

Cross-border Cooperation Agreement among Members of the Options Clearing Corporation Crisis Management Group

1. Objectives, nature and scope of this agreement

- 1.1 We, as the Home Authorities and Host Authorities, as defined in Annex A, for the Options Clearing Corporation (“OCC”), have set out in this cross-border cooperation agreement (“Agreement”) the manner in which we will work together with a view to facilitating institution-specific crisis management planning and cooperation between and among relevant authorities, with an emphasis on cooperation in the event of the resolution of OCC, insofar as the authorities are responsible for crisis management, recovery or resolution.
- 1.2 The Co-lead Authorities are the Securities and Exchange Commission and the Federal Deposit Insurance Corporation (“FDIC”) (each a “Co-lead Authority” and together, the “Co-lead Authorities”).
- 1.3 The parties to this Agreement are the Home and Host Authorities listed in Annex A, as updated and circulated from time to time by the Co-lead Authorities (each a “Party” and together, the “Parties” or “Authorities”). Each of the Parties is a member of the Crisis Management Group (“CMG”) for OCC. The CMG is a cooperative structure formed by the Parties consistent with Key Attribute 9 of the Financial Stability Board’s (“FSB’s”) *Key Attributes of Effective Resolution Regimes for Financial Institutions* (“Key Attributes”), calling for the establishment of CMGs for financial market infrastructures (“FMIs”) that are systemically important in more than one jurisdiction. The CMG’s purpose is to enhance preparedness and planning for, and to facilitate the crisis management, recovery and resolution of OCC. The CMG does not have legal personality.
- 1.4 This Agreement sets forth the Parties’ intentions with regard to cooperation, coordination and the exchange of information, to the extent permitted, for each of the respective Parties, by the respective laws, regulations, and requirements applicable to that Party (“Applicable Law”). The provisions of this Agreement and the understandings reached at the CMG do not create legally binding or legally enforceable obligations, confer any rights or give rise to any legal claim on behalf of any Party or third parties. This Agreement should be interpreted in a manner that is permitted by, and consistent with, Applicable Law. This Agreement does not contemplate roles, responsibilities or powers beyond those granted to the Parties under Applicable Law. This Agreement does not supersede or modify Applicable Law and nothing in this Agreement affects the competence or the supervisory, resolution or regulatory authority of the Parties under Applicable Law.
- 1.5 The Parties may disclose the existence of this Agreement to the public. A Party may publicly disclose all or portions of this Agreement, to the extent such public disclosure is in the proper exercise of its functions, powers or obligations, but will provide prior notice to the Co-lead Authorities, which will inform the other Parties.

2. General framework for cooperation

- 2.1. The roles of the Parties during “business as usual” (that is, during planning for recovery and resolution) and “in crisis” with respect to OCC are set forth herein.
- 2.2. The Parties’ approach to the crisis management, recovery and resolution measures that they adopt with respect to OCC should be informed by: (i) the Key Attributes and the related FSB Guidance on Central Counterparty Resolution and Resolution Planning, (ii) the Bank for International Settlements’ (“BIS’s”) Committee on Payment and Settlement Systems’ and the Technical Committee of the International Organization of Securities Commissions’ (“IOSCO’s”) Principles for Financial Market Infrastructures (“PFMI”), and (iii) the BIS’s Committee on Payments and Market Infrastructures’ and IOSCO’s Recovery of Financial Market Infrastructures (“Recovery Guidance”).

3. Undertakings to cooperate

- 3.1. The Parties will cooperate in the recovery and resolution planning process and, subject to paragraphs 6.2 through 6.6 of this Agreement, will share relevant information to the extent permitted by Applicable Law, including information relating to the recovery and resolution planning process such as the resolution plan developed by the FDIC for OCC (the “OCC Resolution Plan”). To prepare for coordinated resolution of the activities of OCC, the Parties also will endeavor to share, where appropriate and to the extent permitted by Applicable Law, relevant information relating to the recovery and resolution planning process for OCC or its affiliates and providers of critical systems or services to OCC or its affiliates in their respective jurisdictions. As the OCC Resolution Plan is refined, the Parties may identify steps necessary to implement the resolution strategy, potential barriers to resolution, areas in which cross-border cooperation would be needed, and actions the Parties might consider taking to facilitate identified strategies.
- 3.2. To the extent consistent with Applicable Law, the Parties will endeavor to work to develop, and if necessary, implement OCC resolution options that are aimed at pursuing financial stability and the continuity of OCC’s critical functions without exposing taxpayers to losses. In doing so, the Parties will duly consider the potential impact of their resolution actions on the financial stability of other jurisdictions.
- 3.3. The Parties, at a sufficiently senior level, through representation in the CMG, may participate in reviewing the overall resolution strategy for OCC and may provide input on the development and maintenance of the OCC Resolution Plan.
- 3.4. The Parties may engage in periodic table top simulation or scenario exercises within the CMG in order to assess the viability of the OCC Resolution Plan to help prepare for a coordinated resolution of OCC.
- 3.5. The Parties may use the results of the Resolvability Assessment referred to in subparagraph 4.1(ii) below to inform the resolution planning process.
- 3.6. The Parties acknowledge that:
 - (i) A review of the substantive resolution strategy set forth in the OCC Resolution Plan by appropriate senior officials of the Home Authorities and Host Authorities should occur at least annually; and

- (ii) Appropriate senior officials of the Home Authorities and Host Authorities should review the operational aspects of the OCC Resolution Plan at least annually.

3.7 Subject to Applicable Law, the Parties will endeavor to inform each other of material and relevant changes to their respective crisis management or resolution frameworks.

4. Home Authorities' undertakings

4.1 The appropriate Home Authorities¹ will:

- (i) Facilitate and chair meetings of the CMG;
- (ii) With the benefit of the input of the other Parties: (a) perform an assessment of the resolvability of OCC (the "Resolvability Assessment") considering the guidance set forth in the Key Attributes *Resolvability Assessments* Annex, and (b) identify actions that the Home Authorities, the Host Authorities, or OCC may need to take to improve the resolvability of OCC;
- (iii) Lead the discussions of relevant information related to the recovery plan developed by OCC (the "OCC Recovery Plan") within the CMG;
- (iv) Create and ultimately maintain the OCC Resolution Plan, considering the impact of OCC and its resolution on the financial stability of other jurisdictions;
- (v) Lead the discussions of the OCC Resolution Plan and the review of relevant recovery plan information within the CMG, with the benefit of the input of the other Parties;
- (vi) To the extent permitted by Applicable Law, endeavor to alert other Parties without undue delay, so as to allow practical cooperation, if OCC encounters material difficulties, takes recovery actions, or if it becomes apparent that OCC is likely to enter the applicable resolution regime;
- (vii) Take into account the overall effect of their actions with respect to OCC on financial stability in other relevant jurisdictions and, where possible and feasible and consistent with Applicable Law, endeavor to avoid taking actions that reasonably could be expected to trigger instability in OCC or in the financial system of one or more relevant jurisdictions; and
- (viii) Where possible and feasible and to the extent permitted by Applicable Law, work with the other Parties towards a coordinated resolution of OCC with the aim of maintaining financial stability and the continuity of the critical functions of OCC without exposing taxpayers to losses.

5. Host Authorities' undertakings

5.1 Each Host Authority will:

- (i) Participate, at a sufficiently senior level, at meetings of the CMG;

¹ With respect to the actions identified in subparagraphs 4.1(i) through (vi), the appropriate Home Authorities will be one or both of the Co-lead Authorities.

- (ii) Provide input into the development and maintenance of the OCC Resolution Plan;
 - (iii) To the extent consistent with Applicable Law, coordinate with the other Parties the implementation of the actions set out in the OCC Resolution Plan;
 - (iv) To the extent permitted by Applicable Law, alert the Home Authorities without undue delay on becoming aware that an OCC affiliate or provider of critical systems or services to OCC or its affiliates encounters material difficulties or if it becomes apparent that such entity is likely to enter the Host Authority's resolution regime; and
 - (v) Where possible and feasible, work with the other Parties towards the coordinated resolution of OCC with the aim of maintaining financial stability and the continuity of the critical functions of OCC without exposing taxpayers to losses.
- 5.2 Each Host Authority will endeavor not to pre-empt resolution actions by the Home Authorities while reserving the right to act on its own initiative if necessary to achieve domestic stability in the absence of effective action by the Home Authorities.

6. Cooperation mechanisms and information sharing framework

- 6.1 The Parties will meet at least annually and may hold additional meetings if necessary to address emergency situations or if requested by the Parties. Requests for additional meetings should be addressed to the Co-lead Authorities and should specify the purpose of the meeting.
- 6.2 To the extent permitted by Applicable Law, the Parties intend to exchange information on their resolution regimes, the operations of OCC in the jurisdictions of the Parties, and such other information relevant to the recovery and resolution planning and implementation process as provided in this Agreement. During an emergency situation, information exchanges may increase in frequency and level of detail based on the specific circumstances and consistent with the provisions of this Agreement.
- 6.3 The Co-lead Authorities will coordinate information sharing in connection with regular and ad hoc CMG meetings. The Parties will maintain up-to-date contact lists, which will include contact details for key senior and working-level staff, and the Co-lead Authorities will maintain and facilitate access to those lists by all Parties. This contact list should be used for all notices under this Agreement. The Parties intend to agree on multiple means of telecommunications (*e.g.*, electronic correspondence, conference calls) to facilitate rapid and effective communication sharing and communication among the Parties.
- 6.4 To the extent permitted by Applicable Law, the Parties may, from time to time, share confidential (*i.e.*, non-public), proprietary or supervisory information (including, but not limited to, the Resolvability Assessments, the OCC Recovery Plan, the OCC Resolution Plan, other recovery or resolution strategies or plans, and information regarding the members of OCC) ("Confidential Information"). To the extent that any Party's authority permits the sharing of Confidential Information only upon request, any requests for Confidential Information to such Party will be made in writing, to the

extent practicable in the situation. Such request should state why the information is being requested and confirm that it will be used, and its confidentiality maintained, pursuant to paragraphs 6.5 and 6.6.

6.5 Each Party receiving any Confidential Information pursuant to this Agreement (a “Receiving Party”) from another Party will use the Confidential Information only for lawful purposes related to the Receiving Party’s financial stability, safety and soundness, supervisory or regulatory functions, including recovery and resolution planning and crisis management. In addition, each Receiving Party will hold confidential all such Confidential Information to the extent permitted by Applicable Law and will not disclose any of it other than as necessary to carry out its lawful responsibilities and as consistent with the following limitations:

- (i) Except as provided below in subparagraphs (ii) and (iii), before a Receiving Party discloses any Confidential Information received pursuant to this Agreement to any other person, including any other Party or a governmental entity that is not a signatory to this Agreement, the Receiving Party seeking to disclose such Confidential Information will request and obtain prior written consent from the Party that produced or provided the Confidential Information (the “Producing Party”).
- (ii) Where Confidential Information is produced or provided by a Producing Party to a subset of or all other Parties, those Receiving Parties may share such Confidential Information amongst themselves without the consent of the Producing Party, but such Confidential Information may not be shared with any other Party without the prior written consent of the Producing Party.
- (iii) In the event that a Receiving Party is required by Applicable Law or legal process, including a legally enforceable demand, to disclose Confidential Information, it will, to the extent permitted by Applicable Law, inform the Producing Party about such possible compelled disclosure in advance of sharing such Confidential Information. If the Producing Party does not consent to such disclosure, the Receiving Party will take reasonable steps, to the extent permitted by Applicable Law, to resist disclosure, including by asserting all appropriate legal exemptions or privileges that may be available to challenge the requirement or demand to disclose Confidential Information.
- (iv) Subject to the foregoing, access to Confidential Information by each Receiving Party should be restricted to those staff members who have a bona fide need for access to such information in connection with the Receiving Party’s lawful activities. The Receiving Parties will also establish and maintain safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any Confidential Information received under this Agreement.
- (v) A Receiving Party will promptly notify the Producing Party in the event the Receiving Party becomes aware of an unauthorized disclosure of Confidential Information obtained from the Producing Party, including, where possible, identifying the recipient(s) of information.

- (vi) The Parties acknowledge that, without prejudice to any other applicable rights of the Producing Party, a Receiving Party's failure to comply with the foregoing limitations may result in that Party having limited or no access to Confidential Information in the future.
- (vii) The provision of, or request for, information under this Agreement may be denied on grounds of public interest or national security, or when disclosure would interfere with an ongoing investigation.

For the avoidance of doubt, the restrictions in this Agreement do not apply to a Party's use or treatment of information that the Party obtains from OCC, or receives from any other source independent of this Agreement, under Applicable Law regardless of whether that same information is also shared under this Agreement.

- 6.6 No privileges or confidentiality associated with information provided by any Party are waived as a result of sharing information as contemplated by this Agreement.

7. Cross-border implementation of resolution measures

- 7.1 The Parties will work together to develop a process for evaluating the application of potential resolution options and processes for OCC.
- 7.2 The Parties will endeavor to ensure that any resolution plans that are maintained for any OCC affiliate or provider of critical systems or services to OCC or its affiliates consider the interaction with the OCC Resolution Plan. To the extent practicable and consistent with its mandate, each Party should take into account the overall effect of the plan for which they have responsibility, including the OCC Resolution Plan, on OCC and its affiliates and on financial stability in the jurisdictions concerned.
- 7.3 While it is recognized that each Party must operate within the framework of Applicable Law, each Party will work together with the other Parties to identify and, to the extent possible and feasible, to address the legal and operational impediments to effective cross-border implementation of resolution actions with regard to OCC under the applicable legal and operational frameworks related to crisis management, recovery and resolution in such Party's jurisdiction.
- 7.4 In the event of the resolution of OCC, the Parties will maintain open communication channels and coordinate with each other, to the extent permitted by Applicable Law, to promote, as appropriate, consistency of external communications both leading up to, at the time of, and for whatever period is necessary following resolution.

8. Additional provisions

- 8.1 Any Party may terminate its participation in this Agreement upon written notice to the other Parties, provided, however, that upon such termination, the Agreement will continue to apply between the remaining Parties. The confidentiality provisions set forth in paragraphs 6.5 and 6.6 of this Agreement will continue to apply to all Confidential Information in the possession of any Party even if such Party ceases to be a Party to this Agreement, by way of termination or otherwise.
- 8.2 Except as otherwise provided in Section 8, any modification to this Agreement (other than a change in the Parties to the Agreement) will be agreed to in writing by all Parties.

- 8.3 The Co-lead Authorities may enter into discussions with other authorities with a view to their joining the CMG and becoming party to this Agreement. The Co-lead Authorities will consult with current CMG members and, upon receiving the written consent of current CMG members, may add an authority as a new CMG member upon such authority's execution of an accession. Promptly following such execution, the accession and revised Annex A will be circulated to all CMG members.
- 8.4 The Parties may have existing bilateral or multilateral arrangements or may execute bilateral or multilateral arrangements in the future. This Agreement is not intended to amend or supersede existing arrangements or limit the terms of any future arrangements.

[SIGNATURE PAGES FOLLOW.]

This Cross-border Cooperation Agreement among Members of the Options Clearing Corporation Crisis Management Group is signed by the representatives of each Party, and will become effective with respect to such Party, as of the date written below such Party's signature block.

Securities and Exchange Commission

Name:

Title:

Date:

Federal Deposit Insurance Corporation

Name:

Title:

Date:

Board of Governors of the Federal Reserve System

Name:

Title:

Date:

U.S. Commodity Futures Trading Commission

Name:

Title:

Date:

Autorité des marchés financiers (Québec)

Name:

Title:

Date:

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: _____

Name: "Gilbert Charland"

Title: Associate General Secretary for
Canadian Relations, Government of Québec

Date:

Bank of Canada

Name:

Title:

Date:

Ontario Securities Commission

Name:

Title:

Date:

With respect to the Ontario Securities Commission, the Agreement will become effective on the date determined in accordance with applicable legislation.

Autorité de Contrôle Prudentiel et de Résolution

Name:

Title:

Date:

Autorité des Marchés Financiers

Name:

Title:

Date:

Banque de France

Name:

Title:

Date:

Bank of England

Name:

Title:

Date:

Prudential Regulation Authority

Name:

Title:

Date:

ANNEX A

The Parties to this Agreement are the Home Authorities and Host Authorities listed below:

Home authorities (each a “Home Authority”, and together, the “Home Authorities”) and the “Home Jurisdiction”:

Home Jurisdiction	Home Authorities
United States of America	Securities and Exchange Commission Federal Deposit Insurance Corporation Board of Governors of the Federal Reserve System U.S. Commodity Futures Trading Commission

Host authorities (each a “Host Authority”, and together, the “Host Authorities”) and the “Host Jurisdiction”:

Host Jurisdiction	Host Authority or Host Authorities
Canada	Autorité des marchés financiers (Québec) Bank of Canada Ontario Securities Commission
France	Autorité de Contrôle Prudentiel et de Résolution Autorité des Marchés Financiers Banque de France
United Kingdom	Bank of England Prudential Regulation Authority