

MoU concerning consultation, cooperation and the exchange of information related to the supervision of Managers of alternative investment funds

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of Managers of alternative investment funds, the Ontario Securities Commission, the Autorité des marchés financiers (Québec), the Alberta Securities Commission and the British Columbia Securities Commission on one side, and Polish Financial Supervision Authority (Poland) on the other side have reached this Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of Managers of Covered Funds, and their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories of this MoU. The authorities express, through this MoU, 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 and financial integrity, and maintaining confidence and systemic stability. The authorities also express through this MoU, their desire to provide one another with the fullest mutual assistance possible to facilitate the performance of the functions with which they are entrusted within their respective jurisdictions to secure compliance with their laws and regulations.

This MoU is a bilateral arrangement between each Canadian Authority and each EU Authority and should not be considered a bilateral arrangement between each Canadian Authority.

Article 1. Definitions

For the purpose of this MoU:

- a) "Authority" means :
 - i. An EU Authority (including the EEA authorities listed above) or any successor, or any other EU authority which may become a party to this MoU in the manner set out in Article 9; or
 - ii. The Autorité des marchés financiers (Québec) (**AMF**), the Ontario Securities Commission (**OSC**), the Alberta Securities Commission (**ASC**), the British Columbia Securities Commission (**BCSC**), or any other Canadian securities regulatory authority which may become a party to this MOU in the manner set out in Article 9 (individually a **Canadian Authority**, or collectively the **Canadian Authorities**).
- b) "Requested Authority" means :
 - i. Where the Requesting Authority is an EU Authority, the Canadian Authority to which a request is made under this MoU; or
 - ii. Where the Requesting Authority is a Canadian Authority, the EU Authority to which a request is made under this MoU.
- c) "Requesting Authority" means the Authority making a request under this MoU.

- d) “EU competent authority”: means any authority appointed in an EU or an European Economic Area (EEA) Member State in accordance with Article 44 of the AIFMD for the supervision of Managers, delegates, depositaries and, where applicable, Covered Funds.¹
- e) “AIFMD” means the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
- f) “Manager” means a legal person whose regular business is managing one or more Covered Funds in accordance with the AIFMD or a person or company that acts as an adviser or as an investment fund manager, as those terms are defined by the Securities Act of the relevant Canadian Authority, to one or more Covered Funds. For clarity, an “EU Manager” means a Manager that is established in an EU member state and a “Canadian Manager” means a Manager that is registered in one or more jurisdictions of a Canadian Authority.
- g) “Covered Fund” means a collective investment undertaking, including investment compartments thereof, which: (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) is not a UCITS. For clarity, an “EU Covered Fund” means a Covered Fund that is domiciled in an EU member state and a “Canadian Covered Fund” means a Covered Fund that is domiciled in one or more jurisdictions of a Canadian Authority.
- h) “UCITS” means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC.
- i) “Delegate” means an entity to which a Manager delegates the tasks of carrying out the portfolio management or risk management of one or more Covered Funds under its management.
- j) “Depositary” means an entity appointed to perform the depositary functions of a Covered Fund.
- k) “Operate(s) on a cross-border basis” includes the following situations:
- i. EU Managers managing Canadian Covered Funds,
 - ii. EU Managers marketing Canadian Covered Funds in an EU Member State,
 - iii. EU Managers marketing Canadian and/or non-Canadian Covered Funds in Canada,
 - iv. Canadian Managers marketing EU Covered Funds and/or non-EU Covered Funds, including Canadian Covered Funds, in an EU Member State,
 - v. EU Managers marketing Canadian Covered Funds in the EU with a passport,
 - vi. Canadian Managers managing EU Covered Funds,
 - vii. Canadian Managers marketing EU Covered Funds in the EU with a passport,
 - viii. Canadian Managers marketing non-EU Covered Funds in the EU with a passport,
 - ix. Non-EU Managers marketing Canadian Covered Funds in the EU with a passport,

¹ Some EU Member States have more than one competent authority designated to carry out the duties provided under the AIFMD.

- x. Non-Canadian managers marketing EU Covered Funds in Canada
- l) Insofar as there is a link to the activity of the Managers and the Covered Funds, the MoU also covers delegates and depositaries as defined in letters i) and j) of this Article. “Covered Entity” means a Manager that operates on a cross border basis, a Covered Fund, where applicable, and, insofar as there is a link to the Manager and the Covered Fund, delegates and depositaries as defined in letters i) and j) of this Article, including the persons employed by such entities, provided that these entities are subject to the regulatory authority of an EU Authority or a Canadian Authority, as applicable.
- m) “Cross-border on-site visit” means any regulatory visit by one Authority to the premises of a Covered Entity located in the other Authority’s jurisdiction, for the purposes of on-going supervision.
- n) “Governmental Entity” means:
 - i. Those Ministries of Finance, Central Banks and other national prudential authorities listed in Appendix A, if the Requesting Authority is an EU Authority;
 - ii. The Bank of Canada or the Office of the Superintendent of Financial Institutions of Canada, if the Requesting Authority is the ASC, BCSC or OSC;
 - iii. The Alberta Ministry of Treasury and Finance, if the Requesting Authority is the ASC;
 - iv. The British Columbia Ministry of Finance, if the Requesting Authority is the BCSC;
 - v. The Ontario Ministry of Finance, if the Requesting Authority is the OSC;
 - vi. The Québec ministère des Finances, if the Requesting Authority is the AMF; and
 - vii. Such other entity, as agreed to by the signatories, as may be responsible for any other Canadian Authority which may become a party to this MOU in the manner set out in Article 9.
- o) “Local Authority” means the Authority in whose jurisdiction a Covered Entity is physically located.
- p) “Emergency Situation” means:
 - i. In the EU, the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, investors or the markets, independently from a decision of the European Council within the meaning of Article 18 of the ESMA Regulation (Regulation 1095/2010/EU); and
 - ii. In Canada, the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, investors or the markets
- q) “ESMA” means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority).
- r) “ESRB” means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board.

Article 2. General provisions

- 1) This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Covered Entities that operate on a cross-border basis in the jurisdictions of the signatories, in a manner consistent with, and permitted by, the laws, regulations and requirements that govern the Authorities. This MoU provides for consultation, cooperation and exchange of information related to the supervision and oversight of Covered Entities between each EU Authority and each Canadian Authority individually. The Authorities anticipate that cooperation will be primarily achieved through on-going, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.
- 2) This MoU does not create any legally binding obligations, confer any rights, or supersede domestic laws and 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.
- 3) This MoU does not intend to limit an Authority to taking solely those measures described herein in fulfilment of its supervisory or oversight functions. In particular, this MoU does not affect any right of any Authority to communicate with, or obtain information or documents from, any person or Covered Entity subject to its jurisdiction that is established in the territory of the other Authority.
- 4) This MoU complements, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the "IOSCO MMoU"), to which the Authorities are signatories, which also covers information-sharing in the context of enforcement investigations; and any of the existing arrangements concerning cooperation in securities matters between the signatories.
- 5) The Authorities will, within the framework of this MoU, provide one another with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Entities. Following consultation, cooperation may be denied:
 - a) Where the cooperation would require an Authority to act in a manner that would violate domestic law;
 - b) Where a request for assistance is not made in accordance with the terms of the MoU; or
 - c) On the grounds of the public interest.
- 6) No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to other Authority.
- 7) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MoU should that be judged necessary.
- 8) To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix B.

Article 3. Scope of cooperation

- 1) The Authorities recognize the importance of close communication concerning Covered Entities, and intend to consult at the staff level where appropriate regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Covered Entities; and (iii) any other areas of mutual supervisory interest.
- 2) Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:
 - a) The initial application with an Authority for authorization, designation, recognition, qualification, registration or exemption therefrom by a Covered Entity that is authorized, designated, recognized, qualified or registered by an Authority in another jurisdiction;
 - b) The on-going oversight of a Covered Entity; or
 - c) Regulatory approvals or supervisory actions taken in relation to a Covered Entity by one Authority that may impact the operations of the entity in the other jurisdiction.
- 3) *Notification.* Each Authority will, where such information is known and accessible to the Authority, inform the other Authority as soon as practicable of
 - a) Any known material event that could have a significant adverse impact on a Covered Entity; and
 - b) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration, concerning or related to a Covered Entity which may have, in its reasonable opinion, material effect on the Covered Entity.
- 4) *Exchange of Information.* To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information accessible to the Requested Authority and not otherwise available to the Requesting Authority, and, where needed, interpreting such information so as to assist the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation, information such as:
 - a) Information that would assist the Requesting Authority to verify that the Covered Entities covered by this MoU comply with the relevant obligations and requirements of the laws and regulations of the Requesting Authority;
 - b) Information relevant for monitoring and responding to the potential implications of the activities of an individual Manager, or Managers collectively, for the stability of systemically relevant financial institutions and the orderly functioning of markets in which Managers are active;
 - c) Information relevant to the financial and operational condition of a Covered Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal controls procedures;
 - d) Relevant regulatory information and filings that a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices; and

- e) Regulatory reports prepared by an Authority, including for example: examination reports, findings, or information drawn from such reports regarding Covered Entities.

Article 4. Cross-border on-site visits

- 1) Authorities should discuss and reach understanding on the terms regarding cross-border on-site visits, taking into full account each other's sovereignty, legal framework and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities. The Authorities will act in accordance with the following procedure before conducting a cross-border on-site visit.
 - a) The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any cross-border on-site visit. The Local Authority shall decide whether the visiting officials shall be accompanied by its officials during the visit.
 - b) When establishing the scope of any proposed visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available or is capable of being made available by that Authority.
 - c) The Authorities intend to assist each other in obtaining, reviewing, and interpreting the contents of public and non-public documents and obtaining information from directors and senior management of Covered Entities.

Article 5. Execution of requests for assistance

- 1) To the extent possible, a request for written information pursuant to Article 3.4 should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:
 - a) The information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request;
 - b) A concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions behind the supervisory activity; and
 - c) The desired time period for reply and, where appropriate, the urgency thereof.
- 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. During Emergency Situations, 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 7. Permissible uses of information.

- 1) The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Covered Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority, including assessing and identifying systemic risk in the financial markets or the risk of disorderly markets.

- 2) This MoU is intended to complement, but does not alter the terms and conditions of the existing arrangements between Authorities concerning cooperation in securities matters, including the IOSCO MMoU. The Authorities recognize that while information is not to be gathered under this MoU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement purposes. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMoU. Banca d'Italia is not a signatory to the IOSCO MMoU, however, for the purposes of this MoU, Banca d'Italia agrees to be governed and bound by the terms and conditions of the IOSCO MMoU.

Article 8. Confidentiality and onward sharing of information.

- 1) Except for disclosures in accordance with this MoU, including permissible uses of information under Article 7, each Authority will keep confidential to the extent permitted by law information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.
- 2) To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been furnished under this MoU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 3) In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MoU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
 - a) The Requesting Authority will notify the Requested Authority.
 - b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
- 4) Except as provided in paragraphs 2 and 6, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any other party. If consent is not obtained from the Requested Authority, the Authorities will 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.
- 5) The Authorities intend that the sharing or disclosure of non-public 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.
- 6) Onward sharing of information between signatories of this MoU, ESMA and the ESRB shall be permitted in the following circumstances:
 - a) In accordance with Article 25(2) of the AIFMD, an EU Authority may need to share information received from a non-EU authority with other EU Authorities where a Manager under its responsibility or a Covered Fund managed by that Manager could potentially constitute an important source of counterparty risk to a

credit institution or other systemically relevant institutions in other EU Member States.

- b) In accordance with Article 50(4) of the AIFMD, the EU Authority of the Member State of reference of a non-EU Manager shall forward the information received from non-EU authorities in relation to that non-EU Manager to the EU Authority of the host Member States, as defined in Article 4(1)(r) of the AIFMD.
 - c) In accordance with Article 53 of the AIFMD, an EU Authority shall communicate information to other EU Authorities, the ESMA and the ESRB where this is relevant for monitoring and responding to the potential implications of the activities of individual Manager or Managers collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which the Managers are active.
- 7) For purposes of Article 8(6), the EU Authority, ESMA or the ESRB, as applicable will provide written notification to the Canadian Authority at the time of sharing non-public information with another EU Authority. ESMA or the ESRB, as applicable. The written notification will specify the EU Authority, or ESMA or the ESRB, as applicable, with which the non-public information is shared, and the reason for sharing such information.
 - 8) Restrictions in this MoU with respect to the use and confidential treatment of non-public information continue to apply to any non-public information shared, pursuant to this Article, by an EU Authority with another EU Authority, ESMA or the ESRB.

Article 9. Amendments

- 1) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the EU Authorities and the Canadian Authorities with a view, *inter alia*, to expanding the scope or operation of this MoU should that be judged necessary.
- 2) The EU Authority shall notify the Canadian Authority of any change or modification to its laws, regulations and requirements with respect to the protection of non-public information, and shall explain the consequences of the change or modification on the protection of non-public information in the context of the MoU. If the Canadian Authority is of the view that the change or modification results in lesser protection for non-public information than provided for under the laws, regulations and requirements of the Canadian Authority, the MoU shall be terminated between the authorities concerned and the provisions in Article 8(4) shall apply.
- 3) Any Canadian authority may become a party to the MoU by executing a counterpart hereof together with the EU Authorities and providing notice of such execution to the other Canadian Authorities that are signatories to this MoU.
- 4) Any EU authority or EU competent authority may become a party to the MoU by executing a counterpart hereof together with the Canadian Authorities and providing notice of such execution to the other EU Authorities that are signatories to this MoU.

Article 10. Termination of the MoU; Successor authorities

- 1) If a signatory wishes to terminate the MoU, it shall give written notice to the counterparty. ESMA would coordinate the action of EU authorities in this regard. Cooperation in accordance with this MoU will continue until the expiration of 30 days after an Authority

gives written notice to the others. 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 a manner prescribed under Article 7 to 9.

- 2) 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 shall not affect the right of the successor authority and its counterparty to terminate the MoU as provided hereunder if it wishes to do so.

Article 11. Entry into force

This MoU enters into force on 22 July 2013.

Signatures

Ontario Securities
Commission



Autorité des
marchés
financiers
(Québec)

Alberta Securities
Commission

British Columbia
Securities
Commission

Polish Financial
Supervision
Authority (Poland)



Appendix A

None

Appendix B

Polish Financial Supervision Authority (Poland)

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Department of Polish Financial Supervision Authority

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