

**1.1.3 Notice of Amended and Restated Memorandum of Understanding with the UK Financial Conduct Authority Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Alternative Investment Fund Managers**

**NOTICE OF AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING WITH THE UK FINANCIAL CONDUCT AUTHORITY  
CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF  
CROSS-BORDER ALTERNATIVE INVESTMENT FUND MANAGERS**

**October 3, 2019**

The Ontario Securities Commission, together with the Autorité des marchés financiers, Alberta Securities Commission and British Columbia Securities Commission (the “Canadian Authorities”), recently entered into an amended and restated supervisory Memorandum of Understanding (the “Amended Supervisory MoU”) with the United Kingdom Financial Conduct Authority.

The Canadian Authorities entered into similar supervisory MoUs with other European Union and European Economic Area member state financial securities regulators in 2013. The entering into of such supervisory MoUs was a pre-condition under the EU Alternative Investment Fund Managers Directive (“AIFMD”) for allowing non-EU Alternative Investment Fund Managers (“AIFMs”) to manage and market Alternative Investment Funds (“AIFs”) in the EU and to perform fund management activities on behalf of EU Managers. Under the AIFMD, AIFMs are legal persons whose regular business is the risk and/or portfolio management of AIFs and AIFs are collective investment undertakings other than those that comply with the EU Undertakings for Collective Investment in Transferable Securities Directive.

The OSC is a party to an existing supervisory MoU signed in 2013 with the Financial Conduct Authority based on the AIFMD. The Amended Supervisory MoU was necessary as the United Kingdom has given notice that it intends to leave the European Union, and after this occurs, the European legislation referenced in the existing supervisory MoU with the Financial Conduct Authority will no longer apply to the United Kingdom. The Amended Supervisory MoU has been updated to reflect the regulatory regime that will apply in relation to AIFs in the United Kingdom after it has left the European Union.

The purpose of the Amended Supervisory MoU is to facilitate consultation, cooperation and the exchange of information related to the supervision of AIFMs that operate on a cross-border basis in the jurisdictions of both the Financial Conduct Authority and the relevant Canadian Authority.

The Amended Supervisory MoU is subject to the approval of the Minister of Finance and was delivered to the Minister of Finance on October 1, 2019.

**Questions may be referred to:**

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**[Editor’s Note: Amended and Restated MoU concerning consultation, cooperation and the exchange of information related to the supervision of Covered Entities in the alternative investment fund industry between the Ontario Securities Commission (OSC), the Québec Autorité des marchés financiers (QAMF), the Alberta Securities Commission (ASC), the British Columbia Securities Commission (BCSC) and the United Kingdom Financial Conduct Authority (FCA) is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Staff Notice.]**

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**Amended and Restated MoU concerning consultation, cooperation and the exchange of information related to the supervision of Covered Entities in the alternative investment fund industry between the Ontario Securities Commission (OSC), the Québec Autorité des marchés financiers (QAMF), the Alberta Securities Commission (ASC), the British Columbia Securities Commission (BCSC) and the United Kingdom Financial Conduct Authority (FCA)**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of Alternative Investment Fund Managers (AIFMs) of Alternative Investment Funds (AIFs), the OSC, QAMF, ASC and BCSC on one side, and the FCA on the other side have reached this Amended and Restated Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of AIFMs and their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories of this MoU.

This MoU amends, restates and replaces the Memorandum of Understanding concerning consultation, cooperation and the exchange of information related to the supervision of Managers of alternative investment funds ("2013 MOU") entered into between each Canadian Authority and the UK FCA that entered into force on 22 July 2013. The 2013 MOU was entered into as a pre-condition under the EU Alternative Investment Fund Managers directive to allow non-EU Alternative Investment Fund Managers to manage and market Alternative Investment Funds in the EU, which at that time included the United Kingdom. These amendments and restatements are needed to reflect the changes required due to the departure of the UK from the European Union.

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 the FCA 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. The FCA, or any successor; or
- ii. The Autorite des marches financiers (Quebec) (*QAMF*), 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 the FCA, the Canadian Authority to which a request is made under this MoU; or
  - ii. Where the Requesting Authority is a Canadian Authority, the FCA to whom a request is made under this MoU.
- c) "Requesting Authority" means the Authority making a request under this MoU.
- d) "UK AIFM regime" means the UK legislation which, when made, implemented Directive 2011/61/EU in the UK, including (but not limited to) FCA rules, and the Alternative Investment Fund Managers Regulations 2013 (as amended), and any EU laws made under or in relation to Directive 2011/61 EU which are incorporated in UK law by or under the European Union (Withdrawal) Act 2018 (subject to any amendments made to those EU laws as they apply to the UK).
- e) "AIFM" means a legal person whose regular business is managing one or more AIFs in accordance with the UK AIFM regime 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 AIFs.
- f) "AIF" 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 UK UCITS, as defined in section 237 (3) of the Financial Services and Markets Act 2000 (FSMA), as amended.
- g) "Delegate" means an entity to which an AIFM delegates the tasks of carrying out the portfolio management or risk management of one or more AIFs under its management, including delegation conducted in accordance with section 3.10 of the Investment Funds sourcebook in the FCA's Handbook of rules and guidance.
- h) "Depositary" means an entity appointed to perform the depositary functions of an AIF.
- i) "Operate(s) on a cross-border basis" includes the following situations:
- i. UK AIFMs managing Canadian AIFs,
  - ii. UK AIFMs marketing Canadian AIFs in the UK,
  - iii. UK AIFMs marketing Canadian and/or non-Canadian AIFs in Canada,
  - iv. Canadian AIFMs marketing UK AIFs and/or non-UK AIFs, including Canadian AIFs, in the UK,

- v. UK AIFMs marketing Canadian AIFs in the UK,
  - vi. Canadian AIFMs managing UK AIFs,
  - vii. Canadian AIFMs marketing UK AIFs in the UK with a passport,
  - viii. Canadian AIFMs marketing non- UK AIFs in the UK with a passport,
  - ix. Non-UK AIFMs marketing Canadian AIFs in the UK with a passport,
  - x. Non-Canadian AIFMs marketing UK AIFs in Canada.
- j) Insofar as there is a link to the activity of the AIFMs and the AIFs, the MoU also covers delegates and depositaries as defined in letters g) and h) of this Article. "Covered Entity" means an AIFM that operates on a cross border basis, an AIF, where applicable, and, insofar as there is a link to the AIFM and the AIF, delegates and depositaries as defined in letters g) and h) of this Article, including the persons employed by such entities, provided that these entities are subject to the regulatory authority of the FCA or a Canadian Authority, as applicable.
- k) "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.
- l) "Governmental Entity" means:
- i. HM Treasury or The Bank of England (including in its capacity as the Prudential Regulation Authority), if the Requesting Authority is the FCA;
  - 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 Board 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.

- m) "Local Authority" means the Authority in whose jurisdiction a Covered Entity is physically located.
- n) "Emergency Situation" means:
  - i. the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, AIF investors or the markets.

## **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 the FCA 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 the 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 A.

### **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 AIFM, or AIFMs collectively, for the stability of systemically relevant financial institutions and the orderly functioning of markets in which AIFMs 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 6. 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 IOSCOMMoU.

**Article 7. Confidentiality and onward sharing of information.**

- 1) Except for disclosures in accordance with this MoU, including permissible uses of information under Article 6, 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 maybe 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 5, 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.

#### **Article 8. Amendments**

- 1) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the FCA 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 FCA 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 7(4) shall apply.
- 3) Any Canadian authority may become a party to the MoU by executing a counterpart hereof together with the FCA and providing notice of such execution to the other Canadian Authorities that are signatories to this MoU.

#### **Article 9. Termination of the MoU; Successor authorities**

- 1) If an Authority wishes to terminate the MoU, it shall give written notice to the counterparty. 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 Articles 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 10. Entry into force**

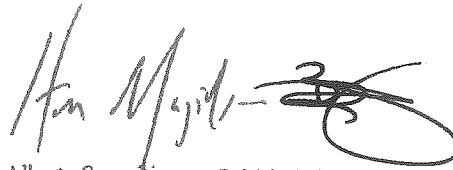
- 1) This MoU enters into force on the day European Union law ceases to apply in the United Kingdom.

**Signatures**



Ontario Securities  
Commission

Autorité des  
marchés financiers  
(Québec)



Alberta Securities  
Commission

British Columbia  
Securities Commission



Financial Conduct  
Authority (United  
Kingdom)

## Appendix A

### **Financial Conduct Authority (United Kingdom)**

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London  
E14 5HS

Attention: Manager, Investment Funds Policy

Email: [aifmdsupervisorycooperation@fca.org.uk](mailto:aifmdsupervisorycooperation@fca.org.uk)

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### **Alberta Securities Commission**

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