

## TRANSFER PROVISIONS OF BANK MOU TO FSA

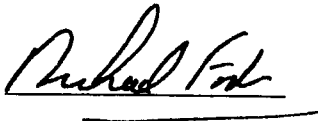
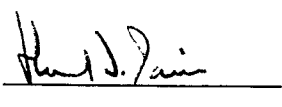
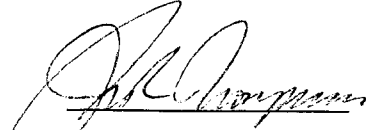
A Memorandum of Understanding was entered into between the Bank of England (the "Bank") and the Office of the Superintendent of Financial Institutions (together constituting the "Authorities") on June 17, 1997. This provided for the sharing of supervisory information to facilitate the performance of the authorities' respective duties relating to banking supervision.

The Authorities recognise that the Bank's responsibilities for supervising banks, listed money market institutions and related clearing houses will be transferred in 1998 to the Financial Services Authority (the FSA, previously known as the Securities and Investments Board). The transfer of banking supervision will take place following enactment of the Bank of England Bill, which will make consequential changes to the Banking Act 1987. The Bill received Royal Assent in April and the FSA will acquire its new powers to supervise banks on 1 June 1998.

The purpose of this side-agreement is to ensure that the co-operation provided for under the Memorandum of Understanding agreed between the Bank and the Office of the Superintendent of Financial Institutions (OSFI) on June 17, 1997 will continue after the transfer of banking supervision from the Bank to the FSA. The provisions of the MoU will, from the time of that transfer, cease to apply between the Bank and OSFI and continue in effect between the FSA and OSFI. From that date, all references to the Bank in the MoU should be taken as references to the FSA in its capacity as supervisor of banks under the Banking Act 1987 as amended.

The scope of this agreement is confined to ensuring continuity in the arrangements for sharing supervisory information between OSFI and the FSA in its future capacity as banking supervisor. Insofar as the FSA has existing MoUs with overseas regulators, including some banking supervisors, in relation to investment business, they will continue in existence for that purpose.

Following the transfer of banking supervision to the FSA, further legislation will be introduced under which the FSA will eventually become the single statutory financial regulator in the UK (the FSA already exercises statutory responsibilities in relation to the regulation of investment business). It may then be appropriate to discuss the need for a revised single MoU between OSFI and the FSA, taking into account the latter's wider responsibilities.

Signed on behalf of:	Bank of England	Financial Services Authority	Office of the Superintendent of Financial Institutions
by	Michael Foot	Howard Davies	John Thompson
Signature			
Date	<u>18 May 1998</u>	<u>18/5/98</u>	<u>29/5/98</u>



May 29, 1998

By fax: 171 601 4352 (original by mail)

*7/17 4/6*

Mr Paul Wright  
Head of North America & Japan Division  
Supervision & Surveillance  
Bank of England  
London EC2R 8AH  
England

*Maxwell  
4/6*

Dear Mr Wright,

I have pleasure in returning, on behalf of John Thompson, one signed copy of the Side Letter amending our Memorandum of Understanding.

Sincerely,

A S Maxwell  
Director  
International Liaison Division

17-12

## **MEMORANDUM OF UNDERSTANDING**

As a number of banking organizations incorporated in Canada and the United Kingdom have significant operations in each of the respective jurisdictions, the Office of the Superintendent of Financial Institutions (the "Office") and the Bank of England (the "Bank") have reached the following understanding in order to establish an arrangement for the sharing of supervisory information to facilitate the performance of their respective duties:

### **SHARING OF INFORMATION**

1 The Office will endeavour to notify the Bank and provide relevant information regarding a material supervisory concern that it has with respect to:

- (a) a UK banking organization or a Canadian branch, agency, representative office (collectively, "branch") or subsidiary of a UK banking organization; and
- (b) a UK branch or subsidiary of a Canadian banking organization.

2 The Bank will endeavour to notify the Office and provide relevant information regarding a material supervisory concern that it has with respect to:

- (a) a Canadian banking organization or a UK branch or subsidiary of a Canadian banking organization; and
- (b) a Canadian branch or subsidiary of a UK banking organization.

3 The term "material supervisory concern" encompasses any matter relating to (a) whether the operations of a banking organization are conducted in a safe and sound manner and substantially in conformity with applicable prudential standards; (b) evidence of a violation of law of such a nature as potentially to affect in a significant manner the operations of a banking organization; or (c) any activity, action, course of conduct or other event that could have a significant adverse effect on the financial stability of financial institutions in the country of the other authority, including an activity, action, course of conduct or other event involving an affiliate or associate of a banking organization.

4 Where the Office or Bank plans to take remedial action to address a material supervisory concern, each authority will endeavour to notify the other prior to it taking the appropriate action, or, as circumstances dictate, as soon thereafter as practicable.

5 In carrying out the undertakings of any of paragraphs 1(b), 2(b) and 4 in the case of a Canadian or UK banking organization facing serious financial difficulties that could have a material adverse impact on the operations of such banking organization in the respective host country, the Office and the Bank recognize that close liaison between home and host authorities would be mutually advantageous. The Office and the Bank will endeavour to communicate such information as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts by the home country authority to resolve the bank's difficulties and restore confidence in the bank. In such circumstances, the Office and the Bank understand that, subject to final agreement at the time, the home authority will also co-ordinate the dissemination to other host authorities of whatever information it judges appropriate, subject to the provisions of paragraphs 15-21 below.

6 In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the Office signed by an authorized official of the Bank, the Office may, to the extent permitted by law, provide to the Bank information contained in reports of examination or inspection of Canadian branches or subsidiaries of UK banking organizations; and any other confidential information regarding a UK banking organization or any of its branches and subsidiaries in Canada that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.

7 In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the Bank signed by an authorized official of the Office, the Bank may, to the extent permitted by law, provide to the Office information contained in any reports concerning UK branches or subsidiaries of Canadian banking organizations; and any other confidential information regarding a Canadian banking organization or any of its branches and subsidiaries in the UK that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.

8 When the Office or the Bank perceives a need for expedited action, requests for information under paragraphs 6 and 7 may be initiated in any form, including orally, but shall be confirmed subsequently in writing. The recipient of such a request will endeavour to respond in a timely manner.

9 The Office and the Bank undertake to provide to each other, either upon request or at such times as they may mutually agree: (a) such information as is reasonably required by the other to facilitate a determination whether a proposed branch or subsidiary meets or continues to meet the requirements for authorization; (b) information regarding the extent and nature of each authority's supervision on a consolidated basis of banking organizations with operations in the other country; and (c) information concerning material changes in or developments with respect to each authority's supervisory regime.

10 The provision of, or request for, information under this Memorandum may be denied: (a) where compliance would require the Bank or the Office to act in a manner that would violate applicable law or any agreement entered into before the date of this Memorandum; (b) on grounds of public interest or national security; or (c) when compliance with a request for information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

### **ANNUAL MEETING**

11 Representatives of the Bank and the Office will endeavour to meet at least annually to discuss general supervisory developments as well as issues concerning banking organizations which maintain operations in both Canada and the United Kingdom. In addition, every effort will be made to encourage continuous and informal contacts between staff at the Bank and the Office.

### **EXAMINATIONS OR INSPECTIONS**

12 The Office will notify the Bank of plans to examine any branch or subsidiary of a Canadian banking organization located in the United Kingdom and the Bank will notify the Office of plans to inspect any branch or subsidiary of a UK banking organization in Canada. The authority in the country where such examinations or inspections are to take place may inform the examining or inspecting authority of any subject matter in which it has a particular concern or interest.

13 The Bank may request on an exceptional basis the Office to conduct an examination of the Canadian offices of a UK banking organization and the Office may request on an exceptional basis the Bank to conduct an inspection of the UK offices of a Canadian banking organization. The Bank and the Office will endeavour to establish the basis and terms upon which such examinations or inspections shall be conducted.

14 The host authority may accompany the home authority during an examination or inspection of a branch or subsidiary in the host country, subject to consideration and agreement by the Office and the Bank on a case-by-case basis.

#### **CONFIDENTIALITY AND USE OF INFORMATION**

15 Any confidential information shared pursuant to this Memorandum shall be used only to carry out the lawful supervisory purposes of the Office and the Bank.

16 To the extent permitted by law, the Bank shall treat as confidential all such information received from the Office pursuant to this Memorandum and will not disclose such information other than as necessary to carry out its lawful supervisory purposes.

17 To the extent permitted by law, the Office shall treat as confidential all such information received from the Bank pursuant to this Memorandum and will not disclose such information other than as necessary to carry out its lawful supervisory purposes.

18 All documents provided pursuant to this Memorandum shall remain the property of the authority providing such information. Subject to the qualifications below and the provisions of paragraph 19 below, if the Office or the Bank receives any request from a third party for confidential information provided pursuant to this Memorandum, the receiving authority shall notify the providing authority as soon as possible of the request, and shall not disclose such information without the prior consent of the providing authority. Prior consent will not be required, however, for disclosure to any domestic agency or other domestic authority that regulates or supervises financial institutions, for purposes related to that regulation or supervision, if the receiving authority is satisfied that the information will be treated as confidential by the agency or authority to whom it is disclosed.

19 If the Office or the Bank receives any legally enforceable demand for confidential information provided pursuant to this Memorandum, the receiving authority shall promptly notify the providing authority of the demand, and shall co-operate in seeking to preserve the confidentiality of such information.

20 The sharing of confidential information pursuant to this Memorandum is done in reliance on the foregoing assurances and shall not constitute a waiver of any legally cognizable privilege as to any person other than the parties to this Memorandum.

21 The Office and the Bank, in providing confidential written materials pursuant to this Memorandum, shall mark every page of the material provided with a legend reading as follows:

“CONFIDENTIAL - PROVIDED PURSUANT TO OSFI/BOE MEMORANDUM OF UNDERSTANDING”

### **SECURITIES SUBSIDIARIES**

22 Where the Office or the Bank becomes aware of a material supervisory concern in a securities subsidiary, affiliate or associate of a bank or bank subsidiary that it supervises, and where the concern is material to the supervised bank or bank subsidiary, the provisions of this Memorandum apply.

### **GENERAL PROVISIONS**

23 By executing this Memorandum, neither party waives any immunity from suit to which it may be entitled nor submits to the jurisdiction of any court that would not have been a court of competent jurisdiction if this Memorandum had not been executed.

24 No provision of this Memorandum shall give rise to the right on the part of any person, entity or governmental authority other than the Office or the Bank, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum.

25 This Memorandum shall continue in effect for a period of one year from the latest date entered below and shall automatically be renewed each year subject to modification by the mutual consent of the

Office and the Bank, provided, however, that the provisions set forth under the headings "Confidentiality" and "General Provisions" shall not terminate with respect to any information provided or actions taken under this Memorandum prior to its termination.

CONFIRMED:

Office of the Superintendent  
of Financial Institutions

By *[Signature]*  
Deputy Superintendent (Policy)

Dated: *June 17, 1997*

Bank of England

By *[Signature]*  
Deputy Director, Supervision and Surveillance

Dated: *June 17, 1997*



## MEMORANDUM OF UNDERSTANDING

As a number of banking organizations incorporated in Canada and the United Kingdom have significant operations in each of the respective jurisdictions, the Office of the Superintendent of Financial Institutions (the "Office") and the Bank of England (the "Bank") have reached the following understanding in order to establish an arrangement for the sharing of supervisory information to facilitate the performance of their respective duties:

### SHARING OF INFORMATION

1 The Office will endeavour to notify the Bank and provide relevant information regarding a material supervisory concern that it has with respect to:

- (a) a UK banking organization or a Canadian branch, agency, representative office (collectively, "branch") or subsidiary of a UK banking organization; and
- (b) a UK branch or subsidiary of a Canadian banking organization.

2 The Bank will endeavour to notify the Office and provide relevant information regarding a material supervisory concern that it has with respect to:

- (a) a Canadian banking organization or a UK branch or subsidiary of a Canadian banking organization; and
- (b) a Canadian branch or subsidiary of a UK banking organization.

3 The term "material supervisory concern" encompasses any matter relating to (a) whether the operations of a banking organization are conducted in a safe and sound manner and substantially in conformity with applicable prudential standards; (b) evidence of a violation of law of such a nature as potentially to affect in a significant manner the operations of a banking organization; or (c) any activity, action, course of conduct or other event that could have a significant adverse effect on the financial stability of financial institutions in the country of the other authority, including an activity, action, course of conduct or other event involving an affiliate or associate of a banking organization.

4 Where the Office or Bank plans to take remedial action to address a material supervisory concern, each authority will endeavour to notify the other prior to it taking the appropriate action, or, as circumstances dictate, as soon thereafter as practicable.

5 In carrying out the undertakings of any of paragraphs 1(b), 2(b) and 4 in the case of a Canadian or UK banking organization facing serious financial difficulties that could have a material adverse impact on the operations of such banking organization in the respective host country, the Office and the Bank recognize that close liaison between home and host authorities would be mutually advantageous. The Office and the Bank will endeavour to communicate such information as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts by the home country authority to resolve the bank's difficulties and restore confidence in the bank. In such circumstances, the Office and the Bank understand that, subject to final agreement at the time, the home authority will also co-ordinate the dissemination to other host authorities of whatever information it judges appropriate, subject to the provisions of paragraphs 15-21 below.

6 In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the Office signed by an authorized official of the Bank, the Office may, to the extent permitted by law, provide to the Bank information contained in reports of examination or inspection of Canadian branches or subsidiaries of UK banking organizations; and any other confidential information regarding a UK banking organization or any of its branches and subsidiaries in Canada that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.

7 In addition to the procedures outlined in paragraphs 1-5 above, upon written request to the Bank signed by an authorized official of the Office, the Bank may, to the extent permitted by law, provide to the Office information contained in any reports concerning UK branches or subsidiaries of Canadian banking organizations; and any other confidential information regarding a Canadian banking organization or any of its branches and subsidiaries in the UK that is obtained as part of the supervisory process. Such information normally would not include customer account information unless this is of particular relevance to the supervisory concern prompting the request.

8 When the Office or the Bank perceives a need for expedited action, requests for information under paragraphs 6 and 7 may be initiated in any form, including orally, but shall be confirmed subsequently in writing. The recipient of such a request will endeavour to respond in a timely manner.

9 The Office and the Bank undertake to provide to each other, either upon request or at such times as they may mutually agree: (a) such information as is reasonably required by the other to facilitate a determination whether a proposed branch or subsidiary meets or continues to meet the requirements for authorization; (b) information regarding the extent and nature of each authority's supervision on a consolidated basis of banking organizations with operations in the other country; and (c) information concerning material changes in or developments with respect to each authority's supervisory regime.

10 The provision of, or request for, information under this Memorandum may be denied: (a) where compliance would require the Bank or the Office to act in a manner that would violate applicable law or any agreement entered into before the date of this Memorandum; (b) on grounds of public interest or national security; or (c) when compliance with a request for information would interfere with an ongoing investigation in circumstances where the prejudice to the investigation is likely to outweigh the adverse effects of denying the information.

#### **ANNUAL MEETING**

11 Representatives of the Bank and the Office will endeavour to meet at least annually to discuss general supervisory developments as well as issues concerning banking organizations which maintain operations in both Canada and the United Kingdom. In addition, every effort will be made to encourage continuous and informal contacts between staff at the Bank and the Office.

#### **EXAMINATIONS OR INSPECTIONS**

12 The Office will notify the Bank of plans to examine any branch or subsidiary of a Canadian banking organization located in the United Kingdom and the Bank will notify the Office of plans to inspect any branch or subsidiary of a UK banking organization in Canada. The authority in the country where such examinations or inspections are to take place may inform the examining or inspecting authority of any subject matter in which it has a particular concern or interest.

13 The Bank may request on an exceptional basis the Office to conduct an examination of the Canadian offices of a UK banking organization and the Office may request on an exceptional basis the Bank to conduct an inspection of the UK offices of a Canadian banking organization. The Bank and the Office will endeavour to establish the basis and terms upon which such examinations or inspections shall be conducted.

14 The host authority may accompany the home authority during an examination or inspection of a branch or subsidiary in the host country, subject to consideration and agreement by the Office and the Bank on a case-by-case basis.

### **CONFIDENTIALITY AND USE OF INFORMATION**

15 Any confidential information shared pursuant to this Memorandum shall be used only to carry out the lawful supervisory purposes of the Office and the Bank.

16 To the extent permitted by law, the Bank shall treat as confidential all such information received from the Office pursuant to this Memorandum and will not disclose such information other than as necessary to carry out its lawful supervisory purposes.

17 To the extent permitted by law, the Office shall treat as confidential all such information received from the Bank pursuant to this Memorandum and will not disclose such information other than as necessary to carry out its lawful supervisory purposes.

18 All documents provided pursuant to this Memorandum shall remain the property of the authority providing such information. Subject to the qualifications below and the provisions of paragraph 19 below, if the Office or the Bank receives any request from a third party for confidential information provided pursuant to this Memorandum, the receiving authority shall notify the providing authority as soon as possible of the request, and shall not disclose such information without the prior consent of the providing authority. Prior consent will not be required, however, for disclosure to any domestic agency or other domestic authority that regulates or supervises financial institutions, for purposes related to that regulation or supervision, if the receiving authority is satisfied that the information will be treated as confidential by the agency or authority to whom it is disclosed.

19 If the Office or the Bank receives any legally enforceable demand for confidential information provided pursuant to this Memorandum, the receiving authority shall promptly notify the providing authority of the demand, and shall co-operate in seeking to preserve the confidentiality of such information.

20 The sharing of confidential information pursuant to this Memorandum is done in reliance on the foregoing assurances and shall not constitute a waiver of any legally cognizable privilege as to any person other than the parties to this Memorandum.

21 The Office and the Bank, in providing confidential written materials pursuant to this Memorandum, shall mark every page of the material provided with a legend reading as follows:

“CONFIDENTIAL - PROVIDED PURSUANT TO OSFI/BOE MEMORANDUM OF UNDERSTANDING”

### **SECURITIES SUBSIDIARIES**

22 Where the Office or the Bank becomes aware of a material supervisory concern in a securities subsidiary, affiliate or associate of a bank or bank subsidiary that it supervises, and where the concern is material to the supervised bank or bank subsidiary, the provisions of this Memorandum apply.

### **GENERAL PROVISIONS**

23 By executing this Memorandum, neither party waives any immunity from suit to which it may be entitled nor submits to the jurisdiction of any court that would not have been a court of competent jurisdiction if this Memorandum had not been executed.

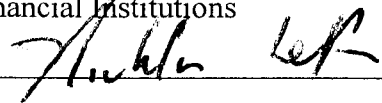
24 No provision of this Memorandum shall give rise to the right on the part of any person, entity or governmental authority other than the Office or the Bank, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this Memorandum.

25 This Memorandum shall continue in effect for a period of one year from the latest date entered below and shall automatically be renewed each year subject to modification by the mutual consent of the

Office and the Bank, provided, however, that the provisions set forth under the headings "Confidentiality" and "General Provisions" shall not terminate with respect to any information provided or actions taken under this Memorandum prior to its termination.

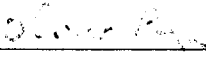
CONFIRMED:

Office of the Superintendent  
of Financial Institutions

By   
Deputy Superintendent (Policy)

Dated: June 17, 1997

Bank of England

By   
Deputy Director, Supervision and Surveillance

Dated: 17 June 1997