

**Memorandum of Understanding Respecting the Oversight of Clearing Agencies,
Trade Repositories and Matching Service Utilities, among:**

Alberta Securities Commission (ASC)
Autorité des marchés financiers (AMF)
British Columbia Securities Commission (BCSC)
Financial and Consumer Affairs Authority of Saskatchewan (FCAA)
Financial and Consumer Services Commission (New Brunswick) (FCNB)
The Manitoba Securities Commission (MSC)
Nova Scotia Securities Commission (NSSC)
Ontario Securities Commission (OSC)

(each a “Party”, collectively the “Parties”)

The Parties hereby agree as follows:

1. Underlying Principles

(I) Scope

- (a) This Memorandum of Understanding (“MOU”) outlines the manner in which the Parties intend to cooperate and coordinate their efforts in respect of the oversight of Regulated Entities (as defined below), including the processing of applications by Applicant Entities (as defined below).

(II) General Purpose and Objectives

- (a) All Parties intend to fully cooperate and coordinate with each other in respect of the oversight of Regulated Entities, including the processing of applications by Applicant Entities, for the purposes of promoting the safe and efficient management and operation of Regulated Entities and the limiting and managing of systemic risk.
- (b) The cooperation and coordination by the Parties under this MOU are intended to ensure that all of the following applicable objectives are met:
- (i) each Party can meet its respective regulatory mandate, whether acting as a Lead Authority, Co-Lead Authority or Reliant Authority;
 - (ii) consistency in the overall oversight approach among the Parties that act as a Lead Authority, Co-Lead Authorities or Reliant Authorities for each particular Regulated Entity is achieved so that conflicting or incompatible oversight requirements and actions are avoided and oversight gaps are eliminated;
 - (iii) the processing of applications of Applicant Entities and the oversight of Regulated Entities are carried out efficiently and effectively, including that the burden imposed on Applicant Entities and Regulated Entities under a multiple

regulator system is reduced, and the duplication of efforts by the Parties is minimized; and

- (iv) consistent and transparent reporting is provided by a Lead Authority or Co-Lead Authorities to a Reliant Authority(s) for each Regulated Entity.

(III) Oversight Model

- (a) A Lead Authority or Co-Lead Authorities will be selected for each Regulated Entity in accordance with Article 3 of this MOU, and if applicable, one or more Parties may rely on the Lead Authority or Co-Lead Authorities as a Reliant Authority(s).
- (b) For each Regulated Entity that is Canadian-based, its Lead Authority or Co-Lead Authorities will be responsible for:
 - (i) its direct oversight through an Oversight Program established in accordance with Article 6 of this MOU;
 - (ii) liaising and interacting directly with the Regulated Entity with respect to such oversight; and
 - (iii) liaising and interacting directly with the Bank of Canada (“Bank”) in accordance with Article 7 of this MOU, where applicable.
- (c) For each Regulated Entity that is foreign-based and that is subject to a comparable regulatory regime in its home jurisdiction, the Lead Authority or Co-Lead Authorities will:
 - (i) rely on the Regulated Entity’s Home Regulator for day to day oversight, to the extent possible;
 - (ii) liaise and interact directly with the Home Regulator with respect to the Regulated Entity’s oversight;
 - (iii) carry out direct oversight of the Regulated Entity through an Oversight Program established in accordance with Article 6 of this MOU only in respect of matters that have a material impact on the Canadian capital markets; and
 - (iv) liaise and interact directly with the Regulated Entity with respect to such oversight.
- (d) For each Regulated Entity that is foreign-based, and that is not regulated in its home jurisdiction or where the Home Regulator’s regulatory regime is not comparable, its Lead Authority or Co-Lead Authorities will be responsible for:

- (i) its direct oversight through an Oversight Program established in accordance with Article 6 of this MOU; and
 - (ii) liaising and interacting directly with the Regulated Entity with respect to such oversight.
- (e) Where Co-Lead Authorities have been selected to carry out the oversight of a Regulated Entity, the number of Co-Lead Authorities should be limited in order to ensure efficiency and effectiveness of the oversight.

2. Definitions

In this MOU, the following terms have the meanings set out below:

“Applicant Entity” means a Clearing Agency, Trade Repository or Matching Service Utility that has concurrently or within an overlapping time period applied to more than one provincial or territorial securities regulatory authority to become recognized, exempted or designated under applicable Canadian Securities Legislation and whose application is being processed concurrently by the Parties in receipt of it.

“Canadian Securities Legislation” has the same meaning as in National Instrument 14-101 *Definitions* and includes, in Manitoba and Ontario, the *Commodity Futures Act*.

“Co-Lead Authority” means a Party that has recognized or designated, or will recognize or designate, a particular Regulated Entity and that has been selected from time to time to be jointly responsible with one or more other Parties for the oversight of the Regulated Entity in accordance with Article 3 of this MOU.

“Coordinating Lead Authority” means one of the Co-Lead Authorities for a particular Regulated Entity that is responsible for carrying out certain administrative tasks in respect of that Regulated Entity, as specified in this MOU.

“Clearing Agency” means a “clearing agency” within the meaning of Canadian Securities Legislation, including National Instrument 24-102 *Clearing Agency Requirements*, and includes, in Manitoba, a “clearing house” within the meaning of the *Manitoba Commodity Futures Act*.

“Contact Person” means the person designated by each Party as the person or persons to receive communications from other Parties.

“Home Regulator” means a foreign-based regulatory authority that has direct authority over, and carries out oversight of, a particular foreign-based Regulated Entity in its home jurisdiction.

“Lead Authority” means a Party that has recognized or designated, or will recognize or designate, a particular Regulated Entity, and that has been selected from time to time

to be responsible for the oversight of the Regulated Entity in accordance with section 3 of this MOU.

“List of Regulated Entities” means the list of Regulated Entities that includes the selected Lead Authorities or Co-Lead Authorities, and the Reliant Authorities, attached as Schedule 1 to this MOU. The List of Regulated Entities does not form part of this MOU, may be amended from time to time by mutual agreement of the Parties, and will be published by each Party after any such amendment.

“Matching Service Utility” means a “matching service utility” within the meaning of Canadian Securities Legislation.

“Regulated Entity” means a Clearing Agency, Trade Repository or Matching Service Utility that is recognized, exempted or designated pursuant to applicable Canadian Securities Legislation in more than one jurisdiction of Canada and that is identified on the List of Regulated Entities.

“Reliant Authority” means a Party that has recognized, designated or exempted a particular Regulated Entity or will recognize, designate or exempt a particular Regulated Entity, and that relies or will rely on the Lead Authority or Co-Lead Authorities for direct oversight of that Regulated Entity.

“Rules” means the rules, operating procedures, user guides, manuals, agreements and similar instruments of a Regulated Entity which govern the operations of the entity or participation in the entity.

“Trade Repository” means a “trade repository” or “derivatives trade repository” within the meaning of Canadian Securities Legislation.

“Urgent Matter” means a particular issue or concern affecting the safety or efficiency of a Regulated Entity or its participants, which requires urgent action or consideration by the relevant Parties.

Unless the context otherwise requires, other terms used in this MOU have the meanings ascribed to them in Canadian Securities Legislation, including National Instrument 14-101 *Definitions*.

3. Selection of a Lead Authority or Co-Lead Authorities

(I) Guiding Factors for the Selection of a Lead Authority or Co-Lead Authorities

- (a) The selection of a Lead Authority or Co-Lead Authorities for a particular Regulated Entity will be reached by consensus of all Parties that have recognized, exempted or designated the Regulated Entity, or that are in the process of recognizing, exempting or designating the Regulated Entity, based on the following guiding factors:

- (i) the head office and/or principal place of business of the Regulated Entity; and
- (ii) the significance of the Regulated Entity's activity in each jurisdiction of Canada, which can be determined by:
 - (A) the number of participants or members of the Regulated Entity that are resident in each jurisdiction of Canada relative to Canadian totals;
 - (B) for a Regulated Entity that is a Clearing Agency, the nature of the products cleared or services offered, and the value and volume cleared and/or settled for residents of each jurisdiction of Canada, as well as the proportion of that activity in each jurisdiction of Canada relative to Canadian totals;
 - (C) for a Regulated Entity that is a Trade Repository, the asset classes that are reported, as well as the proportion of the activity in respect of the asset classes that are reported in each jurisdiction of Canada relative to Canadian totals; and
 - (D) the impact on the capital market or economy of each jurisdiction of Canada if the Regulated Entity ceases to carry on business.
- (b) The list of guiding factors is non-exhaustive, and no single factor is intended to be determinative.
- (c) The selection process for a Lead Authority or Co-Lead Authorities for a particular Regulated Entity may be initiated as early as the time it becomes an Applicant Entity and will be finalized no later than once it becomes a Regulated Entity.
- (d) Where consensus on a Lead Authority or Co-Lead Authorities cannot be reached by the relevant Parties, the matter may be escalated pursuant to Article 12 of the MOU.

(II) Re-Selection of a Lead Authority or Co-Lead Authorities

- (a) Absent the escalation of any disputes or disagreements pursuant to Article 12 of this MOU, the Parties that have recognized, exempted or designated a particular Regulated Entity may re-select a Lead Authority or Co-Lead Authorities, in accordance with this Article 3, no earlier than three years from the time of the selection of the incumbent Lead Authority or Co-Lead Authorities.

4. Cooperation between Co-Lead Authorities

- (a) Co-Lead Authorities for a particular Regulated Entity will cooperate and coordinate with each other in respect of the oversight of the Regulated Entity, including jointly establishing an Oversight Program for the Regulated Entity in accordance with

subsection 6(a) of this MOU and coordinating the conduct of such Oversight Program.

- (b) Coordination between Co-Lead Authorities may be achieved by:
- (i) clearly defining each Party's respective responsibilities;
 - (ii) sharing information respecting the oversight of the Regulated Entity in a timely manner; and
 - (iii) harmonizing regulatory actions with respect to a Regulated Entity to the extent possible (e.g. when approving or non-disapproving material changes to the Rules of the Regulated Entity).
- (c) Co-Lead Authorities for a particular Regulated Entity may appoint by mutual agreement a Coordinating Lead Authority that will accept responsibility for liaising and interacting with the Regulated Entity for each oversight matter, where possible, and for carrying out certain administrative tasks as determined between the Co-Lead Authorities from time to time.

5. Coordination of Application Process

- (a) A Party that is in receipt of an application for recognition, exemption or designation from Clearing Agency, Trade Repository or Matching Service Utility will notify all Contact Persons of the application.
- (b) Parties that have concurrently or within an overlapping time period received an application from an Applicant Entity will coordinate their review and approval of the application to the extent practicable, including sharing communications with the Applicant Entity, harmonizing relevant terms and conditions of recognition, designation or exemption, and developing consistent protocols for review and/or approval of filings by the Applicant Entity following the recognition, designation or exemption.
- (c) The coordination of an application process in respect of a particular Applicant Entity may be led by its Lead Authority or Co-Lead Authorities, if already selected in accordance with Article 3 of this MOU, or by another Party or Parties selected by the mutual agreement of the Parties that are in receipt of an application by the Applicant Entity.

6. Oversight of a Regulated Entity

(I) Oversight Program Conducted by Lead Authority or Co-Lead Authorities

- (a) The Lead Authority or Co-Lead Authorities for a particular Regulated Entity will establish and conduct an oversight program (“Oversight Program”) in respect of that Regulated Entity.
- (b) The purpose of an Oversight Program is to ensure that a particular Regulated Entity is operating safely and efficiently and is in compliance with applicable Canadian Securities Legislation and the terms and conditions of the recognition or designation decision(s) issued by its Lead Authority or Co-Lead Authorities.
- (c) An Oversight Program will be risk-based and will include the following minimum components:
 - (i) review of information filed by a Regulated Entity pursuant to applicable Canadian Securities Legislation and the terms and conditions of the recognition or designation decision(s) issued by its Lead Authority or Co-Lead Authorities;
 - (ii) monitoring of a Regulated Entity’s compliance with applicable Canadian Securities Legislation and the terms and conditions of the recognition or designation decision(s) issued by its Lead Authority or Co-Lead Authorities;
 - (iii) approval or non-disapproval of material changes to the Rules of a Regulated Entity and other matters contemplated under applicable Canadian Securities Legislation, in accordance with the process outlined in the recognition or designation decision(s) issued by its Lead Authority or Co-Lead Authorities; and
 - (iv) periodic on-site review;
- (d) The minimum components outlined for each Oversight Program may be supplemented with additional oversight activities in respect of a particular Regulated Entity, or adjusted if the Regulated Entity is a foreign-based Regulated Entity.
- (e) The Lead Authority or Co-Lead Authorities will retain discretion regarding the manner in which an Oversight Program is conducted.

(II) Involvement of a Reliant Authority

- (a) A Reliant Authority may advise the Lead Authority or Co-Lead Authorities of a particular Regulated Entity that it has specific material concerns regarding the operations of the Regulated Entity and request that the Lead Authority or Co-Lead Authorities examine such concerns. The Lead Authority or Co-Lead Authorities retain the discretion to determine how to examine the concerns, and will notify the Reliant Authority of their intentions within a reasonable period of time. Where the Lead Authority or Co-Lead Authorities undertake an examination based on the concerns of a Reliant Authority, the findings of such examination will be reported

back to the Reliant Authority(s) as soon as practicable and no later than the time such findings are presented to the Regulated Entity.

- (b) Where a Lead Authority or Co-Lead Authorities are not able, or in their discretion determines that they will not examine such material concerns, the Reliant Authority may conduct direct oversight in respect of such concerns without the participation of the Lead Authority or Co-Lead Authorities. The Reliant Authority will report the findings of such direct oversight to the Lead Authority, Co-Lead Authorities and other Reliant Authority(s) as soon as practicable and no later than the time such findings are presented to the Regulated Entity.
- (c) To the extent that a Reliant Authority conducts direct oversight of a Regulated Entity in a particular instance, the Reliant Authority may directly liaise and interact with the Regulated Entity, and with its Home Regulator if the Regulated Entity is a foreign-based Regulated Entity.

(III) Information Sharing

- (a) The Lead Authority or a Co-Lead Authority for a particular Regulated Entity will provide the Reliant Authority(s) with the following:
 - (i) at least annually, a summary description of the Oversight Program planned for the Regulated Entity for the upcoming year, including material concerns or issues that will be subject to examination and key oversight activities, as well as any material changes to the Oversight Program since the last year;
 - (ii) at least quarterly, a summary report of key findings from conducting the Oversight Program in the period, material issues encountered, the Regulated Entity's responses and action plans, the appropriateness of those responses and action plans, and any follow up oversight activities; and
 - (iii) such other information respecting the Regulated Entity or its oversight that the Lead Authority or Co-Lead Authorities consider to be of interest to the Reliant Authority(s) for the discharging of their respective regulatory mandates.
- (b) The Lead Authority or Co-Lead Authorities for a particular Regulated Entity will, upon written request from the Reliant Authority(s) of the Regulated Entity, provide to the Reliant Authority(s) or request that the Regulated Entity provide to the Reliant Authority(s) information concerning the Regulated Entity or their oversight activities in respect of the Regulated Entity within a reasonable period of time.
- (c) Without limiting the generality of the foregoing, information shared between the Parties that have recognized, exempted or designated a particular Regulated Entity may include:

- (i) filings and/or material changes related to the operations, business, services, activities, affairs, financial resources, governance, membership, systems, Rules, design or risk controls of the Regulated Entity;
 - (ii) results of any oversight activities, including assessments, audits or reviews;
 - (iii) decisions, directives or orders or similar regulatory actions with respect to the Regulated Entity; and
 - (iv) any other information respecting the oversight of the Regulated Entity that a Reliant Authority reasonably requires to discharge its respective regulatory mandate.
- (d) The sharing of any information between Parties is subject to applicable law. The Parties will keep such information confidential to the extent permitted by applicable law and the information will be used by the Parties only for oversight purposes or otherwise in connection with their respective statutory mandates and responsibilities.
- (e) Each Party will provide notice to all Contact Persons of any proposed changes to legislative, regulatory or legal frameworks with respect to Clearing Agencies, Trade Repositories and Matching Service Utilities.

(IV) Emergency Protocol for Coordination on Urgent Matters

- (a) If it is not itself the Lead Authority or a Co-Lead Authority, a Party that identifies an Urgent Matter will immediately notify the Lead Authority or Co-Lead Authority of the particular Regulated Entity by telephone or e-mail, briefly describing the nature and the urgency of the matter.
- (b) Upon identifying or being informed of an Urgent Matter, the Lead Authority or a Co-Lead Authority for a particular Regulated Entity will immediately notify all Contact Persons of the Co-Lead Authorities and/or Reliant Authority(s) of the Regulated Entity, where applicable, and organize and convene a teleconference to discuss the Urgent Matter.
- (c) At the initial teleconference, the Lead Authority, Co-Lead Authorities and Reliant Authority(s) of the Regulated Entity will discuss the Urgent Matter and possible responses by the Lead Authority or Co-Lead Authorities, including, where necessary:
 - (i) assigning the role of coordinating consultations among relevant Parties and responses to the Urgent Matter to the Lead Authority, a Co-Lead Authority or another Party (“Urgent Matter Coordinator”);¹ and

¹ Although which Party is the appropriate party to coordinate will depend on the circumstances, in delegating an Urgent Matter Coordinator, the Parties will have regard to: (i) in the case of the potential failure or default of a participant of the Regulated Entity, the provincial or territorial securities regulatory authority that regulates the participant; (ii) whether the Urgent Matter is primarily a matter of risk to the Canadian financial system as a whole or

- (ii) assigning persons within each of the Lead Authority, Co-Lead Authorities and Reliant Authority(s) to receive communications and participate in consultations relating to the Urgent Matter.
- (d) Following the initial teleconference, the Urgent Matter Coordinator will regularly update, and will, where appropriate, consult with or seek input from, the Lead Authority, Co-Lead Authorities and Reliant Authority(s), as necessary.

7. Consultation and Coordination with the Bank of Canada

- (a) When a Regulated Entity operates a clearing and settlement system that is also designated and overseen by the Bank pursuant to the *Payment Clearing and Settlement Act*, its Lead Authority or Co-Lead Authorities will endeavour to cooperate and coordinate with the Bank in order to:
 - (i) promote a consistent approach to oversight between the Lead Authority or Co-Lead Authorities and the Bank, in order to avoid conflicting or incompatible oversight requirements and actions, and to eliminate oversight gaps; and
 - (ii) promote efficient and effective oversight of the Regulated Entity by minimizing the burden on the Regulated Entity and by avoiding duplication of efforts by the Lead Authority, Co-Lead Authorities and the Bank.

8. Contact Persons

- (a) For each Regulated Entity, each Party will designate up to three Contact Persons in respect of that Regulated Entity for the purposes of this MOU and shall communicate any updates in respect of the details of such Contact Persons.
- (b) The Chair of the Oversight Committee (as defined below) will, promptly upon receiving the initial list of Contact Persons from each Party, compile a comprehensive list of Contact Persons and their contact information and distribute the list to all of the Parties. The Chair will thereafter be responsible for maintaining and updating the comprehensive list of Contact Persons, and will promptly distribute updated lists of Contact Persons, as necessary.

9. Oversight Committee

- (a) An oversight committee (“Oversight Committee”) will be established and will have the mandate to act as a forum and venue for the Parties to share information

rather is confined to risk, efficiency, or access in a provincial or territorial market; and (iii) if the Urgent Matter is primarily a matter of operational risk resulting in a system’s problem or failure, the jurisdiction where the system’s problem or failure is likely to have the most impact.

pursuant to this MOU, including the discussion of issues, concerns and proposals related to the oversight of Regulated Entities.

- (b) The Oversight Committee will consist of staff representatives from each of the Parties to this MOU who have responsibility for and/or expertise in the oversight of Regulated Entities.
- (c) A chair of the Oversight Committee (“Chair”) will be selected by consensus of the Parties.
- (d) The Oversight Committee will meet at least once annually in person, and will conduct teleconferences at least quarterly.
- (e) At least annually, the Oversight Committee will provide to the Canadian Securities Administrators (“CSA”) a written report of oversight activities over Regulated Entities during the previous period.

10. Waiver

- (a) The provisions of this MOU may be waived by written mutual agreement of the Parties, with the exception of Article 6, subsection (III)(d).

11. Amendments to the MOU

- (a) This MOU may be amended from time to time by mutual agreement of the Parties. Any amendments must be in writing and approved by the duly authorized representatives of each Party. Any amendment to this MOU, except for the List of Regulated Entities that is not part of this MOU, is subject to applicable Ministerial or Governmental approvals.
- (b) Any provincial or territorial securities regulatory authority having or soon to have regulatory authority over a Regulated Entity may become a Party to this MOU by obtaining the written consent of the other Parties. Upon obtaining the consent of the other Parties, the authority will execute a counterpart of this MOU and provide an original copy of the counterpart to each of the other Parties.

12. Escalation Process

- (a) The Parties will act in good faith to resolve, amongst themselves and/or within the context of discussions of the Oversight Committee, any disputes or disagreements that arise between two or more Parties (“Disputing Parties”).
- (b) In the event that disputes or disagreements cannot be resolved through discussions among Disputing Parties and/or within the context of discussions of the Oversight Committee, the disputes or disagreements will be escalated for resolution as follows:

- (i) Within ten (10) business days of an acknowledgement by the Disputing Parties of a failure to resolve a dispute or disagreement, the Disputing Parties will use their best efforts to arrange for senior staff representatives of the Disputing Parties to discuss the issues and attempt to reach a consensus.
- (ii) If, after discussions, senior staff representatives of the Disputing Parties are unable to reach a consensus, the Disputing Parties will, as soon as practicable, escalate the disagreement to the CSA's Policy Coordination Committee for policy matters, the Executive Directors' Committee for operational matters, or such other process as agreed to by the Disputing Parties.

13. Withdrawal from the MOU

- (a) A Party may withdraw from this MOU at any time upon giving the other Parties at least ninety (90) days prior written notice. During the notice period, a Party wishing to withdraw from this MOU will continue to cooperate in accordance with this MOU. A Party that withdraws from this MOU will continue to treat information that it obtained under this MOU in the manner prescribed by Article 6. If any Party withdraws from this MOU, the MOU will remain in effect between the remaining Parties.

14. Effective Date and Execution

- (a) This MOU will become effective on the date (Effective Date) that all of the following requirements are met:
 - (i) the MOU is signed by all of the Parties; and
 - (ii) all applicable Ministerial or governmental approvals are obtained and notice of such approval is provided to all of the parties.
- (b) This MOU may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be deemed to be the original, and those counterparts will together constitute one and the same instrument.

IN WITNESS WHEREOF the duly authorized signatories of the Parties below have signed this MOU to be effective on the Effective Date of the MOU.

Alberta Securities Commission

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

Autorité des marchés financiers

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

British Columbia Securities Commission

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

Financial and Consumer Affairs Authority of Saskatchewan

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

Financial and Consumer Services Commission (New Brunswick)

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

The Manitoba Securities Commission

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

Nova Scotia Securities Commission

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

Ontario Securities Commission

Per: _____

Title: _____

Signed this ___ day of _____, 2015.

Schedule 1

List of Regulated Entities, in relation to the Memorandum of Understanding Respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities, as of December 3, 2015.

Entity	Type	Lead Authority	Co-Lead Authorities	Reliant Authority(s)
Canadian Depository for Securities Limited	Clearing Agency		AMF, BCSC, OSC	
Canadian Derivatives Clearing Corporation	Clearing Agency		AMF, OSC	BCSC
Chicago Mercantile Exchange Inc.	Trade Repository	OSC		AMF, MSC
DTCC Data Repository LLC	Trade Repository	OSC		AMF, MSC
ICE Clear Canada, Inc.	Clearing Agency	MSC		AMF, OSC
ICE Trade Vault LLC	Trade Repository	OSC		AMF, MSC
LCH.Clearnet Limited	Clearing Agency	OSC		AMF
Natural Gas Exchange Inc.	Clearing Agency	ASC		AMF, OSC, FCAA