

**MEMORANDUM OF UNDERSTANDING FOR
THE CONFIDENTIALITY OF INFORMATION**

among:

**Bank of Canada (the “Bank”)
Office of the Superintendent of Financial Institutions (“OSFI”)
Department of Finance Canada (the “Department of Finance”)
Alberta Securities Commission (the “ASC”)
Autorité des marchés financiers (the “AMF”)
British Columbia Securities Commission (the “BCSC”)
Ontario Securities Commission (the “OSC”)
(each an “Agency” and collectively, the “Agencies”)**

and

**Additional HOA Agencies and Sub-HOA Committee Members who accede to this MOU by
signing a Letter of Adherence
(together with the Agencies, collectively, the “Parties” and each a “Party”)**

PREAMBLE

- A. The Heads of Regulatory Agencies Committee (the “**HOA**”) is an informal, non-statutory committee, whose members consist of the heads of the Agencies. As set out in its Terms of Reference, the objective of the HOA is to share information and perspectives on emerging regulatory issues, financial system trends and broad market developments that cut across functional responsibilities of the Agencies.
- B. In support of such objective, the HOA may establish, from time to time, working groups and sub-committees, consisting of representatives of Sub-HOA Committee Members (as defined hereinafter), for the purposes of, *inter alia*, facilitating information sharing and collaboration on mandate-specific topics and issues and advising and reporting to the HOA thereon (each, a “**Sub-HOA Committee**”).
- C. For the purpose of pursuing the objective of the HOA and a Sub-HOA Committee, as the case may be, the Parties intend to collaborate and share information in accordance with their own independent mandates and subject to their confidentiality obligations at regularly scheduled meetings or on an *ad hoc* basis through communications conducted by telephone, email, in-person meetings or meetings held by electronic means (collectively, “**HOA Consultations**” or “**Sub-HOA Consultations**, as applicable).
- D. The Parties acknowledge that access to information legislation in each Canadian jurisdiction applies to all records as defined in the relevant legislation. While such legislation varies from one jurisdiction to another, all jurisdictions allow the head of a government institution to

refuse to disclose any record if it was obtained in confidence from another government or an institution thereof. In some jurisdictions, the refusal to disclose information is discretionary rather than mandatory.

- E. The Parties further recognize that each Party routinely engages in discussions with various federal, provincial, and territorial governmental ministries, departments and agencies and exchanges opinions, documents and correspondence with such bodies on the clear understanding that the information is to be treated as confidential.
- F. Because of the foregoing, the Parties acknowledge that the exchange of information among them must be done in the strictest confidence, failing which the objectives of the HOA or a Sub-HOA Committee, as the case may be, would be negatively impacted.
- G. The Parties wish to set out in this Memorandum of Understanding (this “**MOU**”) their mutual understanding regarding the sharing of confidential information among them.

THE PARTIES CONFIRM THE FOLLOWING UNDERSTANDINGS:

1. DEFINITIONS

For the purposes of this MOU, in addition to the definitions set forth in the Preamble, the following terms have the meaning ascribed to them in this Section 1.

- 1.1. “**Additional HOA Agency**” means any federal, provincial or territorial governmental or regulatory agency, commission, authority, institution or body the head of which becomes a member of the HOA; for greater certainty, upon its adherence to this MOU in accordance with the terms hereof, an Additional HOA Agency will thereafter be defined as and considered to be an Agency.
- 1.2. “**Confidential Information**” means any verbal or written information, whether marked as “confidential” or not, other than Excluded Information, that is produced, received or accessed by a Party at any HOA Consultation or any Sub-HOA Consultation or otherwise through its participation in the HOA or any Sub-HOA Committee.
- 1.3. “**Excluded Information**” means information that a Recipient can duly evidence that: (a) at the time of its receipt, is or becomes generally available to the public through no act or failure to act on its part; (b) is lawfully disclosed to the Recipient by a third party without restrictions concerning the confidentiality of such information; (c) is lawfully in the possession of the Recipient prior to disclosure by other Parties; or (d) is developed independently by the Recipient with no access to Confidential Information.
- 1.4. “**Letter of Adherence**” means a letter, in a form satisfactory to the Agencies, that an Additional HOA Agency or a Sub-HOA Committee Member that is not a party to this

MOU signs and delivers to the Bank (in its capacity as Chair of the HOA) pursuant to which it confirms that it will adhere to this MOU as a Party hereof. The Letter of Adherence will include such other specifications as reasonably required by the Agencies. An illustrative form of Letter of Adherence is attached to this MOU as Schedule A.

- 1.5. **“Recipient”** means a Party that receives or is otherwise given access to Confidential Information.
- 1.6. **“Sub-HOA Committee Member”** means any Agency or other person that is a member of a Sub-HOA Committee whose adherence to this MOU is required by the Agencies.

2. PROTECTION OF CONFIDENTIAL INFORMATION

- 2.1. Each Party confirms that it has adopted reasonable policies and procedures to protect its own confidential and proprietary information.
- 2.2. Each Party confirms that it will protect and keep confidential any Confidential Information disclosed to it by the other Parties, to the extent permitted by applicable law, by using at least a standard of care that the Party would be reasonably expected to employ for its own confidential and proprietary information.
- 2.3. The onward sharing of Confidential Information to a third party by a Recipient is permitted (i) where required by law, (ii) where the Recipient considers it advisable and is satisfied that the third party will keep the Confidential Information confidential, or (iii) with the prior written consent of the Part(y/ies) from whom the Recipient obtained the Confidential Information. If the information relates to a matter that the Recipient has identified as being urgent, such consent may be given in any form, including verbally, provided that it is confirmed in writing as soon as possible following the giving of consent. If such consent is not obtained, the Recipient and the relevant Parties will consult to discuss the reasons for withholding consent and the circumstances, if any, under which disclosure to the person or entity might be allowed.
- 2.4. In the event that a Recipient is required by statute or by legal process (including, without limitation, access to information legislation and discovery process relating to judicial or administrative proceedings) to disclose to a third party Confidential Information that has been provided in accordance with this MOU, this Recipient will, to the extent permitted by law, promptly notify the Part(y/ies) that originated the Confidential Information, indicating what information it is required to release and the circumstances surrounding its release. If requested by such Part(y/ies), the Recipient will make reasonable efforts to preserve the confidentiality of the Confidential Information to the extent permitted by law.

- 2.5. Each Party will notify the other Parties of any violation or suspicion or threat of violation of the understandings set forth in this MOU forthwith upon becoming aware of such violation, suspicion or threat of violation.

3. INTERPRETATION

- 3.1. The provisions of this MOU are not intended to create legally binding rights or obligations nor to modify or supersede domestic law, including any confidentiality or security of information obligation applicable to a Party. For avoidance of doubt, (i) this MOU does not confer upon a Party any right to obtain information from the other Parties; and (ii) this MOU does not create any obligation unto a Party to disclose information or to update any information previously provided.
- 3.2. The provisions of this MOU are not intended to, and do not modify, supersede, nor interfere with the power, mandate and responsibilities of the Agencies prescribed by their respective legislation.
- 3.3. The provisions of this MOU are not intended to interfere with the respective jurisdictions of the Parties.

4. AMENDMENT OF THIS MOU

- 4.1. This MOU may be amended from time to time as mutually agreed upon in writing by all Parties. Any amendment is subject to ministerial approval in Alberta and Ontario and to governmental approval and ministerial signature in Québec, as required by law.
- 4.2. Any amendment to this MOU pursuant to Section 4.1 will be deemed to have been incorporated into this MOU.
- 4.3. Except as regards the Autorité des marchés financiers or any other governmental or para-governmental body from Québec, a Letter of Adherence that is signed and delivered by an Additional HOA Agency or a Sub-HOA Committee Member in accordance with this MOU will not be deemed an amendment to this MOU.

5. WITHDRAWAL FROM THE MOU

- 5.1. A Party may at any time withdraw from this MOU upon giving the other Parties at least thirty (30) days prior written notice. During the notice period, a Party wishing to withdraw from this MOU will collaborate with the other Parties to determine such Party's subsequent participation in the HOA or the relevant Sub-HOA Committees, as

the case may be, and the policies and procedures it will adopt to protect any Confidential Information disclosed to it in the course of such participation.

5.2. A Party that withdraws from this MOU will continue to treat Confidential Information that it obtained prior to its withdrawal in the manner set out in this MOU.

5.3. If a Party withdraws from this MOU, the MOU will remain in effect between the remaining Parties.

6. EXECUTION AND EFFECTIVE DATE

6.1. With respect to the Agencies, this MOU will come into effect on the date that all of the following requirements are met:

- a) the MOU is signed by all Agencies;
- b) in the case of the AMF, governmental approval is obtained, and the MOU is signed by the Minister responsible for Canadian Relations and the Canadian Francophonie;
- c) in the case of the ASC and OSC, on the date determined in accordance with applicable legislation.

6.2. Subject to sections 4.1 and 4.3, with respect to an Additional HOA Agency or a Sub-HOA Committee Member, this MOU will come into effect on the date when the Letter of Adherence provided by such member becomes effective in accordance with its terms.

[Signature pages follow]

BANK OF CANADA

Per: “Tiff Macklem”

Title: Governor, Bank of Canada

Date: February 28, 2022

**OFFICE OF THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

Per: “Peter D. Routledge”

Title: Superintendent of Financial Institutions

Date: February 28, 2022

DEPARTMENT OF FINANCE CANADA

Per: “Isabelle Jacques”

Title: Assistant Deputy Minister

Date: March 8, 2022

ALBERTA SECURITIES COMMISSION

Per: “Stan Magidson”

Title: Chair and Chief Executive Officer

Date: March 1, 2022

AUTORITÉ DES MARCHÉS FINANCIERS

Per: “Louis Morisset”

Title: President and Chief Executive Officer

Date: February 23, 2022

BRITISH COLUMBIA SECURITIES COMMISSION

Per: “Brenda M. Leong”

Title: Chair and Chief Executive Officer

Date: March 3, 2022

ONTARIO SECURITIES COMMISSION

Per: “D. Grant Vingo”

Title: Chief Executive Officer

Date: April 29, 2022

Intervention

The Minister responsible for Canadian Relations and the Canadian Francophonie, represented by the Associate General Secretary of the Secrétariat du Québec aux relations canadiennes, takes part herein pursuant to the first paragraph of section 3.8 of *An Act respecting the Ministère du Conseil exécutif* (R.S.Q., c. 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

Date: February 28, 2022

SCHEDULE A

ILLUSTRATIVE FORM OF LETTER OF ADHERENCE

[LETTERHEAD OF ADDITIONAL HOA AGENCY OR SUB-HOA COMMITTEE MEMBER]

[*date*]

Heads of Regulatory Agencies Committee (the “**HOA**”)
c/o Bank of Canada
234 Wellington St.
Ottawa, Ontario
K1A 0G9

Attention: Chair of the HOA

Re: Adherence to the Memorandum of Understanding for the Confidentiality of Information

Reference is made to the Memorandum of Understanding for the Confidentiality of Information first made as of [*date*] among the Bank of Canada, the Office of the Superintendent of Financial Institutions, the Department of Finance Canada, the Alberta Securities Commission, the Autorité des marchés financiers, the British Columbia Securities Commission, the Ontario Securities Commission and the Additional HOA Agencies and Sub-HOA Committee Members that adhere thereto from time to time (the “**MOU**”). Capitalized terms used herein and defined in the MOU have the meanings ascribed thereto in the MOU.

[*Name of the adhering Additional HOA Agency or Sub-HOA Committee Member*] hereby confirms that it will adhere to the terms of the MOU as a Party thereof.

This Letter of Adherence will become effective and [*Name of the adhering Additional HOA Agency or Sub-HOA Committee Member*] will become a Party to the MOU as of the date of signature of this Letter of Adherence.

Yours truly,

[*Name of the adhering Additional HOA Agency or Sub-HOA Committee Member*]

Per: _____

Name: _____

Title: _____

Date: _____