**Memorandum of Understanding ("MoU")**

**Respecting the**

**Resolution of Certain Clearing and Settlement Systems**

**among:**

**Bank of Canada (the "Bank")**
**Ontario Securities Commission (the "OSC")**
**Autorité des marchés financiers (the "AMF") and**
**British Columbia Securities Commission (the "BCSC")**
**(each a "Party", collectively the "Parties")**

The Parties hereby agree as follows:

## 1. Context and Objectives

a) The Bank is the resolution authority for clearing and settlement systems domiciled in Canada that the Governor of the Bank has designated as posing systemic or payments system risk under section 4 of the *Payment Clearing and Settlement Act,* S.C. 1996, c. 6, Sch., (''PCSA''), and are therefore subject to oversight of the Bank. The scope of this MoU is limited to the "Regulated Systems" as these are defined hereinafter. The Bank's mandate as resolution authority is established under Part I.1 of the PCSA and is distinct from its mandate to oversee clearing and settlement systems designated by the Governor of the Bank.

b) Each of the OSC, AMF and BCSC is the regulatory authority over the capital markets of its respective jurisdiction and, as such, has recognized the operators of the Regulated Systems as a recognized clearing agency or, in Québec, a recognized clearing house, for the purposes of carrying on such business in their respective jurisdiction.

c) In 2014, the Parties executed the Memorandum of Understanding Respecting the Oversight of Certain Clearing and Settlement Systems, as amended or supplemented from time to time ("Oversight MoU"), for the purposes of providing a mechanism for mutual cooperation and assistance in carrying out their respective oversight responsibilities in respect of the Regulated Systems. The Oversight MoU recognizes that each of the Parties has authority and responsibilities in accordance with its respective regulatory mandate for the regulatory oversight of the Regulated Systems for purposes of promoting the safety and efficiency of those systems and limiting and managing systemic risk.

d) The parties now seek to establish this Memorandum of Understanding Respecting the Resolution of Certain Clearing and Settlement Systems (this "MoU") as a basis for

cooperation, coordination, consultation and information sharing on matters related to the resolution of the Regulated Systems.

e) This MoU is distinct from the Oversight MoU. This MoU is intended to coexist with, but not to alter, the terms and conditions of the Oversight MoU.

f) In accordance with International Guidance related to financial market infrastructures ("FMI") resolution, and consistent with Responsibility E of the PFMIs (as defined hereinafter), the Parties agree to cooperate in order to support the objectives of resolution. These are to pursue the stability of the financial system in Canada and allow for the continuity of critical clearing and settlement functions in a manner that minimizes the exposure of public money to loss. The Parties establish this MoU to set out how they will cooperate, share information, consult and coordinate, for the purposes of planning for, and coordinating, the resolution of a Regulated System.

g) In particular, the Parties seek to cooperate through this MoU in respect of Regulated Systems in order to:

i. leverage the Parties' respective perspectives, expertise and experience to contribute to the development of feasible and credible resolution strategies and plans;
ii. facilitate the orderly resolution of a Regulated System either by: 1) maintaining or restoring continuity of the Regulated System's critical functions; or 2) ensuring continued performance of the Regulated System's functions by another entity or arrangement, and, if necessary, the orderly wind-down of the residual Regulated System in resolution; and
iii. foster consistent and transparent communication and sharing of information related to resolution of Regulated Systems among the Parties.

h) While recognizing the benefits of cooperating through this MoU, the Parties also acknowledge that this MoU and their participation in this MoU do not in any way:

i. modify or supersede the relevant legislation, regulations or rules in effect in their respective jurisdictions;
ii. modify or supersede any relevant agreements between a Party and a Regulated System or any order, directive, designation or decision made by a Party in respect of a Regulated System;
iii. constrain or limit the powers or discretion of the Parties in discharging their respective oversight responsibilities and, also in the case of the Bank, its responsibilities as Resolution Authority of the Regulated Systems;
iv. modify, supersede, nor interfere with the powers, mandate and responsibilities of the Parties as prescribed by their respective legislation;
v. create any legally binding rights, obligations or liabilities for the Parties apart from any rights, obligations and liabilities that might arise under the general law. In particular,

this MoU does not confer upon any person any right to obtain information and does not create any liabilities in respect of the provision of information, any failure or delay in providing information or the accuracy of information that is provided; or

vi. interfere with the respective jurisdictions of the Parties over trade and matters of a merely local nature.

## 2. Definitions

In this MoU, the following terms have the meaning set out below:

**"Confidential Information"** means any non-public information that is received by a Party through its participation in this MoU, including, without limitation, requests for information received pursuant to subsection 4(III)(c).

**"Contact Person"** means a person designated by a Party pursuant to section 3 as a person to receive communications from other Parties under this MoU.

**"Federal Authority"** has the meaning ascribed to such term in subsection 6(b).

**"International Guidance"** means the Financial Stability Board's "Key Attributes of Effective Resolution Regimes for Financial Institutions" dated 15 October 2014 and "Guidance on Central Counterparty Resolution and Resolution Planning", dated 5 July, 2017, as amended, supplemented or superseded from time to time and includes any further guidance on how to interpret or implement such key attributes.

**"MoU"** has the meaning ascribed to such term in sub-section 1(d).

**"Oversight MoU"** has the meaning ascribed to such term in sub-section 1(c).

**"PFMIs"** means the Principles for Financial Market Infrastructures of the Bank of International Settlements Committee on Payment and Settlement Systems and the International Organization of Securities Commissions, dated April 12, 2012, as such principles may be amended from time to time and includes any successors to such principles.

**"Provincial Recipient"** has the meaning ascribed to such term in paragraph 6(c)(ii).

**"Relevant Ministry"** has the meaning ascribed to such term in paragraph 6(c)(i).

**"Resolution Authority"** means the Bank of Canada acting in accordance with its statutory mandate under Part I.1 of the PCSA.

**"Resolution Plan"** means a plan that identifies the set of actions that the Resolution Authority could take when recovery efforts have been unsuccessful, or when recovery measures are insufficient for the Regulated System to continue to operate safely without adversely affecting financial stability.

**"Regulated Systems"** means the clearing and settlement systems identified in Schedule 1 that are designated by the Bank and jointly overseen by the Parties; for greater certainty, it also includes the operators of such systems. Schedule 1 may be amended by the Parties pursuant to subsection 7(a) and published by the Parties.

## 3. Contact Persons

(a) Immediately upon the effective date of this MoU, each Party will send to the Bank by e-mail a list of Contact Persons to receive communications under this MoU. Each Party may include on the list of Contact Persons a maximum of three persons in respect of each Regulated System and will provide the name, telephone number, e-mail address and mailing address of each Contact Person, as well as indicate the Regulated System for which each person has responsibility. Each Party will also promptly provide the Bank with a revised list of its Contact Persons when a Contact Person's contact information changes or the persons on the list change. Contact Persons may in turn delegate responsibilities for communicating with the other Parties on specific issues to other persons in their organizations upon notifying the other Parties of the delegation.

(b) The Bank will, promptly upon receiving the initial list of Contact Persons from each of the other Parties pursuant to subsection (a), compile a comprehensive list of Contact Persons and contact information of all the Parties and distribute the list to all of the Parties. The Bank will thereafter be responsible for updating the comprehensive list of Contact Persons as the Parties send in their revised lists of Contact Persons pursuant to subsection (a) and will promptly distribute updated lists of Contact Persons to the other Parties.

## 4. Framework for Cooperation Related to Resolution of Regulated Systems

### (I) Matters for Consultation and Coordination: Resolution Planning

(a) The Resolution Authority will consult and coordinate with the Parties on matters related to planning for the resolution of each Regulated System. Without limiting the generality of the foregoing, the Resolution Authority's responsibilities will include:

i. facilitating and chairing meetings to discuss matters related to resolution planning for each Regulated System.
ii. developing and maintaining, in accordance with the PCSA regulations, a resolution plan for each Regulated System pursuant to section 11.05 (1) of the PCSA.
iii. assessing the feasibility and credibility of implementing the resolution strategy and operational plan for each Regulated System.

iv. developing communication procedures to facilitate coordination, consultation and information sharing among the Resolution Authority and the Parties in the lead-up to, and during, the resolution of a Regulated System.
v. conducting periodic exercises based on resolution scenarios to facilitate resolution preparedness.

(b) Each of the OSC, BCSC and AMF will, as appropriate:
i. participate in meetings and conference calls.
ii. provide recommendations on the proposed resolution strategy and operational plan for each Regulated System, and review these on an ongoing basis.
iii. contribute to the assessment of the feasibility and credibility of the resolution plan for each Regulated System, and work with the Resolution Authority and the Regulated System to address any legal, operational or structural impediments to the effective resolution of a Regulated System that are identified in this assessment.
iv. contribute to the development of communication procedures to facilitate coordination, consultation and information sharing among the Resolution Authority and the Parties in the lead-up to and during the resolution of a Regulated System.
v. participate in periodic exercises based on resolution scenarios to facilitate resolution preparedness.

## (II) Matters for Consultation and Coordination: Executing a Resolution

(a) In carrying out its responsibilities as the Resolution Authority for Regulated Systems, the Resolution Authority will inform and consult with all Parties, to the extent possible, on its actions, in the lead up to, and during the resolution of a Regulated System. Without limiting the generality of the foregoing, these actions include to:
i. monitor the Regulated System's implementation of its recovery plan, to assess the operator's ability to continue to offer its critical services and meet regulatory requirements related to financial risk controls, and the implications for financial stability, in order to determine if, and when, it may be necessary to place the Regulated System into resolution. [1]
ii. recommend to the Governor of the Bank that the Regulated System be placed into resolution if it is determined that the Regulated System is no longer viable within the meaning of sub-section 11.06(1) of the PCSA.
iii. execute the orderly resolution of the Regulated System, once an order has been made by the Governor of the Bank placing it into resolution. To the extent practically feasible, the Resolution Authority's actions will be based on the resolution plan for the Regulated System.

[1] The Parties to the Oversight MoU have the regulatory responsibility for overseeing a Regulated System's implementation of its recovery plan. Communication among the Parties for this purpose would be governed by Appendix 1 of the Oversight MoU: Protocol for Consulting on Urgent Matters.

(b) In carrying out its responsibilities as the Resolution Authority for Regulated Systems, the Resolution Authority will inform and consult with all Parties to develop an exit plan to end resolution for each Regulated System in accordance with section 11.2 of the PCSA.

(c) Each of the OSC, BCSC and AMF will:

i. advise the Resolution Authority on the potential impact of a declaration of non-viability of a Regulated System (from the perspective of its regulatory oversight mandate).
ii. identify and inform the Resolution Authority of any concerns related to its use of specific resolution powers and tools.
iii. provide recommendations on any steps to be taken to return the Regulated System to viability, including recapitalizing the Regulated System and developing an exit plan to end resolution.

## (III) Information Sharing

(a) Each Party will share with the other Parties, through their respective Contact Persons and their delegates, such information concerning the resolution of a Regulated System that the Party considers to be of relevance to its effective resolution, including notice of any planned changes to its operation or structure that could materially affect the resolution strategy or operational plans of such Regulated System.

(b) In particular, without limiting the generality of the foregoing, the Resolution Authority will share with the other Parties, on a timely basis, the following information:

i. initial resolution plans and exit plans to end resolution and any updates to these plans, which will set out the Resolution Authority's plans for executing resolution, as appropriate, specifically the planned use of powers and tools, measures to recapitalize the Regulated System and a proposed strategy for exit of the Regulated System from resolution.
ii. information requested from a Regulated System for the purpose of carrying out a resolvability assessment.
iii. notice, and where appropriate, prior notice, of any changes to the legislative, regulatory or legal framework governing the resolution of a Regulated System, to the extent that this information can be shared under applicable law.

(c) Without limiting the generality of the foregoing, each Party may request from the other Parties information relating to a Regulated System. To the extent practicable, a request for information should be made in writing, which may be transmitted electronically, and addressed to the relevant Contact Person as identified pursuant to section 3. A request for information should specify the following:

i. the information sought by the requesting Party.
ii. a general description of the matter to which the request relates and the purpose for which the information is sought.

iii. the degree of urgency of the request and the time period in which a response is requested.

## 5. Mechanisms for Information Sharing, Consultation and Coordination

(a) The Parties will share information and consult with each other as they consider appropriate on issues of common interest related to this MoU through communications among the Contact Persons of the respective Parties and their delegates. Such communications may be conducted on an ad hoc basis by telephone, mail, e-mail or in-person meetings as issues of common interest arise.

(b) In addition to the ad hoc communications and consultations described in subsection (a), the Resolution Authority will schedule an annual in-person meeting on mutually acceptable dates ("Annual Meeting"). This meeting may be combined with one of the Quarterly Meetings identified in the Oversight MoU.

(c) Each Party will be represented at each Annual Meeting by at least one of its Contact Persons and may also send such other representatives as it considers appropriate.

(d) The Parties will discuss at Annual Meetings matters related to planning for and coordinating the execution of the resolution of a Regulated System. In particular, without limiting the generality of the foregoing, the Parties may discuss:

i. the tools available to the Resolution Authority for allocating losses.
ii. potential resolution scenarios under which resolution could be triggered by either a default or a non-default event.
iii. possible resolution strategies for each Regulated System.
iv. the operational plans for resolving each Regulated System.
v. proposals for periodic exercises based on resolution scenarios to facilitate resolution preparedness.

## 6. Confidentiality and Uses of Information

(a) Each Party confirms that it has adopted reasonable policies and procedures to protect its own confidential and proprietary information and that, subject to subsections (b) through (g) below, it will keep confidential all Confidential Information disclosed to it by the other Parties, to the extent permitted by applicable law, by using at minimum a standard of care that the Party would be reasonably expected to employ for its own confidential and proprietary information.

(b) The Bank may onward share Confidential Information that it has obtained under this MoU by communicating the information orally or in writing to the Department of Finance Canada, the Office of the Superintendent of Financial Institutions, and the Canada Deposit Insurance Corporation (each, a "**Federal Authority**"), provided that the Bank informs the

Federal Authority of the confidential nature of the Confidential Information and the Federal Authority agrees to not further disclose such information to any person unless:

i. such disclosure is made to the Cabinet of Canada, in which case prior written consent is not required; or
ii. the Federal Authority first obtains the written consent of the Part(y/ies) from whom Confidential Information was initially obtained, or in the case where such disclosure is required by applicable law or legal process, promptly notifies the Part(y/ies) from whom Confidential Information was initially obtained and complies with the provisions of subsection (f) as if it were a party to this MoU.

(c) The OSC, the AMF and the BCSC may, subject to subsection (d), onward share Confidential Information that they have obtained under this MoU by communicating the information orally or in writing to the following entities:

i. their respective provincial finance minister and ministries (each a "**Relevant Ministry**"); and
ii. any other provincial or territorial securities or derivatives regulatory authority in Canada having regulatory authority over a Regulated System, that is not a party to this MoU (each a "**Provincial Recipient**").

(d) The onward sharing of Confidential Information pursuant to subsection (c) is made under condition that the OSC, the AMF or the BCSC, as applicable, informs the Relevant Ministry or the Provincial Recipient of the confidential nature of the Confidential Information and the Relevant Ministry or Provincial Recipient agrees to not further disclose Confidential Information to any person unless:

i. in the case of a Relevant Ministry, such disclosure is made to the Executive Council of Ontario, the Conseil des ministres du Québec or the Executive Council of British Columbia, as applicable, in which case prior written consent is not required; or
ii. the Relevant Ministry or Provincial Recipient first obtains the written consent of the Part(y/ies) from whom Confidential Information was initially obtained, or in the case where such disclosure is required by applicable law or legal process, promptly notifies the Part(y/ies) from whom the Confidential Information was initially obtained and complies with the provisions of subsection (f) as if it were a party to this MoU.

(e) Except as provided for in subsections (b), (c) and (d), a Party that has obtained Confidential Information under this MoU from another Party may disclose the information to any entity, including an entity outside Canada, upon obtaining the prior written consent of the Party from whom it obtained the information. If such consent is not given by the Party who provided the information under the MoU, the two Parties will consult to discuss the reasons for withholding consent and the circumstances, if any, under which disclosure to the entity might be allowed.

(f) In the event that a Party is required by statute or by legal process (including, without limitation, access to information legislation and a discovery process relating to judicial or administrative proceedings) to disclose Confidential Information to a third party, such Party will, to the extent permitted by applicable law, promptly notify the Part(y/ies) from whom the Confidential Information was initially obtained, indicate what information it is required to release and the circumstances surrounding its release. If requested by any other Party, the Party required to disclose the Confidential Information will use its best efforts to preserve its confidentiality to the extent permitted by law, including by asserting all available legal exemptions from or privileges against disclosure.

(g) Nothing in this MoU restricts a Party from informing financial institutions or the operators of the Regulated Systems of, or otherwise making public, risks or deficiencies that it has identified in respect of a Regulated System when doing so is in connection with its statutory responsibilities or pursuant to legal obligations, even when the knowledge of such risks or deficiencies is based in whole or part on Confidential Information, so long as no Confidential Information provided by any other Party is disclosed, except in accordance with this MoU.

(h) Each Party confirms that it will use Confidential Information only for resolution purposes and in connection with its respective statutory responsibilities and for no other purpose whatsoever, unless so authorized in writing by the Part(y/ies) from whom Confidential Information was initially obtained.

## 7. Amendments to the MoU

a) This MoU may be amended from time to time as mutually agreed upon in writing by the duly authorized representatives of the Parties. Any amendment is subject to ministerial approval in Ontario and to governmental approval and ministerial signature in Québec.

b) Any provincial or territorial securities or derivatives authority which has regulatory authority over a Regulated System may become a party to this MoU by obtaining the written consent of each of the Parties, which consent is given subject to the approvals required under subsection (a). Upon obtaining the consent of the Parties, the authority will execute a counterpart of this MoU and provide an original copy of the counterpart to each of the Parties.

## 8. Withdrawal from the MoU

A Party may at any time withdraw from this MoU upon giving the other Parties at least ninety (90) days prior written notice. During the notice period, a Party wishing to withdraw from this MoU will continue to cooperate in accordance with this MoU. A Party that withdraws from this MoU will continue to treat information that it obtained under this MoU in the manner prescribed by

section 6. If any Party withdraws from this MoU, the MoU will remain in effect between the remaining Parties.

## 9. Execution and Effective Date

(a) This MoU will come into effect on the date that all of the following requirements are met:

i. the MoU is signed by all of the Parties;

ii. in the case of the AMF, governmental approval is obtained, and the MoU is signed by the Minister or its authorized representative; and

iii. in the case of the OSC, on the date determined in accordance with applicable legislation.

(b) This MoU may be executed and delivered by the Parties in one or more counterparts, each of which when so executed and delivered will be deemed to be the original, and those counterparts will together constitute one and the same instrument.

**Bank of Canada**

Per: “Tiff Macklem”
Title: Governor
Signed this 14th day of June, 2021.

**Ontario Securities Commission**

Per: “D. Grant Vingoe”
Title: Chair and Chief Executive Officer
Signed this 20th day of October, 2021.

**Autorité des marchés financiers**

Per: “Louis Morisset”
Title: President and Chief Executive Officer
Signed this 18th day of August, 2021.

**Intervention**

The Minister responsible for Canadian Relations and the Canadian Francophonie, represented by the Associate General Secretary for Canadian Relations, takes part herein pursuant to the first paragraph of section 3.8 of An Act respecting the Ministère du Conseil exécutif (R.S.Q., chapter M-30), acknowledges the undertakings set out in this MoU and declares to be satisfied therewith.

Per: “Gilbert Charland”
Title: Associate General Secretary for Canadian Relations, Government of Québec
Signed this 18th day of August, 2021

**British Columbia Securities Commission**

Per: “Brenda Leong”
Title: Chair and Chief Executive Officer
Signed this 6th day of October, 2021.

**Schedule 1**

## Regulated Systems

The following clearing and settlement systems and their operators are Regulated Systems within the meaning of the Memorandum of Understanding Respecting the Resolution of Certain Clearing and Settlement Systems among the Bank, the OSC, the AMF and the BCSC:

- CDSX, operated by CDS Clearing and Depository Services Inc.; and
- Canadian Derivatives Clearing Service (CDCS), operated by Canadian Derivatives Clearing Corporation.