



MEMORANDUM OF UNDERSTANDING

BETWEEN THE

OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA

AND THE

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

CONCERNING MUTUAL COOPERATION

1. The Office of the Superintendent of Financial Institutions Canada (OSFI) and the Australian Prudential Regulation Authority (APRA) (collectively, the Authorities) have reached the following understanding in order to establish an arrangement for the sharing of information to facilitate the performance of their respective duties and to promote the safe and sound functioning of financial institutions with cross-border establishments in their respective countries.
2. The Authorities express, through this Memorandum, their willingness to cooperate with each other on the basis of mutual trust and understanding in the supervision of cross-border establishments within their respective jurisdictions. A cross-border establishment is defined as a branch, a subsidiary or any other entity of a bank or insurer supervised by one Authority (the host Authority), which gives rise to the need for consolidated or group-wide supervision by the other Authority (the home Authority).

The Authorities

3. The OSFI was established in July 1987 by the *Office of the Superintendent of Financial Institutions Act* (OSFI Act). Under this Act, the OSFI is responsible for regulating and supervising all federally chartered, licensed or registered banks, insurance, trust and loan companies, cooperative credit associations and fraternal benefit societies in Canada. The Superintendent reports to the Minister of Finance.

4. APRA is the national prudential regulator in Australia, established on 1 July 1998 under the *Australian Prudential Regulation Act 1998* (the APRA Act). APRA administers legislation providing for the supervision of authorised deposit-taking institutions (banks, building societies and credit unions), insurance/reinsurance companies, friendly societies and superannuation funds licensed or registered by APRA to operate in Australia.

Scope and General Principles

5. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws.

6. The Authorities will, within the framework of this Memorandum of Understanding, provide each other with all reasonable assistance to promote the safe and sound functioning of financial institutions.

7. The Authorities recognise the importance and desirability of mutual assistance and exchange of information. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, the provision of or request for information under this Memorandum may be denied on the grounds of national security or when disclosure would interfere with an ongoing investigation. 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.

8. Requests for assistance will be made in writing by designated employees of the Authority and will be addressed to the requested Authority's contact persons (Annex B). However, where the Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing, within 10 business days.

Sharing of Information

9. Information-sharing includes contact during the authorisation and licensing process, in the supervision of the on-going activities of such entities and in the handling of problem institutions.

10. In connection with the authorisation process:

- (a) the host Authority should notify the home Authority, without delay, of applications for approval to establish cross-border establishments or make acquisitions in the host jurisdiction;
- (b) upon request, the home Authority should inform the host Authority whether the applicant is in substantial compliance with applicable laws and regulations and whether it may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home Authority should also, upon request, assist the host Authority with verifying or supplementing any information submitted by the applicant;
- (c) upon request, the home Authority should inform the host Authority about the nature of its regulatory system and the extent to which it will conduct consolidated or group-wide supervision over the applicant. Similarly, the host Authority should inform the home Authority about the nature of its regulatory system and the extent to which it will supervise the cross-border establishment of the applicant; and

- (d) to the extent permitted by law, the home and host Authorities should share information on the fitness and propriety of prospective directors and managers of a cross-border establishment.

11. In connection with the on-going supervision of their cross-border establishments, the Authorities intend to:

- (a) provide relevant information to their counterpart, in a timely manner and to the extent reasonable, regarding material developments or supervisory concerns in respect of the operations of a cross-border establishment;
- (b) respond to requests for information on their respective national regulatory systems and inform each other about major changes, in particular those which have a significant bearing on the activities of cross-border establishments;
- (c) inform their counterpart of material administrative penalties imposed, or other formal enforcement action taken, against a cross-border establishment or its management. Prior notification of such action shall be given, as far as practicable and subject to applicable laws; and
- (d) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

On-site Inspections

12. The Authorities agree that co-operation is particularly useful in assisting each other in carrying out on-site inspections of cross-border establishments. The host Authority will co-operate with the home Authority, as far as practicable, to conduct on-site inspections of authorised institutions in the host jurisdiction. Prior to deciding whether an on-site examination is necessary, the Authorities should review any relevant examination or other supervisory reports prepared by the other Authority.

13. The home Authority will notify the host Authority of plans to examine a cross-border establishment or to appoint a third party to conduct an examination on its behalf, in the host jurisdiction and to indicate the purposes and scope of the examination. The host Authority reserves the right to accompany the home Authority on such an examination. The Authorities will keep each other informed on the results of the inspections, if of interest to the host Authority, to the extent reasonable and in a timely manner.

Protection of Information

14. The Authorities recognise that mutual trust can only be achieved if exchanges of information can flow with confidence in both directions. The Authorities agree to use their best endeavours to preserve the confidentiality of the information received. In this regard, employees of both Authorities are bound to hold confidential all information obtained in the course of their duties. Any confidential information received from the other Authority will be used exclusively for lawful supervisory purposes and will not be disclosed except as set out below.

15. An Authority that has received confidential information from the other Authority may subsequently receive a request (not legally enforceable) for that information from a third party, including a third party supervisory authority, who has a legitimate common interest in the matter. Prior to passing information to the third party, the Authority will consult with and

obtain agreement from the Authority that originated the information, who may attach conditions to the release of information, including that the third party recipient be bound to hold the information confidential.

16. In the event that an Authority is legally compelled to disclose to a third party, including a third party supervisory authority, information that has been provided in accordance with this Memorandum, this Authority will promptly notify the Authority that originated the information, indicating what information it is compelled to release and the circumstances surrounding its release. If so required by the originating Authority, the requesting Authority will use its best endeavours to preserve the confidentiality of the information to the extent permitted by law. The Authorities will inform one another of the circumstances in which they may be subject to legal compulsion to release information obtained.

17. Notwithstanding Section 15, the Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies set out in Annex C to this document, and confirm that in their respective jurisdictions these agencies are required by legislation to maintain the confidentiality of such information.

Financial Crime

18. The Authorities intend to co-operate as closely as possible, given their respective responsibilities, when they identify suspected financial crime activities in supervised financial institutions and financial transactions. For the purposes of this Memorandum, financial crimes include unauthorised banking, investment or insurance business and all other violations of law governing financial markets.

On-going Co-ordination

19. The Authorities will conduct meetings, as appropriate, to discuss issues concerning financial institutions that maintain cross-border establishments in the respective jurisdictions (Annex A) and to review the effectiveness of co-operation arrangements. APRA and OSFI also intend, where practical, to promote their co-operation by visits for informational purposes.

20. Unless otherwise agreed, all initial communications between the Authorities will be directed to the principal contact persons set out in Annex B.

Modifications and Term

21. The understandings in this Memorandum will commence on the later of the two days written below and shall continue indefinitely subject to modification by the mutual consent of the Authorities or termination by either party with 30 days advance notice in writing. After termination, the confidentiality provisions shall continue to apply to any information provided under this Memorandum prior to termination.

22. Annexes A, B and C will be reviewed at least annually and reconfirmed or amended as necessary to ensure that the information therein remains current.

On behalf of:

The Australian Prudential Regulation Authority

By: 

Dated: 7 March 2007

Dr John Laker, Chairman

The Office of the Superintendent of Financial Institutions Canada

By: 

Dated: March 23, 2007

Robert Hanna, Acting Assistant Superintendent, Regulation Sector

OSFI/APRA MoU

(@ March 2007)

Cross-Border Establishments (CBEs)¹

Canadian CBEs Supervised in Australia by APRA

- Toronto Dominion Australia Ltd.
- RBC Global Services Australia Ltd.

Australian CBEs Supervised in Canada by OSFI

- N/A

¹ *Cross-border establishment means a branch, a subsidiary or any other entity supervised in and by the host jurisdiction which gives rise to the need for consolidated supervision by the home supervisor.*

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Related Government Agencies

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The Authorities acknowledge that confidential information, including information they receive from each other, may be required by legislation to be passed to related government agencies or persons set out below, and that these agencies and persons are required by legislation to maintain the confidentiality of such information. Confidential information passed to those listed below are exempted from the notification provisions of Section [15] of the MoU.

Office of the Superintendent of Financial Institutions Canada²

- Commissioner of the Financial Consumer Agency of Canada
- Governor of the Bank of Canada
- Chairperson of the Canada Deposit Insurance Corporation
- Deputy Minister of Finance.

Australian Prudential Regulation Authority

- N/A

² All are members of the Financial Institutions Supervisory Committee (FISC), a statutory body authorized under the OSFI Act chaired by the Superintendent of Financial Institutions.