



Memorandum of Understanding
between the
Autorité des marchés financiers
("AMF")
and the
Financial Industry Regulatory Authority, Inc.
("FINRA")

Memorandum of Understanding (“MOU”)

Between

FINANCIAL INDUSTRY REGULATORY AUTHORITY INC. (FINRA)
1735 K Street, NW
Washington, DC 20006

and

**AUTORITÉ DES MARCHÉS FINANCIERS (AMF)
(CANADA)**
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1

Recitals

- A. The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States. FINRA is dedicated to investor protection and market integrity through effective and efficient regulation.
- B. The Autorité des marchés financiers (AMF) is established under the *Act respecting the Autorité des marchés financiers*, CQLR, c. A-33.2 (the “AMF Act”). The AMF shall perform the functions and exercise the powers conferred on it by the *Securities Act*, CQLR, c. V-1.1 (the “Securities Act”), the *Derivatives Act*, CQLR, c. I-14.01 (the “Derivatives Act”) and *An Act respecting the distribution of financial products and services*, CQLR, c. D-9.2 to foster the confidence of the public and of the business community in the financial sector by protecting consumers against unethical, abusive or fraudulent practices.
- C. FINRA and the AMF wish to enter into this MOU to provide a formal basis for co-operation, including for the exchange of Information (defined below) and investigative assistance. FINRA and the AMF believe such cooperation will enable them to perform their functions more effectively.

The AMF and the FINRA hereby acknowledge and agree as follows:

1. Definitions

For the purposes of this MOU:

“AMF” means the Autorité des marchés financiers;

“Agency” or “Agencies” means a governmental or non-governmental public agency responsible for prosecuting, regulating or enforcing Laws falling within the areas of responsibility of the Authority;

“Authority” or “Authorities” means FINRA or the AMF;

“FINRA” means the Financial Industry Regulatory Authority, Inc.;

“Information” means either Authority’s confidential, proprietary and non-public information, including any and IP Rights (defined in Section 12), title, interest and Personal data, whether in verbal, written, electronic, graphic or other form, whether (a) disclosed by that Authority to the other Authority, or (b) obtained by the other Authority through (i) observation or examination of any of that Authority’s documents or materials or (ii) discussions with that Authority’s representatives or parties designated by that Authority to speak with or provide information to the other Authority concerning that Authority;

“Laws” means any laws, regulations, regulatory rules or policy applicable in the United States of America and/or in Québec, including all relevant laws pertaining to privacy and data security and applicable to each Authority in its respective country;

“Person” means a natural or legal person, or unincorporated entity or association, including corporations and partnerships;

“Personal data” means any information relating to an identified or identifiable natural person (“data subject”); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;

“Requesting Authority” means the Authority making a request under this MOU;

“Requested Authority” means the Authority to whom the request is made under this MOU;

“Third party” means a third party natural or legal person, unincorporated entity or association, including corporations and partnerships.

2. Purpose and Principles

2.1 The purpose of this MOU is to establish a formal basis for cooperation between the Authorities, including exchange of Information and investigative assistance, in order to facilitate the fulfilling of their supervisory responsibilities.

2.2 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.

2.3 The Authorities acknowledge that they may provide Information under this MOU only if permitted or not prevented under applicable Laws.

3. Scope of Assistance

3.1 To the extent permitted by their respective Laws, the Authorities shall endeavor to provide each other with the fullest mutual assistance possible in any matters falling within their competence. Assistance may include, but is not limited to:

- a. providing Information in the possession of the Requested Authority;
- b. confirming and verifying Information provided to it for that purpose by the Requesting Authority;

- c. exchanging Information on or discussing issues of mutual interest;
- d. obtaining specified Information and documents from Persons designated by the Requesting Authority; and
- e. questioning or taking testimony, where permissible, under oath, of Persons designated by the Requesting Authority regarding the matters set forth in the request for assistance;

3.2 Following consultation, a request for assistance may be denied by the Requested Authority:

- a. where the request is not made in accordance with the provisions of this MOU;
- b. where the request would require the Requested Authority to act in a manner that would violate domestic law;
- c. 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 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;
- d. where 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. where provision of assistance would be otherwise contrary to any other matters specified by the Laws of the Requested Authority's jurisdiction (in particular those relating to international co-operation, confidentiality and professional secrecy, data protection and privacy and procedural fairness); and
- f. Where the Authorities mutually agree that compliance with the request would not be in the best interests of either or both Authorities.

3.3 However, the Requested Authority cannot deny assistance to the Requesting Authority if the type of conduct under investigation would not be a violation of the Laws of the Requested Authority's jurisdiction.

3.4 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.

4. Unsolicited Assistance

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

5. Requests for Assistance

5.1 Requests for the provision of Information or other assistance will be made in writing or, in urgent circumstances, may be effected by telephone or facsimile, provided such communication is confirmed through an original, signed document within ten (10) business days. A request will be signed by the Requesting Authority and addressed to the contact person of the Requested Authority listed in Annex A.

5.2 Requests for assistance should include the following:

- a. a description of the subject matter of the request and the purpose for which the Information is sought and the reasons why this Information will be of assistance;
- b. a description of the specific Information or other assistance requested by the Requesting Authority (identity of Persons, specific questions to be asked, etc.);
- c. how the Information is likely to be used, including details of any likely onward disclosure by the Requesting Authority, and the purpose such disclosure would serve;
- d. a description of the facts that constitute the grounds for the suspicion that the offence that is the subject of the request has been committed, and of the connection between these facts and the assistance requested;
- e. a short description of the Laws that may have been violated and, if known to the Requesting Authority, a list of the Persons believed by the Requesting Authority to possess the Information sought or the places where such Information may be obtained and the details that support this belief, to the best of the Requesting Authority's knowledge;
- f. an indication of any special precautions that should be taken in collecting the Information due to investigatory considerations, including the sensitivity of the Information contained in the request;
- g. if Information is provided by the Requesting Authority for confirmation or verification, the Information and the kind of confirmation or verification sought;
- h. those Agencies, if any, to whom onward disclosure of Information provided to the Requesting Authority is likely to be necessary;
- i. any other matters specified by the Requesting Authority and by Laws in relation to the Requested Authority;
- j. an indication of the urgency of the request; and
- k. a declaration that any Information or document transferred to the Requesting Authority pursuant to the request shall be used solely for the purpose for which it was delivered.

6. Execution of Requests for Assistance

6.1 Each request for assistance will be assessed on a case-by-case basis by the Requested Authority to determine whether the assistance can be provided under the terms of this MOU and pursuant to its Laws. In any case where the request cannot be fulfilled in part or whole,

the Requested Authority will consider whether there may be other assistance which can be provided by itself or by any other authority in its jurisdiction.

6.2 To the extent permitted by its Laws, the Requested Authority shall take all reasonable steps to obtain and provide the Information sought within a reasonable period of time.

6.3 To the extent permitted by its Laws, the Requesting Authority shall provide the Requested Authority with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further Information as to the circumstances surrounding the request, staff or other resources.

6.4 Upon request, the Requested Authority will require the production of documents identified in Section 3.1 (d) from (i) any Person designated by the Requesting Authority, or (ii) any other Person who may possess the requested Information or documents. Upon request, the Requested Authority will obtain other Information relevant to the request.

6.5 Upon request, the Requested Authority will seek responses to questions and/or a statement (or where permissible, testimony under oath) from any Person involved, directly or indirectly, in the activities that are the subject matter of the request for assistance or who is in possession of Information that may assist in the execution of the request.

6.6 In urgent circumstances, the response to requests for assistance may be effected by telephone or facsimile provided such communication is confirmed through an original, signed document.

7. Costs

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.

8. Permissible Uses of the Information

8.1 The Requesting Authority may use non-public Information and non-public documents 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 Laws related to the Requesting Authority.

A purpose within the general framework of the use stated in the request for assistance, including conducting a civil or administrative enforcement proceeding or conducting any investigation for the general application of Laws.

- b. In the event that Information provided by FINRA to the AMF leads the AMF to submit a request for assistance to the US Securities and Exchange Commission (SEC), FINRA expressly authorizes the AMF to use the Information provided by FINRA in connection with its communications with the SEC in an appropriate manner. In this event, the AMF will provide notice to FINRA either prior to, or simultaneously with, its request to the SEC.

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

9. Confidentiality

9.1 The Authorities shall maintain strict confidentiality in respect to any non-public Information, document, IP Rights, or Privacy data which has become known to them in connection with this MOU.

9.2 The Authorities agree that they will keep confidential all Information shared under this MOU, including but not limited to, any requests made under this MOU, the contents of such requests, and any matters arising under this MOU, including consultations between or among the Authorities, and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.

9.3 A Requesting Authority will not use, disclose or publish any Information of the Requested Authority or received pursuant to a request for assistance made under this MOU for any purpose other than provided under this MOU without the prior written approval of the Requested Authority unless or until the Information is:

- a. Lawfully in Requesting Authority's possession prior to this MOU and not under a duty of non-disclosure;
- b. Voluntarily disclosed by a Third party so long as that party is not under a duty of non-disclosure;
- c. Voluntarily disclosed to the public by the disclosing party; or
- d. Generally known to the public.

9.4 The Requesting Authority may not disclose the Requested Authority's Information to any Person, except to the Requesting Authority's employees, officers, directors, agents, contractors, attorneys, and accountants who require the Information to act on the Requesting Authority's behalf in connection with this MOU.

9.5 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 disclosing Authority that supplied the Information and receive its consent prior to disclosing such Information. If the Requested Authority that supplied the Information does not consent to such disclosure, then the receiving Authority will use all reasonable legal means to resist such a demand, including asserting appropriate legal exemptions or privileges with respect to that Information as may be available.

9.6 To the extent permitted by Laws, FINRA may disclose Information received under this MOU:

- a. to a government agency with regulatory or oversight jurisdiction over FINRA for the purpose of enabling or assisting FINRA to discharge its regulatory function; or

- b. for the purpose of enabling or assisting FINRA to discharge any of its regulatory responsibilities, including responsibilities under the Securities Exchange Act of 1934 or other applicable law.

The AMF will be notified unless the request has already mentioned the need to disclose Information as stated above. AMF will receive adequate assurances concerning the use and confidential treatment of Information, including, as necessary, assurances that Information will not be shared with other parties without getting the prior consent of AMF. Similar conditions will be imposed on any third party recipient of confidential information.

9.7 At the Requested Authority's request and direction, the Requesting Authority will (a) stop using and copying the Requested Authority's Information, (b) return to the Requested Authority all of the Requested Authority's Information in the Requesting Authority's possession or control, or destroy that Information, in all forms and media, and (c) provide the Requested Authority with a certificate of return or destruction (as applicable) that includes the date(s), manner and facts concerning the return or destruction of the Requested Authority's Information and is signed under oath by an officer of the Requesting Authority.

9.8 The Requesting Authority will notify the Requested Authority immediately upon discovery of any actual or threatened unauthorized use, loss or disclosure of the Requested Authority's Information, and will cooperate with the Requested Authority to help regain possession of that Information and to prevent any further unauthorized use, loss or disclosure.

9.9 The Authorities acknowledge that all Information shared or exchanged pursuant to this MOU is provided "as is".

10. Data Protection and Privacy

10.1 Each Authority will, to the best of its knowledge and consistent with applicable law, ensure that it transmits to the other Authority Personal data that is accurate. Each Authority will inform the other Authority if it learns that previously transmitted Personal data was inaccurate and/or must be updated. In such case the other Authority will make any appropriate corrections in its files.

10.2 All Authorities will, to the best of its knowledge and consistent with applicable law, ensure that the Personal data requested and transferred is adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.

10.3 The Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed, or for such time as otherwise required by applicable Laws.

10.4 The Authorities acknowledge that the transfer of Personal data would occur in the context of exercise of their official regulatory authorities pursuant to the legislations in their home jurisdiction, and that the rights of data subjects to access Personal data held by each Authority therefore may be restricted in order to safeguard the Authority's ability to monitor, inspect or otherwise exercise its regulatory functions. However, Personal data that has been transferred to FINRA may request that the AMF identify any Personal data that has been transferred to FINRA and request that the AMF confirm with FINRA that the data is complete, accurate and, if applicable, up-to-date and the processing is in accordance with the data processing principles in this agreement. If the Personal data turns out to be incomplete, inaccurate or outdated or the processing is not in accordance with the data processing principles in this agreement, the data subject has the right to make a request for rectification, erasure or blocking the data, through the AMF.

11. Consultation Regarding Mutual Assistance and the Exchange of Information

The Authorities will consult periodically with each other regarding this MOU about matters of common concern with a view to improving its operation and resolving any issues that may arise. In particular, the Authorities will consult in the event of:

- a. a significant change in market or business conditions or in legislation where such change is relevant to the operation of this MOU;
- b. a demonstrated change in the willingness or ability of an Authority to meet the provisions of this MOU; and
- c. any other circumstance that makes it necessary or appropriate to consult, amend or extend this MOU in order to achieve its purposes.

12. IP Ownership

The Authorities agree that, as between them, the Requested Authority is the exclusive owner of all proprietary and intellectual property rights, improvements, derivative works, enhancements or modifications, (including, but not limited to, patents, trade secrets, trademarks, trade dress and copyrights) (“IP Rights”) in and to the Requested Authority’s Information. Nothing in this MOU grants any express or implied license of IP Rights to the Requesting Authority.

Neither Authority may use the other Authority’s trademarks, service marks, or trade names or otherwise refer to or identify the other Authority in promotional materials, press releases, statements to the news media or other public announcements, without the other Authority’s prior written consent.

13. Warranty Disclaimer and Limitation of Liability

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

14. Amendments to the MOU

The Authorities may, by a written instrument signed by each Authority’s authorized representative, amend or modify this MOU through the mutual consent of the Authorities.

15. Commencement and Termination

15.1 This MOU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority.

15.2 This MOU will be concluded for an unlimited period of time and may be terminated by any of the Authorities at any time by giving, at least thirty (30) days prior written notice to the other Authority. The Authorities’ confidential treatment of assistance and Information obtained pursuant to this MOU will continue in perpetuity after termination of this MOU in

accordance with authorized records and information retention policies. For greater clarity, in the event of termination of this MOU, information obtained under this MOU will continue to be treated in a manner prescribed under Section 9 *Confidentiality* and Section 10 addressing *Data Protection and Privacy*. If the Requested Authority undertakes to terminate the MOU, requests for Information communicated before the effective date of denunciation will still be processed under this MOU.

16. Assignment

Neither Authority may assign, delegate or otherwise transfer this MOU or any of its rights or obligations under this MOU (by operation of law or otherwise) without the other Authority's prior written consent.

17. Disputes, Entire Agreement and Compliance with Applicable Laws

17.1 This MOU constitutes the entire agreement, and supersedes any prior or contemporaneous statements or agreements, between the Authorities with respect to its subject matter.


17.2 Each Authority shall comply with all applicable Laws.

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

* * * * *

The Authorities have caused this MOU to be executed by their respective duly authorized representatives.

Financial Industry Regulatory Authority Inc.

By: 
Name: Richard G. Ketchum
Title: Chairman and CEO
Date: June 10, 2015

Autorité des marchés financiers

By: 
Name: Louis Morisset
Title: President and Chief Executive Officer
Date: June 4, 2015