

1.1.2 Notice of Letter Agreement between the OSC and the APGO

**NOTICE OF LETTER AGREEMENT
BETWEEN THE OSC AND THE APGO**

On August 20, 2012, the Ontario Securities Commission (OSC) and the Association of Professional Geoscientists of Ontario (APGO) entered into a Letter Agreement (the Agreement). The Agreement provides a framework that will facilitate the exchange of information between the OSC and the APGO. This framework will support collaboration on investigations and other matters concerning members of the APGO, and will ultimately enhance the ability of each organization to act in the public interest.

The Agreement is subject to the approval of the Minister of Finance, and was delivered to the Minister of Finance on September 6, 2012. Subject to the Minister's approval, the Agreement will take effect in Ontario on November 12, 2012.

Questions may be referred to:

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September 13, 2012



August 20, 2012

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Letter Agreement – Information Sharing

The relationship between staff of the Ontario Securities Commission (OSC) and the Association of Professional Geoscientists of Ontario (APGO) is a productive one. To strengthen the processes by which the parties exchange information with each other, and therefore, enhance their ability to act in the public interest, this letter agreement:

- documents the parties' discussions and understandings concerning matters related to inter-agency cooperation, and
- describes circumstances when the parties voluntarily agree to share information.

The OSC is the regulatory body responsible for overseeing Ontario's capital markets. The OSC administers and enforces Ontario's securities and commodity futures laws. Its mandate is to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets and confidence in capital markets.

The APGO governs the practice of professional geoscience in Ontario. It is understood that no person may practice professional geoscience in Ontario unless he or she is a member of the APGO and practices in accordance with the terms, conditions and limitations imposed on his or her membership. It is further understood that no person may imply or represent that he or she is qualified to practice professional geoscience in Ontario unless he or she is a member of the APGO. It is part of the mandate of the APGO to deal with the illegal practice of geoscience in Ontario.

This letter agreement does not create any enforceable rights or any legally binding obligations.

The understanding between the parties is documented below.

1. Periodic Meetings

The parties agree that face-to-face discussions are often the best manner to share information and discuss issues that are important to each other's mandate, and to ensure that information exchange procedures operate efficiently. Accordingly, the parties agree to meet at least twice a year.

2. Formal Requests for Information

(1) Requests for information and documentation made pursuant to this letter agreement, as well as responses to such requests, will be addressed to:

- at the OSC – the Director, Corporate Finance or his or her designate,
- at the APGO – the Executive Director or his or her designate.

(2) Requests will contain:

- a general description of the information sought (such as the identity or contact details of the relevant person),

- the purpose for which the request is made, including citations of any relevant laws or regulatory requirements,
 - a description of how the information will be used, and
 - the desired response date.
- (3) Except for straightforward, informal requests, requests made pursuant to this letter agreement will be in writing.
- (4) A request for information made pursuant to this letter agreement may include information to be provided on a routine basis.
- (5) The APGO expects to request information about the following from the OSC:
- the quality of reports submitted by members of the APGO to the OSC,
 - OSC reviews that may involve a member of the APGO, or may involve work performed by a member of the APGO, and
 - persons whom the OSC believes may be unlawfully engaged in professional geoscience practice in Ontario.
- (6) The OSC expects to request from the APGO information about investigations or disciplinary actions concerning its members that the APGO conducts, and that are relevant to a matter under consideration by the OSC.
- (7) Each party acknowledges that the other party may only provide information if not prevented by any applicable laws or by the legal authority of the party. In particular, the OSC notes that Ontario securities law restricts its ability to share information in connection with a formal investigation. Subject to applicable laws, each party reserves the right to refuse to provide information if the disclosure of such information would cause prejudice to an ongoing investigation.

3. Responding to Requests

- (1) Where possible, in the event that a request for information does not specify a desired response date, the parties will respond to requests for information made pursuant to this letter agreement within 5 business days.
- (2) Each party will endeavour to respond as soon as practicable to urgent requests for information.
- (3) Requests for information pursuant to this letter agreement, as well as the responses thereto, are made on a voluntary basis. If the disclosing party is unable or unwilling to share some or all of the information requested for reasons of confidentiality or otherwise, it will promptly inform the other party, and will provide written reasons for the refusal. The disclosing party will also inform the other party in writing of any restrictions on the use of the information other than the restrictions specifically contemplated by this letter agreement.

4. Method of Delivery

- (1) The parties prefer to use electronic means to share information, whenever possible. Other methods of delivery are also acceptable.
- (2) When transmitting files containing potentially sensitive information electronically, the parties will use secure encryption or password-protected documents.

5. Use of Information

- (1) Each party will only use information obtained from the other party in a manner consistent with this letter agreement and with the purposes set out in the request for the information. Each party will seek the prior written consent of the other party to use non-public information obtained under this letter agreement for a purpose other than one specified in this letter agreement or in a request for information.
- (2) The APGO will use information it obtains from the OSC to assist the APGO in the registration of unregistered individuals who may be practicing professional geoscience in Ontario, or in the investigation, or discipline of professional geoscientists regulated by the APGO. Such purposes may include, among other things:
- developing professional practice guidelines for members that will advance the quality and consistency of their work,
 - enhancing the APGO's ability to effectively monitor members' conduct and to detect illegal geoscience practice, and
 - upholding and protecting the public interest in the practice of professional geoscience.

- (3) The OSC will use the information that the APGO provides to administer Ontario securities law or to assist in the administration of the laws of another jurisdiction dealing with securities matters.
- (4) Information shared pursuant to this letter agreement may be used by each party to conduct research to support the party's policy development.

6. Confidentiality and Disclosure to Third Parties

- (1) Each party agrees that, to the extent permitted by law, it will keep confidential all non-public information shared under this letter agreement, including any requests under the agreement and any other non-public matters arising under the agreement.
- (2) Each party agrees that it will request and obtain prior written consent from the other party before disclosing to a third party any non-public information received from the other party.
- (3) Each party will take reasonable actions to:
 - prevent the unauthorized disclosure, copying, use, modification or deletion of information shared pursuant to this letter agreement; and
 - restrict access of its employees, agents and contractors to the information shared pursuant to this letter agreement to only those who need to use it.
- (4) Each party will promptly inform the other in the event of a security breach that may impact or involve information shared pursuant to this letter agreement.
- (5) In the case of any legally enforceable demand for information shared under this letter agreement, where practicable, each party will notify the other before complying with the demand, unless prohibited by law from doing so. Each party will use best efforts to also assert appropriate legal exemptions or privileges that may be available.
- (6) The parties intend that the sharing or disclosure of non-public information pursuant to this letter agreement will not constitute a waiver of privilege or confidentiality of such information.

7. Accuracy

Each party will use reasonable efforts to ensure the completeness and accuracy of information shared pursuant to this letter agreement.

8. Privacy Laws and Policies

- (1) The OSC is subject to and compliant with the Freedom of Information and Protection of Privacy Act (FOIPPA). It collects and uses personal information in accordance with the FOIPPA. The FOIPPA applies to all OSC records, subject to any provisions in the FOIPPA or the Securities Act (Ontario) that exempt or exclude records from disclosure.
- (2) This letter agreement does not limit the OSC's responsibilities under the Securities Act (Ontario) or the APGO's responsibilities under the Professional Geoscientists Act, 2000.
- (3) Each party will securely collect, disclose, use, retain, destroy and dispose of the information according to applicable laws and where practicable, treat the information according to the other party's security and privacy policies and guidelines.

9. Employees, Agents and Contractors

Each party agrees to take responsibility for its employees', agents' and contractors' use, disclosure and disposition of information shared pursuant to this letter agreement.

10. Responsibility for Costs

Each party will bear its own expenses to comply with information requests from the other party made pursuant to this letter agreement. However, when extraordinary expenses to the disclosing party are involved, the parties agree to discuss the matter in advance and, on a case-by-case basis, to either:

- adjust the scope of the request, or
- agree in advance and in writing to compensate each other for these costs.

11. Dispute Resolution

The parties will consult with each other and will use reasonable efforts to resolve disputes, disagreements, or questions about the operation of this letter agreement.

12. Term and Termination

- (1) This letter agreement will become effective on the date signed and, in the case of the OSC, on the date determined in accordance with the Securities Act (Ontario).
- (2) Each party may terminate this letter agreement upon 30 days' written notice to the other party.
- (3) The provisions set out in sections 6, 8, 9, 10, 11 and 12 will survive termination of this letter agreement.

13. Amendments

All changes or modifications to this letter agreement must be agreed to in writing between the parties.

The parties look forward to working together. By working in the manner described in this letter agreement, the parties can support each other in fulfilling the goals of protecting the public interest in accordance with their respective mandates.

"Maureen Jensen"
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Executive Director and
Chief Administrative Officer
Ontario Securities Commission

"Andrea Waldie"
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