

**MEMORANDUM  
OF  
UNDERSTANDING**

**UNITED STATES OF  
AMERICA**

**Financial Industry  
Regulatory Authority,  
Inc.**

**CANADA**

**Investment Industry  
Regulatory Organization  
of Canada**

# Contents

<b>RECITALS</b> .....	<b>2</b>
<b>OPERATIVE PART</b> .....	<b>3</b>
Interpretation .....	3
Purpose and Principles .....	3
Provision of Unsolicited Information.....	3
Requests for Assistance.....	3
Procedure for Requests.....	4
Assessing Requests .....	4
Contact Points .....	5
Costs.....	5
Confidentiality.....	5
Commencement and Termination.....	6
Entire Agreement .....	6

## **Memorandum of Understanding (MoU)**

**Between**

**Financial Industry Regulatory  
Authority, Inc. (FINRA)**

**and**

**The Investment Industry Regulatory  
Organization of Canada (IIROC)**

### **Recitals**

- A. The Financial Industry Regulatory Authority, Inc. (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

Created in July 2007 through the consolidation of National Association of Securities Dealers, Inc. and the member regulation, enforcement and arbitration functions of the New York Stock Exchange, FINRA is dedicated to investor protection and market integrity through effective and efficient regulation.

The Investment Industry Regulatory Organization of Canada (IIROC) is the national self-regulatory organization which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. Created in 2008 through the consolidation of the Investment Dealers Association of Canada and Market Regulation Services Inc., IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets.

- B. FINRA and IRROC wish to enter into this MoU to provide a formal basis for co-operation, including for the exchange of information or other assistance. FINRA and IIROC believe such co-operation will enable them to more effectively perform their functions.

## **Operative Part**

### **Interpretation**

1. In this MoU, unless the context requires otherwise:
  - (a) “administering” an applicable law, regulation or requirement includes enforcing the same;
  - (b) “applicable laws, regulations and requirements” means any law, regulation or requirement applicable in the United States of America and/or in Canada and, where the context permits, includes any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;
  - (c) “Authority” means FINRA or IIROC;
  - (d) “IIROC” means the Investment Industry Regulatory Organization of Canada;
  - (e) “FINRA” means the Financial Industry Regulatory Authority, Inc.;
  - (f) “permitted onward recipient” means a national governmental agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;
  - (g) “person” means a natural person, legal entity, partnership or unincorporated association.

### **Purpose and Principles**

2. The purpose of this MoU is to establish a formal basis for co-operation between the Authorities, including the exchange of information or other assistance.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the United States of America or Canada. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights or any legally binding obligations. This MoU does not affect any arrangements under other MoUs.
4. The Authorities acknowledge that they may provide information under this MoU only if permitted or not prevented under applicable laws, regulations and requirements.

### **Provision of Unsolicited Information**

5. The Authorities may provide information, or arrange for information to be provided, solely on a voluntary basis even though no request has been made.

### **Requests for Assistance**

6. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws, regulations, and overall policy. Assistance may include, but is not limited to, for example:

- (a) providing information in the possession of the requested Authority;
- (b) confirming or verifying information provided to it for that purpose by the requesting Authority; or
- (c) exchanging information on or discussing issues of mutual interest.

### **Procedure for Requests**

7. Requests for the provision of information or other assistance may be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business days. To facilitate assistance, the requesting Authority should specify in any request:
  - (a) the information or other assistance requested;
  - (b) if information is provided by the requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
  - (c) the purpose for which the information or other assistance is sought;
  - (d) those permitted onward recipients, if any, to whom onward disclosure of information provided to the requesting Authority is likely to be necessary; and
  - (e) any other matters specified by the requesting Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

### **Assessing Requests**

8. Each request for assistance will be assessed on a case-by-case basis by the requested Authority to determine whether assistance can be provided. In any case where the request cannot be fulfilled in part or whole, the requested Authority will notify the requesting Authority.
9. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:
  - (a) whether the request conforms with this MoU;
  - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
  - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
  - (d) whether it would be otherwise contrary to the public interest or the essential national interest of the requested Authority's jurisdiction to give the assistance sought;
  - (e) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to

confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and

- (f) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions or business objectives.
10. The Authorities recognise that assistance may be denied in whole or in part for any of reasons in the discretion of the requested Authority.
  11. The Authorities agree that although all information shared pursuant to this MoU is provided “as is”, an Authority will endeavour to assist the recipient Authority, through reasonable measures, in correcting inaccurate information if such assistance is requested by the recipient Authority.

### **Contact Points**

12. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed, and which may change from time to time.

#### **FINRA**

Jeanne Balcom  
 Senior Director  
 1735 K Street, NW  
 Washington, DC 20006

#### **IIROC**

Rosemary Chan  
 Senior VP and General Counsel  
 Suite 1600, 121 King Street West  
 Toronto, ON M5H 3T9

### **Costs**

13. If the cost of fulfilling a request is likely to be substantial, the requested Authority may, as a condition of agreeing to give assistance under this MoU, require the requesting Authority to make a contribution to costs.

### **Confidentiality**

14. Except for permitted disclosure of non-public information as provided in Sections 15, 16, and 17 below, each Authority agrees:
  - (a) That it will keep confidential all non-public information shared under this MoU, including but not limited to, any requests made under this MoU and any other non-public matters arising under this MoU;
  - (b) That a recipient Authority will request and obtain prior written consent from the other Authority before disclosing to a third party any non-public information received from such other Authority;

- (c) The permitted disclosures shall not apply to any intellectual property disclosed by one Authority to the other, but rather that a recipient Authority understands and agrees that it will hold such information in confidence, and that prior to disclosing any such intellectual property to any permitted onward recipient or person, the recipient Authority will request and obtain the prior written consent of the disclosing Authority, such consent to be at the disclosing Authority's sole discretion. Further, with regard to all intellectual property rights, title, and interest associated with any information supplied by a disclosing Authority to a recipient Authority, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights, shall remain with the disclosing Authority.
15. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will, to the extent permitted by law, notify the Authority that supplied the information subject to the demand and receive its consent prior to disclosing such information, unless this is not practicable for reasons of urgency. If the Authority that supplied the information does not consent to such disclosure, then the Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.
16. FINRA consents to IIROC disclosing non-public information provided by FINRA to permitted onward recipients in furtherance of IIROC's regulatory responsibilities, and subject to assurances that the information will not be further disclosed by the receiving party except as authorized by IIROC after IIROC obtains FINRA's consent in accordance with Section 15 above.
17. IIROC consents to FINRA disclosing non-public information provided by IIROC to permitted onward recipients in furtherance of FINRA's regulatory responsibilities, and subject to assurances that the information will not be further disclosed by the receiving party except as authorized by FINRA after FINRA obtains IIROC's consent in accordance with Section 15 above.
18. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
19. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the requesting and the requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

### **Commencement and Termination**

20. This MoU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving 30 days advance written notice to the other Authority. It may be amended by agreement in writing.

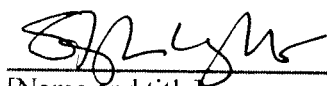
### **Entire Agreement**

21. The Authorities agree that this MoU supersedes any outstanding agreements between the Authorities pursuant to which the Authorities share information, provided that this

MoU does not supersede any agreement to which the Authorities are parties relating to the Intermarket Surveillance Group.


**Executed by the Parties:**

**For FINRA**

  
\_\_\_\_\_  
[Name and title]

Date: 2/23/09

**For IIROC**

  
\_\_\_\_\_  
[Name and title] SVP Surv + Compl

Date: 2/23/09