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# B. Ontario Securities Commission

## B.1 Notices

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### B.1.1 Notice of Memorandum of Understanding concerning Cooperation and Exchange of Information between Ontario Securities Commission and New York State Department of Financial Services

**NOTICE OF MEMORANDUM OF UNDERSTANDING  
CONCERNING COOPERATION AND EXCHANGE OF INFORMATION  
BETWEEN  
ONTARIO SECURITIES COMMISSION  
AND  
NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

**March 16, 2023**

The Ontario Securities Commission (“OSC”) has entered into a Memorandum of Understanding (the “MOU”) with the New York State Department of Financial Services (“NYSDFS”) to support both informal consultations and formal cooperation between the parties, as well as to facilitate the exchange of non-public information in accordance with applicable laws. The OSC entered into the MOU on March 3, 2023.

The MOU sets forth the understandings that will apply in order to preserve the confidential nature of information that is shared between the parties in the course of fulfilling their respective examination, enforcement, licensing, regulatory, or supervisory responsibilities.

Questions may be referred to:

Gloria Tsang  
Senior Legal Counsel  
Compliance and Registrant Regulation  
1-416-593-8263  
[gtsang@osc.gov.on.ca](mailto:gtsang@osc.gov.on.ca)

Conor Breslin  
Advisor  
Global and Domestic Affairs  
1-416-593-8112  
[cbreslin@osc.gov.on.ca](mailto:cbreslin@osc.gov.on.ca)

**MEMORANDUM OF UNDERSTANDING  
CONCERNING COOPERATION AND EXCHANGE OF INFORMATION  
BETWEEN  
ONTARIO SECURITIES COMMISSION  
AND  
NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

Article 1: Purpose and Scope

1. This Memorandum of Understanding (“Memorandum”) is entered into between the Ontario Securities Commission (“OSC”) and the New York State Department of Financial Services (“NYSDFS”) (each a “party”) and is intended to support both informal consultations and formal cooperation between the parties, as well as to facilitate the exchange of non-public information in accordance with applicable laws. It sets forth the understandings that will apply in order to preserve the confidential nature of information that is shared between the parties in the course of fulfilling their respective examination, enforcement, licensing, regulatory, or supervisory responsibilities.
2. To the extent permitted by applicable law, it is the intention of both parties that legal exemptions and privileges that establish or support the confidentiality of provided information will not be waived or compromised when information is shared between the parties. These assurances regarding the preservation of the confidential nature of shared information can serve to promote greater communication and coordination between the parties and thereby enhance their effectiveness and efficiency in carrying out their respective responsibilities.
3. It is not intended, however, that this Memorandum will:
  - a. Limit or waive the discretion of either party to determine whether information in its possession will be provided to the other;
  - b. Modify or alter the respective legal authority of either party to fulfill its examination, enforcement, licensing, regulatory, or supervisory responsibilities;
  - c. Create any direct or indirect legally enforceable rights or binding obligations for either party or any third party; or
  - d. Prevent either party from taking examination, enforcement, licensing, regulatory, or supervisory action against any person or company.

Article 2: Non-Public Information

4. When one party provides non-public information pursuant to this Memorandum to the other party, the party providing such information shall be designated a “Providing Party” and the party receiving such information shall be designated a “Receiving Party.” Requests for the provision of non-public information including the basis for such requests shall be made in writing. The Receiving Party shall maintain the confidentiality of such information in accordance with the terms of this Memorandum, unless and until the Providing Party designates otherwise in writing.

Article 3: Use of Non-Public Information

5. Non-public information obtained by the Receiving Party will remain the property of the Providing Party. Accordingly, the Receiving Party:
  - a. Will use the non-public information it obtains only for purposes described in the written request submitted to the Providing Party and directly related to the exercise of its examination, enforcement, licensing, regulatory and supervisory authority;
  - b. Will not disclose non-public information to any third party without the prior written consent of the Providing Party, except as required by law and described below; and
  - c. Will not, without the prior provision of notice to, and consultation with, the Providing Party, take any action that will affect the rights of any person on the basis of non-public information obtained from the Providing Party, except no notice or consultation is required where the request for the non-public information from the Receiving Party identified this intended use.

6. As required by law, it may become necessary for the OSC to share non-public information obtained under this Memorandum with the Ministry of Finance - Ontario. In such circumstances and to the extent permitted by law:
  - a. The OSC will notify the NYSDFS; and
  - b. Prior to the OSC sharing the non-public information, the OSC will provide adequate assurances to the NYSDFS concerning the Ministry of Finance's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The Ministry of Finance 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 Ministry of Finance with other parties unless:
      - A. The Ministry of Finance is required to do so by law; or
      - B. The NYSDFS has provided prior written consent.

Article 4: Preservation of Confidential and Privileged Status

7. To the extent permitted by applicable law, the Receiving Party will take all reasonable actions necessary to preserve and protect the confidential and privileged status of non-public information (as well as requests made under this Memorandum and the contents of such requests and any related communications), including those to:
  - a. Restrict access to non-public information to only those of its officers, employees, or agents (including outside counsel, accountants, and consultants) who have a *bona fide* need for such information in carrying out the Receiving Party's examination, enforcement, licensing, regulatory, and supervisory responsibilities;
  - b. Inform its officers, employees, or agents who are provided access to such non-public information of the Receiving Party's responsibilities under this Memorandum; the Receiving Party will ensure that its officers, employees or agents who are provided access to such non-public information are bound by obligations to maintain the confidentiality of such information in compliance with relevant laws, regulations and requirements or contractual obligations; and
  - c. Establish such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any non-public information obtained from the Providing Party.
8. If the Receiving Party is served with a Freedom of Information request, subpoena, or order of a court, adjudicatory body or legislative body, or other similar legal process that purports to compel production of non-public information, the Receiving Party will:
  - a. Unless prohibited by law, immediately notify the Providing Party and provide to it copies of such Freedom of Information request, subpoena, order or the request under the other legal process, including all attachments;
  - b. Consult with the Providing Party to allow the Providing Party to the extent possible to preserve, protect, and maintain the confidentiality of such information or any related privileges;
  - c. Cooperate fully with the Providing Party to preserve, protect, and maintain the confidentiality of such information or any related privileges;
  - d. Make every effort to preserve the confidentiality of the confidential information to the extent permitted by law.
9. Nothing in this Memorandum shall prevent the Receiving Party from complying with a legally valid and enforceable subpoena or order of a court, adjudicatory body, or legislative body of competent jurisdiction that compels production of non-public information, provided that the Receiving Party:
  - a. Has considered the preservation, protection, and maintenance of the confidentiality of such non-public information or any related privileges,
  - b. Has consulted with the Providing Party to the extent possible, and
  - c. Immediately notifies the Providing Party of its intent to comply with the order and of any actions taken in compliance with the order.

## **B.1: Notices**

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### Article 5: Authority

10. Each party represents that it has authority to enter into this Memorandum. In the event of any material change in a party's authority to either enter into this Memorandum or maintain the confidentiality of non-public information provided by the other, written notification will be provided to the other party within ten (10) calendar days of any such change.

### Article 6: Execution and Effective Date

11. This Memorandum may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same agreement. This Memorandum shall become effective on the date of the latest signature date on this document and shall remain effective until terminated, and may be revised or modified, upon mutual agreement of the parties.

### Article 7: Termination

12. Either party may terminate this Memorandum with respect to the prospective sharing of information by providing thirty (30) calendar days' advance written notice to the other party. In the event of termination, the non-public information provided or obtained pursuant to this Memorandum will remain confidential and continue to be governed by the terms of this Memorandum.

### Article 8: Liaison

13. As soon as practicable after execution of this Memorandum, as set out in Appendix A, each party will advise the other of the name, title, and contact information, including email addresses and telephone numbers, for the appropriate official(s) to contact for purposes of notices and exchanges of information. This contact information will be updated as appropriate.

### Article 9: Effect on Other Agreements

14. This Memorandum is not intended to supersede or replace any other agreement.

## **ONTARIO SECURITIES COMMISSION**

"Grant Vingoe"  
Chief Executive Officer  
Date: March 3, 2023

## **NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

"Peter Marton"  
Deputy Superintendent of Virtual Currency  
Date: March 1, 2023

**Appendix A: Contact Details**

**ONTARIO SECURITIES COMMISSION**

Dena Staikos  
Manager, Compliance and Registrant Regulation  
20 Queen Street West, 22nd Floor  
[dstaikos@osc.gov.on.ca](mailto:dstaikos@osc.gov.on.ca)  
1-416-593-8058

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

Peter Holmes  
Director Financial Services Programs  
One State Street, 7-087, New York, NY 10004  
[peter.holmes@dfs.ny.gov](mailto:peter.holmes@dfs.ny.gov)  
1-646-343-3163