. ON-SITE VISITS**

- 7.1 The AMF may conduct On-Site Visits of Dually Regulated Entities located in the UK and the FSA may conduct On-Site Visits of Dually Regulated Entities located in Québec.
- 7.2 The Authorities intend to comply with the following procedures before conducting an On-Site Visit:
- 7.2.1 The Inspecting Authority will notify the Host Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it, the intended time frame for and the scope of the On-Site Visit. If practicable, the Inspecting Authority will attempt to notify the Host Authority at least one week prior to notifying the Dually Regulated Entity covered by this Paragraph.
- 7.2.2 The Authorities intend to assist each other regarding On-Site Visits, including cooperation and consultation in reviewing, interpreting and analysing the contents of information and in obtaining information from directors and senior management of a Dually Regulated Entity covered by this paragraph.
- 7.2.3 The Host Authority may, in its discretion, accompany the Inspecting Authority during the On-Site Visit and assist in the On-Site Visit.

## **8. TERMINATION**

Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate its cooperation under the MOU. If either 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 the manner prescribed under Section 6.

Signed at \_\_\_\_\_, this \_\_\_\_\_, 2011 Signed at \_\_\_\_\_, this \_\_\_\_\_, 2011

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Mario Albert

For the Province of Québec

Autorité des marchés financiers

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Verena Ross

For the United Kingdom

Financial Services Authority

## **APPENDIX**

### **CONTACT PERSONS**

#### **Province of Québec**

##### **Autorité des marchés financiers**

800, square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3

Attention:

M<sup>c</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Tel. +1 514-395-0337, ext. 2511  
Email: [anne-marie.beaudoin@lautorite.qc.ca](mailto:anne-marie.beaudoin@lautorite.qc.ca)

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#### **United Kingdom**

##### **Financial Services Authority**

25 The North Colonnade  
Canary Wharf  
London E14 5HS

Attention:

Blake Stephenson (Market Infrastructure)  
Tel. +44 20 7066 3342  
Email: [Blake.Stephenson@fsa.gov.uk](mailto:Blake.Stephenson@fsa.gov.uk)