

## **Memorandum of Understanding ("MOU")**

### **Between**

**Financial Industry Regulatory  
Authority, Inc.  
1735 K Street, NW  
Washington, DC 20006  
("FINRA")**

**and Ontario Securities Commission  
20 Queen Street West, Suite 1903  
Toronto, ON M5H 3S8  
("OSC")**

### **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 (NYSE). In 2010, FINRA signed an agreement with NYSE Euronext whereby FINRA would assume the market surveillance and related enforcement functions for NYSE Euronext's U.S. equities and options markets, which encompass the NYSE, NYSE Arca, and NYSE-Amex markets. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation.
- B. The Ontario Securities Commission (OSC) is the regulatory body responsible for overseeing Ontario's capital markets. The OSC is a self-funded Crown corporation accountable to the Ontario Legislature through the Minister of Finance. 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 OSC regulates various types of capital market participants. These participants include individuals and companies advising on or trading in securities or commodities futures (unless under an exemption), public companies, investment funds, self-regulatory organizations and marketplaces.
- C. FINRA and OSC wish to enter into this MOU to provide a formal basis for the exchange of regulatory information and investigative assistance.

### **Operative Part**

#### **Definitions**

1. In this MOU, unless the context requires otherwise:
  - a. "Administering" an applicable law, regulation or requirement includes enforcing the same;

- b. "Agency" or "Agencies" means a national or provincial governmental or non-governmental public agency responsible for prosecuting, regulating or enforcing Laws falling within the areas of responsibility of the Authority;
- c. "Authority" means FINRA or OSC. Together, FINRA and OSC are the "Authorities";
- d. "FINRA" means the Financial Industry Regulatory Authority, Inc.;
- e. "Information" means either Authority's confidential and regulatory information. For example, this could include any relevant information relating to the activities of the individuals or bodies regulated and supervised by the Authorities, in particular, trading activities, the registration and licensing information of supervised individuals or bodies, their disciplinary history, and with respect to supervisory examination and inspections, the substance of inspection reports (any and all issues identified and addressed during such examinations or inspections, actions (and action plans) taken in response to issues identified, and all outstanding issues), information on the transactions (name of client buy side/sell side, name of intermediary, and reason for operation), and any other information mutually agreed upon by the Authorities on a case-by-case basis;
- f. "Laws" means any law, regulation, or regulatory rules or requirement applicable in the United States of America and/or in Ontario and, where the context permits, includes any rule, guidance or policy made or given by or to be taken into account by an Authority;
- g. "OSC" means the Ontario Securities Commission;
- h. "Person" or "Persons" means a natural person, legal entity, partnership or unincorporated association;
- i. "Requested Authority" means the Authority to whom the request is made under this MOU;
- j. "Requesting Authority" means the Authority making a request under this MOU.

### **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.
- 3. This MOU does not modify or supersede any Laws in force and applying to the Authorities. This MOU sets forth a statement of intent and accordingly does not create any enforceable rights, any legally binding obligations or agreement. However, the provisions set forth in Sections 14, 15, 16, 17, and 18 shall be binding upon the Authorities and survive the termination of the MOU.
- 4. The Authorities acknowledge that they may provide Information under this MOU only if permitted or not prevented under any Laws or by any Agency.

## Scope of Assistance

5. FINRA and OSC agree that the scope of assistance shall be as follows:

- a. The Authorities will, within the framework of this MOU, provide each other with the fullest assistance permissible to secure compliance with the respective Laws of the Authorities.
- b. In cases where the Information requested may be maintained by, or available to, another authority within the country of the Requested Authority, FINRA and OSC will endeavour to provide full assistance in obtaining the Information requested to the extent permitted by law. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient Information to establish direct contact between the Requesting Authority and the other authority.
- c. The Requested Authority shall endeavour to assist the Requesting Authority, through reasonable measures, in correcting inaccurate Information if such assistance is requested by the Requesting Authority.
- d. Each request for assistance will be assessed on a case-by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of this MOU and pursuant to any Laws. A request for assistance may be denied in whole or in part by the Requested Authority:
  - i. Where the request would require the Requested Authority to act in a manner that would violate domestic law;
  - ii. Where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same Persons, or the same Persons have already been the subject of the final punitive sanctions on the same charges by the competent authorities of the jurisdiction of the Requested Authority, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority;
  - iii. Where the request is not made in accordance with the provisions of this MOU;
  - iv. Where the provision of assistance would be too burdensome so as to disrupt the proper performance of the Requested Authority's functions;
  - v. Where compliance with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions or business objectives;
  - vi. On grounds of public interest or essential national or provincial interest; and

- vii. Where the Authorities, after consultation, mutually agree that compliance with the request would not be in the best interests of either or both Authorities.

Assistance will not be denied based on the fact that the type of conduct under investigation would not be a violation of the Laws of the Requested Authority.

- e. Where a request for assistance is denied, or where assistance is not available under domestic law, the Requested Authority will provide the reasons for not granting the assistance in writing to the Requesting Authority.

### **Provision of Unsolicited Information**

- 6. The Authorities may provide to each other or arrange to be provided, to the extent permitted by their respective Laws and procedures, without prior request and solely on a voluntary basis, Information which they believe to be helpful to the other Authority for the discharge of its functions and for the purposes which they may specify in the communication.

### **Requests for Assistance**

- 7. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to the Laws, jurisdictional limits, and 5(d) (iv). Assistance may include, but is not limited to:
  - a. Providing Information in the possession of the Requested Authority;
  - b. Obtaining specified Information from persons designated by the Requesting Authority or any third party who may possess the requested Information. Upon request, the Requested Authority will obtain other Information relevant to the request;
  - c. Seeking responses to questions and/or a statement (or where permissible, testimony under oath) from persons designated by the Requesting Authority, or from any third party who is in possession of Information that may assist in the execution of the request;
  - d. Unless otherwise arranged by the Authorities, Information requested under this MOU will be gathered in accordance with the procedures applicable in the jurisdiction of the Requested Authority and by persons designated by the Requested Authority. Where permissible under the Laws of the jurisdiction of the Requested Authority, a representative of the Requesting Authority may be present at the taking of statements and testimony, may ask questions and may provide specific questions to be asked of any witness;
  - e. Confirming or verifying Information provided to it for that purpose by the Requesting Authority; or
  - f. Exchanging Information on or discussing issues of mutual interest.

8. In the event that the Requesting Authority seeks additional Information, beyond 7(a)-(f) above, the Authorities will discuss the request on a case by case basis and may take additional steps provided that they are in furtherance of the Authorities' respective regulatory purposes.
9. 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.

### **Procedure for Requests**

10. Requests for the provision of Information shall be made in writing. To facilitate assistance, the Requesting Authority should specify in any request:
  - a. The specific Information or other regulatory assistance requested. This should include reference to relevant Laws and/or a description of the supervisory review and/or the facts underlying the investigation that are subject of the request and the purpose for which the assistance is sought;
  - b. Any Information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying either the persons believed to possess the Information or documents sought or the places where such Information may be obtained;
  - c. If Information is provided by the Requesting Authority for confirmation or verification, the Information and the kind of confirmation or verification sought;
  - d. How the Information is likely to be used, including the details of any possible onward disclosure of Information provided to the Requesting Authority, and including to whom such disclosure would be made and the purpose such disclosure would serve.
11. In instances of urgent circumstances, requests for assistance may be made by telephone, email or facsimile, provided such communication is confirmed through an original, signed document.

### **Permissible Use of Information**

12. The Requesting Authority may use Information furnished in response to a request for assistance under this MOU solely for:
  - a. The purposes set forth in the request for assistance, including ensuring compliance with the Laws related to the request; or
  - b. A purpose within the general framework of the use stated in the request for assistance, including conducting an investigation or enforcement proceeding, or assisting in a self-regulatory organization's surveillance or enforcement activities (insofar as it is involved in the supervision of trading or conduct that is the subject

of the request). This use may include enforcement proceedings which are public, and any attendant disclosure obligations.

13. If a Requesting Authority intends to use Information furnished under this MOU for any purpose other than those stated in 12(a) – (b) above, it must obtain the prior written consent of the Requested Authority.

### **Confidentiality**

14. The Authorities agree that, to the extent permitted by their respective laws, they shall maintain strict confidentiality in respect of any Information, including but not limited to, non-public documents, data, or Information which has become known to them in connection with this MOU.
  - a. The Authorities shall not use, disclose, copy or publish any Information for any purpose other than as provided under this MOU without the prior written approval of the Requested Authority unless or until the Information is:
    - i. Lawfully in the receiving party's possession prior to this MOU and not under a duty of non-disclosure;
    - ii. Voluntarily disclosed by a third party so long as that party is not under a duty of non-disclosure;
    - iii. Voluntarily disclosed to the public by the Requested Authority; or
    - iv. Generally known to the public.
  - b. Except for permitted disclosure of non-public Information as provided in this Section 14, each Authority agrees:
    - i. That it will keep confidential all non-public Information shared under this MOU, including but not limited to, any requests made under this MOU, the fact and contents of such requests, and any other non-public matters arising under this MOU, consultations between or among the Authorities, and unsolicited assistance;
    - ii. That the Requesting Authority will request and obtain prior written consent from the Requested Authority before disclosing to a third party any non-public Information received from the Requested Authority;
  - c. All intellectual property rights, title and interest associated with each Authority's Information, including without limitation, patent, trademark, copyright, trade secret rights, and moral rights shall remain in and the confidential information of the respective Authority. Further, neither Authority will use, in any manner, including advertising or publicity or in any way related to this MOU or the subject matter hereof, the name of the other Authority or its affiliates or any of their directors, officers, managers, employees, consultants or agents or any trade name, trademark, service mark, logo, symbol or copyright, whether any of the

above are registered or unregistered, of the other Authority or its affiliates, except with the express written consent of such other Authority.

- d. If there is a legally enforceable demand for Information supplied under this MOU, the Authority that has received 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. In the event of a legally enforceable demand, the Requesting Authority will notify the Requested Authority prior to complying with the demand. If the Requested Authority that supplied the Information does not consent to such disclosure, then the Requesting 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.
- e. Notwithstanding anything otherwise set forth herein, the parties acknowledge that FINRA may be required to disclose Information to the SEC: a) in connection with the SEC's regulatory or oversight jurisdiction over FINRA; or b) in the course of fulfilling any of FINRA's regulatory responsibilities, including responsibilities under the Securities Exchange Act of 1934 or other applicable law. In the case of such disclosure, FINRA will use reasonable efforts to advise the SEC of any restrictions on the use or onward sharing of the Information as may be requested or imposed by the OSC. FINRA also agrees to use reasonable efforts to notify the OSC of any such disclosure to the SEC.
- f. 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 Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

### **Costs**

15. If the cost of fulfilling a request is likely to be substantial (i.e., entail extraordinary efforts, or is outside the ordinary course of business), 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.

### **Warranty Disclaimer and Limitation of Liability**

16. The Authorities hereby disclaim and make no representations or warranties, express or implied, as to merchantability, non-infringement, data accuracy, accuracy of informational content, data handling capabilities, or otherwise, with respect to this MOU.

The Authorities will not be liable for, nor will the measure of damages include, any direct, indirect, incidental, special or consequential damages, including lost profits or savings, arising out of or relating to their actions or omission under this MOU, even if the Authorities have been advised of the possibility of such losses or damages; provided that, in the event of an actual or threatened breach of the Confidentiality provisions

hereof, the Authority that has not breached or threatened to breach such provisions may pursue injunctive relief with respect thereto.

**Commencement and Termination**

- 17. This MOU will take effect after both Authorities have signed it and, with respect to the OSC, when it has been approved by the Ontario Minister of Finance, and will continue to have effect until terminated by either Authority giving thirty (30) days advance written notice to the other Authority.

**Disputes**

- 18. The Authorities shall use reasonable efforts to settle amicably all disputes arising out of or in connection with the MOU or its interpretation.

**Contact Points**

- 19. 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 should be updated when necessary.

**Entire Agreement**

- 20. The Authorities agree that this MOU supersedes any outstanding agreements between the Authorities pursuant to which the Authorities share Information. All changes or modifications to this MOU must be agreed to in writing between the Authorities.

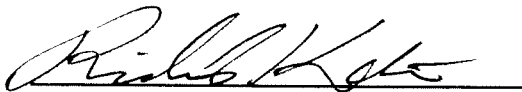
**Executed by the Authorities:**

**FINRA**

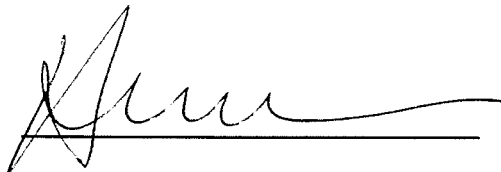
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Date: Nov 10, 2011



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