

**MEMORANDUM OF UNDERSTANDING**

**[JOINT STATEMENT]**

**BETWEEN**

**THE COMMISSION BANCAIRE  
PARIS, FRANCE**

**AND**

**THE OFFICE OF THRIFT SUPERVISION  
WASHINGTON, DC USA**

**REGARDING MUTUAL COOPERATION AND EXCHANGE OF  
INFORMATION IN THE PERFORMANCE OF BANKING AND  
PRUDENTIAL SUPERVISION**

1. In view of the fact that a number of banks and other financial organizations incorporated in the United States or France have operations in both jurisdictions, the *Commission Bancaire* (the "CB") and the *Office of Thrift Supervision* (the "OTS") have reached an understanding in order to establish an arrangement for the collection and sharing of information, in particular through on-site inspections, whose aim is to facilitate the performance of their tasks, meet the highest international standards for effective banking supervision and promote the safe and sound functioning of banks and other financial organizations in their jurisdictions.

2. This understanding demonstrates the commitment of the parties to the principles of effective consolidated supervision and cooperation between banking supervisors, and to their respective responsibilities, as laid down in the Basel Committee's *Concordat* and *Core Principles for Effective Banking Supervision*.

3. The overall aim of the present understanding is to improve the strength of the financial systems of the two jurisdictions thereby helping to maintain stability and confidence in the domestic and international financial systems and reducing the risk of loss to depositors and creditors.

**ARTICLE I. Legislation and Competent Authorities**

1. The relevant French law for purposes of this agreement is the *Code Monétaire Financier* (Code monétaire et financier, annexe à l'ordonnance n° 2000-1223 du 14 December 2000, hereafter referred to as the "Monetary and Financial Code"), as amended, in particular Articles L.613-13 and seq.

2. The relevant United States laws for the purposes of this agreement include, without limitation, the Home Owners' Loan Act and the Federal Deposit Insurance Act, each as amended, hereafter referred to as the "U.S. Banking Laws."

3. The CB has been vested by the Monetary and Financial Code with the task of supervising credit institutions, investment firms (except portfolio management firms) and some other financial undertakings located within the jurisdiction of the French Republic (hereafter "France"), including French overseas territories. The *Comité des établissements de crédit et des entreprises d'investissement* (committee for Credit Institutions & Investment Firms), which rules in particular on applications for licenses by credit institutions and investment firms and on equity participation in French credit institutions or investment firms, will get directly in touch with the OTS with respect to matters falling within the scope of its competencies.

4. Pursuant to U.S. Banking Laws, the OTS has been given the task of regulating and supervising savings associations (thrifts) and savings association holding companies (thrift holding companies) and their banking and non-banking subsidiaries and affiliates.

## ARTICLE II. Definitions

For the purposes of this Understanding:

1. "Authority" means either the CB or OTS, and "Authorities" means both the CB and OTS.

2. "Supervised institution" means an institution subject to the supervision or control of the CB pursuant to the Monetary and Financial Code.

3. "Banking organization" means a savings association (thrift), savings association holding company (thrift holding company) and its banking and non-banking subsidiaries and affiliates subject to regulation or supervision by the OTS.

4. "Branch" means an organizational unit of a supervised institution or banking organization that has been granted a banking license or authorization in the host supervisor's country.

5. "Subsidiary" means a separate legal entity in one country that is controlled (as such term may be used in applicable law) by a supervised institution or banking organization incorporated in the other country.

6. "Cross-border establishment" means a branch or a subsidiary of a supervised institution or banking organization.

7. "Home supervisor" means the Authority located in the United States or France responsible for the supervision on a consolidated basis of a banking organization or supervised institution.

8. "Host supervisor" means the Authority located in the United States or France responsible for supervising a cross-border establishment.

**ARTICLE III. Mutual Assistance Concerning Sharing of Supervisory Information between the Authorities**

1. The Authorities hereby recognize that closer cooperation during the authorization process of a cross-border establishment as well as sharing of information on an ongoing basis would be mutually advantageous for the Authorities for effective consolidated supervision of supervised institutions and banking organizations.

2. To the extent possible, a request for information pursuant to this Article should be made in writing, and addressed to the relevant contact person(s) (Article VI, paragraph 11) of the disclosing Authority. Where the Authorities perceive a need for expedited action, requests may be initiated in any form but should be confirmed subsequently in writing.

A request generally should specify the following:

- (a) the information sought by the requesting Authority;
- (b) a general description of the matter which is the subject of the request and the purpose for which the information is sought; and,
- (c) the desired time period for reply and, where appropriate, the urgency thereof.

3. The Authority receiving a request should endeavor to acknowledge receipt as soon as feasible by mail, fax or e-mail and, to the extent possible, specify the estimated time period to provide a written response.

**Sharing of information during the process of authorization**

4. In connection with the authorization process, and without prejudice to the competencies of the *Comité des établissements de crédit et des entreprises d'investissement*:

- (a) the host supervisor should notify one or more home supervisor, without delay, of applications for approval to establish or acquire cross-border establishments in the host jurisdiction;
- (b) upon request, the home supervisor should inform the host supervisor whether the applicant banking organization or supervised institution is in substantial compliance with banking laws and regulations and whether the applicant may be expected, given its administrative structure and internal controls, to manage the cross-border establishment in an orderly manner. The home supervisor should also, upon request, assist the host supervisor by verifying or supplementing any information submitted by the applicant;

(c) the home supervisor should inform the host supervisor about the nature of its regulatory system and the extent to which it will conduct consolidated supervision over the applicant. Similarly, the host supervisor should indicate the scope of its supervision and indicate any specific features that might give rise to the need for special arrangements;

(d) to the extent permitted by law, the home and host supervisors should share information on the fitness and properness of prospective directors, managers and relevant shareholders of the cross-border establishment.

**Sharing of information for consolidated supervision on an ongoing basis**

5. In connection with the ongoing supervision of cross-border establishments in the United States and France, the Authorities should:

(a) upon request, provide relevant information to the appropriate Authority 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) endeavor to inform the appropriate host supervisor, in a timely manner and to the extent reasonable, about any event which has the potential to endanger the stability of cross-border establishments in the host country;

(d) inform the relevant Authority of material administrative penalties imposed, or any other formal enforcement action taken, against a cross-border establishment. Prior notification should be made, as far as practicable and subject to applicable laws;

(e) facilitate the transmission of any other relevant information that might be required to assist with the supervisory process.

In accordance with applicable laws and, in particular, article L. 511-34 of the Monetary and Financial Code, exchanges of information may cover all matters related to the consolidated supervision of the cross-border establishment including information related to such establishments' arrangements for the prevention of money laundering and the financing of terrorism.

6. Upon receipt of a written request by the home supervisor, the host supervisor would endeavor to provide to the requesting Authority, information contained in examination or other reports, including in appropriate cases making available the report itself, regarding the cross-border establishments of supervised institutions or banking organizations incorporated in the requesting Authority's country.

7. Whenever necessary, the OTS will endeavor to transmit to the CB the information required for the calculation of insurance premiums for the French Deposit Guarantee Fund.

8. Before enforcement or administrative action is taken by one Authority on the sole basis of information received from the other Authority, the former will endeavor to consult the later.

#### ARTICLE IV. On-site Inspections in the Host Country

1. The host competent supervisor will permit any competent home supervisor to carry out an on-site inspection concerning any cross-border establishments in the host country subject to the following:

(a) Unless otherwise agreed, notification should be provided to the relevant contact person at the host supervisor at least thirty days before the envisaged date of the visit, specifically regarding the purpose of the inspection, its expected duration, the institution(s) to be inspected and details of the persons performing the inspection.

(b) The visit is not rejected under the conditions set out in Article VI, paragraph 5 below.

(c) At the discretion of the host supervisor, on-site inspections may be carried out independently or jointly with the host supervisor. The *Secrétaire Général* of the CB shall appoint a representative to accompany the home supervisor in its inspection.

2. In the course of such an inspection, persons taking part in the supervision or management of a supervised institution or banking organization, or employed by such an institution or organization, must, according to the applicable French and U.S. Banking Laws, comply with the requests of the home supervisor's representatives and may not assert a duty of professional secrecy as grounds for non-disclosure.

3. The host supervisor should endeavor to exercise its statutory powers to ensure compliance with the requests for information issued by the home supervisor in the carrying out of inspections.

4. A report summarizing the findings of the inspection should be submitted to the host supervisor for information. The information on the results of the inspection may provide a basis for further action, including disciplinary proceedings, undertaken by the Authority which initiated the request for the on-site inspection. This shall be without prejudice to the right of the host supervisor to initiate a separate action on the basis of the report of inspection for an alleged infringement of applicable French or U.S. banking laws.

## **ARTICLE V. Confidentiality of the Information Shared Between the Authorities**

1. Reports of examination or inspection remain the property of the Authority providing such a document.
2. Any confidential information received from another Authority is to be used only for lawful supervisory purposes, as stated in the request or provided by law.
3. The Authorities consider that any information obtained in accordance with the provisions of this understanding should remain confidential, except for the purposes determined in the paragraph below. In this regard it is recognized that employees, contractors, consultants and any other person acting on behalf of the Authorities in the discharge of their supervisory duties are bound by an obligation, according to their respective national laws, to hold confidential the information obtained in the course of their duties. No provision of this understanding shall give rise to the right on the part of any person, entity or governmental authority other than the Authorities, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this understanding.
4. In cases where an Authority is legally compelled to disclose confidential information received under this understanding, that Authority would fully cooperate in seeking to preserve the confidentiality of the information, to the full extent permitted by law. This may include providing information on judicial recourses that are available against a request for information addressed to the requested Authority. In cases where an Authority receives a legally enforceable request for confidential information provided under this understanding or disclosure is necessary to carry out the Authority's lawful supervisory responsibilities, that Authority would, to the extent permitted by law, consult with the Authority that provided such information before providing it to the requesting body. If the Authority that provided the information does not consent to the onward sharing, the Authority that is compelled to share will advise the requesting body that the forced disclosure could adversely affect the future transmission of confidential information by foreign supervisory authorities and request that the information be kept confidential by the requesting body.
5. In cases where an Authority receives a request for information from a third party, but disclosure is not legally compelled or necessary to carry out the Authority's lawful supervisory responsibilities, the Authority receiving the request would consult and obtain the prior consent from the Authority that originated the information in order to release it.
6. In the event of a breach of the conditions set out in Article V, paragraph 4 and 5 above by an Authority, the other Authority may suspend the execution of cooperation under this Understanding with immediate effect. Such suspension shall affect neither the obligation of confidentiality nor the content of Article VI, paragraph 9 of this Understanding.

## ARTICLE VI General Provisions

1. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede national laws. Nothing in this understanding should affect the competence of the Authorities under their respective national laws, or European Community law, and supervisory practices or supersede, alter or create any arrangement between any of them and other entities with respect to sharing information.

### Mutual information on laws and regulations

2. The Authorities have exchanged documents intended to inform each other of the laws (including, where applicable, regulations and procedures) governing the supervised institutions or banking organizations in their respective jurisdictions.

3. The Authorities have informed each other of the laws, regulations and procedures governing the confidentiality of information to be shared pursuant to this Understanding.

4. The Authorities acknowledge that this arrangement is in accordance with the applicable laws and regulations in France and in the United States and is based on the representations made and supporting materials exchanged by the Authorities.

### Limitations on providing information or assistance

5. Information would be shared to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. The Authorities understand that the provision of information or assistance to an Authority must be refused by the other Authority when complying with the request is likely to result in prejudice to sovereignty, security, essential economic interests or public policy, when disclosure would interfere with an ongoing investigation or, in the case of the CB, where criminal proceedings have been initiated on the same facts against the same persons, or where a final decision to impose a sanction has been given against such persons for the same facts. Nothing in this understanding shall affect this obligation.

### Implementation of the understanding

6. This Understanding will enter into effect on the date on which both Authorities have executed the document, and it may be amended by the mutual written agreement of the Authorities.

7. The *Secrétaire Général* of the CB and the Managing Director, Examinations, Supervision & Consumer Protection of the OTS may issue practical arrangements regarding the method of cooperation between the Authorities.

8. The Authorities will consult each other in the event of any changes in their respective laws or in the event of any other difficulty, which may make it necessary to amend or interpret this understanding.

9. This Understanding will remain in effect for an indefinite period from the date entered below. Should an Authority consider that it can no longer cooperate under the provisions of this understanding, it will give notification to the other Authority as soon as possible. In any case, the duty of confidentiality referred to in Article V of this understanding will not terminate with respect to any information disclosed.

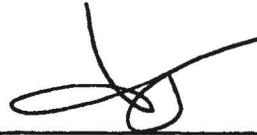
10. Representatives of the CB, on the one hand, and representatives of the OTS, on the other hand, will meet regularly to discuss supervisory developments concerning supervised institutions and/or banking organizations maintaining establishments in both the United States and France. Each party will make every effort to encourage continuous and informal contact between their respective staff, particularly to provide the other Authority with information on legislative and regulatory provisions relevant to supervised institutions and banking organizations.

11. The CB and the OTS will exchange lists of contact persons authorized to request and provide information on behalf of the CB and the OTS pursuant to this understanding. The list shall contain the following contact data: the first name and surname, position (function), e-mail and mailing addresses, and telephone and fax numbers of the authorized persons. On behalf of the CB and the OTS, persons other than those specified in the manner stated in the preceding clauses may request or provide information of a general nature or information that has been officially disclosed. The CB and the OTS will endeavor to inform each other of any modifications to the list of authorized persons without undue delay.

Confirmed this day, 11 April, 2005 by:



**Scott M. ALBINSON**  
Managing Director  
Office of Thrift Supervision



**Danièle NOUY**  
Secrétaire général de la Commission  
bancaire

**CB/OTS MoU**  
**Per Article VI, 11.**

**Contact Persons**

(Revised as of September 2006)

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