

# MEMORANDUM OF UNDERSTANDING

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**British Columbia Securities Commission**



**Bundesanstalt für  
Finanzdienstleistungsaufsicht**



**Deutsche Bundesbank**

**COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING AGENCIES OPERATING  
AS CENTRAL COUNTERPARTIES**

March 5, 2018

**MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION  
AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF  
CROSS-BORDER CLEARING AGENCIES OPERATING AS CENTRAL  
COUNTERPARTIES**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the British Columbia Securities Commission and the German Bundesanstalt für Finanzdienstleistungsaufsicht and Deutsche Bundesbank (collectively, "the Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of clearing agencies that operate on a cross-border basis in both British Columbia in Canada and Germany. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates with respect to clearing agencies operating as central counterparties.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "Authority" means:
  - a. In British Columbia in Canada, the British Columbia Securities Commission ("BCSC"); and
  - b. In Germany, the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin") or the Deutsche Bundesbank ("Bundesbank") - which cooperate closely in supervising banks (including clearing agencies) and which has an oversight function on clearing and settlement systems -, financial service providers, and investment firms (individually, a "German Authority", and together referred to as the "German Authorities").
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means:
  - a. The German Authority to which a request is made under this MOU, where the Requesting Authority is the BCSC; or
  - b. The BCSC, where the Requesting Authority is a German Authority.
4. "Laws and Regulations" means:
  - a. For the BCSC, the BC Securities Act and related rules and regulations and successor legislation ("BC Securities Act"); and other relevant requirements in Canada and British Columbia; and
  - b. For the German Authorities, the German Banking Act ("Kreditwesengesetz") and related ordinances as parts of the German law, the Act on the Deutsche Bundesbank (Bundesbank Act) the German Securities Trading Act ("Wertpapierhandelsgesetz"),

the German Stock Exchange Act (“Börsengesetz”), the Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (“EMIR”) and related Regulatory Technical Standards as parts of the European Union (“EU”) law and other applicable legal or regulatory requirements applicable in Germany, and the Capital Requirements Regulation (“CRR”) and related Regulatory Technical Standards as parts of the EU law and other applicable legal or regulatory requirements applicable in Germany.

5. “Person” means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Clearing Member, Clearing Participant, or Central Counterparty.
6. “Central Counterparty” (“CCP”) means an organization in either British Columbia in Canada or Germany that satisfies both of the following criteria:
  - a. A clearing agency for derivatives (“DCA”) that is, or that has applied to be, recognized as such under the BC Securities Act, or that is subject to an obligation to be recognized as a clearing agency under the BC Securities Act; and
  - b. A CCP that is, or that has applied to be, authorized or recognized as a CCP under EMIR or licensed or exempted from licensure as a credit institution or a financial services institution under the Kreditwesengesetz.
7. “Clearing Member” means a member of a CCP that also serves as an intermediary through which market participants access the CCP’s services.
8. “Clearing Participant” means a participant of a CCP that does not serve as an intermediary, but trades and clears derivatives through the CCP solely for its own account, as principal.
9. “Books and Records” means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a CCP or the CCP’s clearing services.
10. “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a CCP.
11. “Exchange Supervisory Authority” (“ESA”) means
  - a. An authority of one of the Bundesländer (German federal states) that has statutory responsibility under the Börsengesetz over a CCP organized in Germany; and
  - b. The BCSC for a CCP organized in British Columbia.
12. “On-Site Visit” means any regulatory visit as described in Article Five to the premises of a CCP for the purposes of ongoing supervision and oversight including the inspection of Books and Records.

13. "Local Authority" means the Authority in whose jurisdiction a CCP that is the subject of an On-Site Visit is physically located.
14. "Visiting Authority" means the Authority conducting an On-Site Visit.
15. "Governmental Entity" means:
  - a. If the Requesting Authority is the BCSC, the Ministry of Finance – Province of British Columbia, the Bank of Canada, the Federal Ministry of Finance and the Office of the Superintendent of Financial Institutions; and
  - b. If the Requesting Authority is the BaFin or Bundesbank, the Bundesministerium der Finanzen (Federal Ministry of Finance).
16. "CPMI-PFMIs" means the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions ("IOSCO"), as amended from time to time.

## **ARTICLE TWO: GENERAL PROVISIONS**

17. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with each of the Authorities' respective functions, responsibilities, oversight, supervision and mandates relating to CCPs. The cooperation and information sharing arrangements under this MOU will be interpreted and implemented in a manner and to the extent that is permitted by, and consistent with, the laws and requirements that govern each Authority. With respect to cooperation pursuant to this MOU, at the date this arrangement is executed, each Authority believes that no domestic secrecy or blocking laws or regulations should prevent it from providing assistance to any other Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation. The provisions of this MOU are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws and apply for both sides equally.
18. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede domestic laws or 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.
19. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions or preclude Authorities from sharing information or documents with each other with respect to Persons that are not CCPs, Clearing Members, or Clearing Participants but may be subject to Laws and Regulations in British Columbia in Canada and in Germany. In particular, this MOU does not affect any right of any Authority to communicate with,

conduct an On-Site Visit of (subject to the procedures described in Article Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the territory of another Authority.

20. This MOU is intended to complement, but does not alter, the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“IOSCO MMOU”) to which the BCSC and BaFin are signatories, which covers primarily information sharing in the context of enforcement matters.
21. This MOU will not impact any arrangements that have been or may be entered into between the BCSC and the European Securities and Markets Authority (“ESMA”) with regard to their respective responsibilities in connection with CCPs.
22. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authorities.

### **ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION**

#### **General**

23. The Authorities recognize the importance of close communication concerning their supervision of CCPs and intend to consult regularly, as appropriate, regarding:
  - a. General supervisory issues, including regulatory, oversight, or other related developments;
  - b. Issues relevant to the operations, activities, and regulation of CCPs; and
  - c. Any other areas of mutual supervisory interest.
24. The Authorities recognize in particular the importance of close cooperation in the event that a CCP experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
25. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
  - a. The initial application for registration, authorization, licensure, designation, recognition, or qualification or exemption therefrom, by a CCP that is registered, authorized, licensed, designated, recognized, qualified or exempted therefrom in the other jurisdiction;
  - b. The ongoing supervision and oversight of a CCP including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards, including the CPMI-PFMI; and

- c. Regulatory or supervisory actions or approvals taken by an Authority in relation to a CCP that may impact the operations of the entity in the jurisdiction of the other Authority or Authorities.

### **Event-Triggered Notification**

26. As appropriate in the particular circumstances, the BCSC and each German Authority endeavors to inform, respectively, the German Authorities or the BCSC promptly, and where practicable in advance, of:
  - a. Pending regulatory or legislative changes that may have a significant impact on the operations, activities, or reputation of a CCP, including those that may affect the rules or procedures of a CCP;
  - b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a CCP or its Clearing Members or its Clearing Participants, including such events as a default or potential default of a Clearing Member or Clearing Participant; market or settlement bank difficulties that might adversely impact the CCP; failure by a CCP to satisfy any of its requirements for continued registration, authorization, licensure, designation, qualification or recognition or for an exemption, therefrom, where that failure could have a material adverse effect in the other jurisdiction; or any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a CCP, including such as material cyberattack, breach in security or material system failure;
  - c. Any material extension of the range of activities and services that a CCP provides with respect to current or new asset classes or current or new European Union trading venues;
  - d. The status of efforts of which the Authority is aware to address any material event that could adversely impact the financial or operational condition of a CCP, Clearing Member, or Clearing Participant as described in Subparagraph b; and
  - e. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant registration, authorization, recognition or licensure, or exemption therefrom, concerning a CCP.
27. The determination of what constitutes “significant impact”, “material event”, “adversely impact”, “difficulties”, “material adverse effect”, “adverse material change”, “material”, or “significant regulatory actions” for purposes of Paragraph 26 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.
28. Paragraphs 26 and 27 shall not preclude the Authorities from entering into any further arrangements relating to notification regarding specific financial or operational issues related to a CCP.

## **Request-Based Information Sharing**

29. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide to the Requesting Authority the reasonable cooperation, subject to the terms in this MOU and to practical and legal restrictions, in assisting the Requesting Authority in its supervision and oversight of a CCP or of a Clearing Member or Clearing Participant of a CCP relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority. This cooperation may include providing assistance in obtaining and interpreting information that is not otherwise available to the Requesting Authority. Such requests shall be made pursuant to Article Four of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.
30. The cooperation covered by Paragraph 29 includes:
- a. Information relevant to the financial and operational condition of a CCP including, for example, financial resources, risk management, and internal control procedures;
  - b. Relevant regulatory information and filings that a CCP is required to submit to an Authority including, for example, interim and annual financial statements and event-specific notices; and
  - c. Regulatory reports prepared by an Authority including, for example, examination reports, findings, or information contained in such reports regarding CCPs.

## **Periodic Meetings**

31. Representatives of the Authorities intend to meet periodically, as appropriate, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of CCPs, including but not limited to: contingency planning and crisis management, the adequacy of existing cooperative arrangements, systemic risk concerns, default procedures, and the possible improvement of cooperation and coordination among the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

## **ARTICLE FOUR: EXECUTION OF REQUESTS FOR INFORMATION**

32. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person in Appendix A. A request generally should specify the following:
- a. The information sought by the Requesting Authority;
  - b. A general description of the matter that is the subject of the request;
  - c. The purpose for which the information is sought; and
  - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information responsive to the request, as well as any subsequent communication among Authorities, may be transmitted electronically. Any electronic transmission should use

- means that are appropriately secure in light of the confidentiality of the information being transmitted.
- 33. In an Emergency Situation, the BCSC and the relevant German Authority or Authorities will endeavor to notify the other(s), as soon as possible, of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, 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 FIVE: ON-SITE VISITS**

- 34. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, Laws and Regulations, an Authority may need to conduct On-Site Visits to a CCP physically located in the jurisdiction of the other Authority(ies). The Authorities will consult and work collaboratively in conducting an On-Site Visit.
- 35. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
  - a. The Visiting Authority will provide reasonable advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended time frame for, and the purpose and scope of, the On-Site Visit. Other than in exceptional circumstances, the Visiting Authority will notify the Local Authority prior to notifying the CCP.
  - b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the CCP.
  - c. The Authorities will assist each other regarding On-Site Visits, including providing information that the Visiting Authority may request and that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a CCP.
  - d. The Authorities will consult with each other, and the Local Authority may in its discretion accompany or assist the Visiting Authority during the On-Site Visit, or the Authorities may conduct joint visits where appropriate.

#### **ARTICLE SIX: PERMISSIBLE USES OF INFORMATION**

- 36. The Requesting Authority may use non-public information obtained under this MOU solely for:
  - a. the supervision and oversight of CCPs.
  - b. ensuring compliance with the Laws and Regulations of the Requesting Authority.
- 37. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, the Authorities may subsequently want to use the non-public information provided pursuant to this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings.. Non-



public information shared between the BCSC and BaFin for enforcement purposes will be used in accordance with the terms and conditions of the IOSCO MMOU, as amended from time to time. With respect to information shared between the BCSC and Bundesbank, Paragraph 38 will apply.

38. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraph 36 and Paragraph 37, the Requesting Authority must first consult with and obtain the written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will discuss the reasons for withholding approval and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
39. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a CCP, whether during an On-Site Visit or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to an information-sharing request pursuant to Article Four of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

#### **ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

40. Except as provided in Paragraphs 41-46, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
41. Each German Authority may share non-public information obtained from the BCSC under this MOU with the other German Authority so long as that other German Authority uses and treats the information in accordance with the terms of this MOU.
42. In cases where the BaFin seeks to share non-public information obtained from the BCSC pursuant to this MOU with an ESA, prior to sharing such information, the BaFin shall:
  - a. Consult with the BCSC and work with the ESA to establish a written arrangement for sharing non-public information on an ongoing basis;
  - b. Provide the BCSC with adequate assurances that:
    - i. The sharing of the non-public information between the BaFin and the ESA is required pursuant to Article 8, Paragraph 1 of the Börsengesetz and Article 6, Paragraph 2 of the Wertpapierhandelsgesetz;
    - ii. The information will be used by the ESA for a relevant supervisory purpose;
    - iii. The use and confidential treatment of the information will be governed by Article 10 of the Börsengesetz, except that the information may also be used for a relevant supervisory purpose and shall not be shared by the ESA with other parties without getting the prior written consent of the BCSC; and
    - iv. To the extent possible, the BaFin intends to notify the BCSC of any legally enforceable demand to the ESA for non-public information furnished under

this MOU and shared with the ESA. Prior to compliance with the demand, the ESA will assert all appropriate legal exemptions or privileges with respect to such information as may be available.

- c. Provide the BCSC with prompt notice of any relevant changes to German law or requirements and of any changes that would affect the sharing of non-public information obtained from the BCSC pursuant to this MOU in accordance with a written arrangement with an ESA.
43. As required by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MOU with a Governmental Entity. In these circumstances and to the extent permitted by law:
- a. The Requesting Authority will notify the Requested Authority; and
  - b. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will notify the Requested Authority and provide it with adequate assurances concerning the use and confidential treatment of the information by the Governmental Entity, including, as necessary, assurances that:
    - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction; and
    - ii. The information will not be shared by the Governmental Entity with other parties unless:
      - A. the Governmental Entity is required to do so by law; or
      - B. the Requested Authority has provided prior written consent.
  - c. Before sharing information under this section, the Requesting Authority will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
44. As required by EMIR, it may become necessary for the German Authorities to share non-public information obtained from the BCSC under this MOU with the European Banking Authority, European Securities and Markets Authority, or the European Systemic Risk Board or, with regard to the implementation of the Single Supervisory Mechanism in the EU insofar as this is necessary for the German Authorities on the basis of EU law in connection with CCPs, the European Central Bank in its function as banking supervisor (each an "EU Entity"). In these circumstances and to the extent permitted by law:
- a. The German Authority will notify the BCSC prior to sharing the information and indicate the purpose for which the information will be shared with an EU Entity; and
  - b. Prior to the German Authority sharing the non-public information, the German Authority will provide adequate assurances to the BCSC concerning the EU Entity's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The EU Entity has confirmed that it requires the information and will use the information only for a purpose within the scope of its jurisdiction; and

- ii. The information will not be shared by the EU Entity with other parties without getting the prior written consent of the BCSC.
45. Except as provided in Paragraphs 41-44 and 46, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
46. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. When complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
47. The Authorities intend that the sharing or the disclosure of non-public information, including deliberative and consultative materials, such as written analysis, opinions, or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

#### **ARTICLE EIGHT: AMENDMENTS**

48. The Authorities intend periodically to review the functioning and effectiveness of the cooperation arrangements between the BCSC and the BaFin and the Bundesbank with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of all of the Authorities referred to in Paragraph 1.

#### **ARTICLE NINE: EXECUTION OF MOU**

49. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by all of the Authorities.

#### **ARTICLE TEN: SUCCESSORS**

50. Where the relevant functions of a signatory to this MOU are transferred or assigned to another authority or authorities, the terms of the 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 this MOU. This will not affect the right of any Authority to terminate the MOU as provided

hereunder. The Authorities shall work to ensure a seamless transition to any successor MOU, including the continued handling of outstanding matters.


51. Where regulatory functions have been assigned to another authority or authorities under paragraph 50, the successor authority may use non-public information previously obtained under this MOU if the successor authority uses and treats the information in accordance with the terms of this MOU.

#### ARTICLE ELEVEN: TERMINATION


52. Cooperation in accordance with this MOU will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate the MOU. If an Authority gives notice of termination, the relevant parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under this MOU before the expiration of the 30-day period until all such requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner described under Articles Six and Seven.
53. If a German Authority terminates the MOU in accordance with this Article, the MOU shall remain effective between the BCSC and the remaining German Authority.

This MOU is executed in triplicate, this \_\_\_\_\_ day of 23rd April 2018.

  
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Brenda Leong  
Chair and CEO  
British Columbia Securities Commission

  
\_\_\_\_\_  
Elisabeth Roegele  
Chief Executive Director  
Bundesanstalt für Finanzdienstleistungsaufsicht

  
\_\_\_\_\_  
Andreas Dombret  
Member of the Executive Board  
Deutsche Bundesbank

  
\_\_\_\_\_  
Erich Loeper  
Head of Banking and Financial Supervision  
Department  
Deutsche Bundesbank

## APPENDIX A

### CONTACT PERSONS

*In addition to the following contact information, the BCSC, BaFin, and Bundesbank will exchange confidential emergency contact telephone information.*

#### BCSC

Name: Secretary to the Commission  
P.O Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver, B.C.  
V7Y 1L2  
Phone: 604-899-6500  
Fax: 1-888-801-0607  
Email: commsec@bcsc.bc.ca

#### Alternate Contacts:

Manager, Derivatives  
P.O Box 10142, Pacific Centre  
701 West Georgia Street  
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#### BaFin

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