

MEMORANDUM OF UNDERSTANDING



AUSTRALIA

**Australian Securities &
Investments Commission**

SINGAPORE

**Monetary Authority of
Singapore**

Memorandum of Understanding on Cooperation Arrangements to Access Information on Derivatives Contracts held in Trade Repositories

The Australian Securities and Investments Commission and the Monetary Authority of Singapore have reached this Memorandum of Understanding (“MoU”) regarding cooperation arrangements to facilitate the access by each of them to information on derivatives contracts held in licensed trade repositories for the purpose of enabling them to fulfil their respective responsibilities and mandates, while ensuring the privacy of that information is appropriately protected. This will contribute to the transparency, integrity, stability and effective regulation of derivatives markets.

Article 1

Definitions

For the purpose of this MoU:

- a) “Authorised TR” means a TR which is either:
 - (i) licensed under an Australian derivative trade repository licence under Part 7.5A of the Corporations Act 2001, or
 - (ii) a licensed trade repository or licensed foreign trade repository under Part IIA of the Singapore Securities and Futures Act (Cap. 289).
- b) “Authority” means:
 - (i) in Australia, the Australian Securities and Investments Commission (“ASIC”) or its successor; or
 - (ii) in Singapore, the Monetary Authority of Singapore (“MAS”) or its successor.
- c) “CPSS-IOSCO Guidance” means the framework, guidelines and data access mapping for authorities' access to TR data as set out in the Committee on Payment and Settlement Systems' (“CPSS”) and the International Organization of Securities Commissions' (“IOSCO”) joint report entitled “Authorities' access to trade repository data” issued in August 2013, and unless otherwise agreed from time to time includes any subsequent amendment, replacement or reissue of such framework, guidelines and data access mapping.
- d) “Derivatives Trade Data” means information about derivatives transactions, or about positions relating to derivatives transactions that is required to be reported to an Authorised TR, pursuant to the Laws and Regulations of Australia or Singapore, and, in relation to Derivatives Trade Data obtained or to be obtained as contemplated under Article 3(4), includes information that is created or derived from information about derivatives transactions or about positions relating to derivatives transactions that is required to be reported to an Authorised TR pursuant to the Laws and Regulations of Australia or Singapore.
- e) “Direct Access” means access by means of an online portal or equivalent electronic access system maintained by an Authorised TR.

- f) "Laws and Regulations" means:
- (i) in relation to ASIC, the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001*, the *Mutual Assistance in Business Regulation Act 1992*, and regulations and other regulatory requirements issued from time to time pursuant to these laws, including without limitation any derivative transaction rules or derivative trade repository rules made by ASIC under Part 7.5A of the *Corporations Act 2001* from time to time; and
 - (ii) in relation to MAS, the *Securities and Futures Act (Cap. 289)* and the *Monetary Authority of Singapore Act (Cap. 186)* and regulations and other regulatory requirements issued, or which may from time to time be issued, pursuant to these laws in Singapore.
- g) "Person" includes a natural person, unincorporated association, partnership, trust investment company or corporation.
- h) "Receiving Authority" means the Authority that obtains, or seeks to obtain, information as contemplated by or in accordance with this MoU.
- i) "TR" or "Trade Repository" means a facility that collects and maintains information on any transaction relating to any derivatives contract.
- j) "TR Authority" means the Authority that licenses the Authorised TR from whom a Receiving Authority is seeking to obtain information as contemplated by or in accordance with this MoU.

Article 2

General provisions

- 1) This MoU is a statement of intent by each Authority to facilitate the other Authority's access to Derivatives Trade Data held in an Authorised TR that it licenses.
- 2) This MoU does not create any legally binding obligations, confer any rights, or supersede any domestic laws, including the Laws and Regulations. This MoU does not confer upon any Person or TR the right or ability, directly or indirectly, to obtain, suppress, or exclude any information or to challenge the manner of provision of access under this MoU.
- 3) This MoU does not alter or supersede the terms and conditions of the following arrangements:
 - a) the Memorandum of Understanding on the Exchange of Information and Mutual Assistance between ASIC and MAS dated 16 May 2000;
 - b) the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (revised May 2012) ("IOSCO MMoU") to which the Authorities are signatories, which covers information sharing in the context of enforcement matters; and
 - c) any other existing MoUs or arrangements that either Authority may have in place with any other national or international authorities.
- 4) This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates.

- 5) To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in the Appendix, which may be amended from time to time by an Authority transmitting revised contact information to the other Authority.

Article 3

Scope of cooperation

- 1) The Authorities recognise the importance of access to Derivatives Trade Data held in Authorised TRs.
- 2) The Authorities will, within the framework of, and subject to, this MoU, provide each other with the fullest cooperation permissible under their respective domestic laws (including the Laws and Regulations) to facilitate access to Derivatives Trade Data, where the Derivatives Trade Data:
 - a) is required by the Receiving Authority in order to fulfil its responsibilities and mandates under its Laws and Regulations; and
 - b) is held by an Authorised TR licensed by the TR Authority.
- 3) The TR Authority will take such reasonable steps as are permissible under its domestic laws (including the Laws and Regulations) to enable an Authorised TR licensed by it to provide the Receiving Authority with Direct Access to Derivatives Trade Data held by the Authorised TR where such Derivatives Trade Data has been reported under the Laws and Regulations relating to the Receiving Authority or in respect of transactions that are reportable transactions under the Laws and Regulations relating to the Receiving Authority.
- 4) The TR Authority will take such reasonable steps as are permissible under its domestic laws (including the Laws and Regulations) to enable an Authorised TR licensed by it to provide access to Derivatives Trade Data held by the Authorised TR to the Receiving Authority where such Derivatives Trade Data:
 - a) has been reported under the Laws and Regulations relating to the TR Authority; and
 - b) is data which the Receiving Authority requires in order to fulfil its responsibilities and mandates under its Laws and Regulations, in accordance with the CPSS-IOSCO Guidance.

For the avoidance of doubt, any request for Derivatives Trade Data that has been reported under the Laws and Regulations relating to the TR Authority, that is made by the Receiving Authority to the TR Authority for the purpose of enforcing, and securing compliance with, the Laws and Regulations of the jurisdiction of the Receiving Authority, shall be made in accordance with the terms of the IOSCO MMoU.

- 5) If a technical disruption(s) to the online portal or equivalent electronic access system by which Direct Access is provided prevent the Receiving Authority from having Direct Access to Derivatives Trade Data held by an Authorised TR licensed by the TR Authority as contemplated under Article 3(3), the Receiving Authority will, at first instance, work with the Authorised TR to restore Direct Access. If Direct Access cannot be restored within seven (7) working days of the first occurrence of the technical disruption(s), the TR Authority will, to the extent permitted by its domestic laws (including the Laws and Regulations) and where practicable, upon receipt of a written request from the Receiving Authority, provide the Receiving Authority with the Derivatives Trade Data it would have been entitled to obtain from the Authorised TR as contemplated under Article 3(3).

Article 4

Notification to other Authority

Each Authority will inform the other Authority as soon as practicable of:

- a) any material event it knows of that could adversely affect the other Authority's access to Derivatives Trade Data held in an Authorised TR that it licenses;
- b) any changes and pending changes to the relevant obligations and requirements to which the Authorised TRs it licenses are subject, including to any relevant Laws and Regulations applicable to such Authorised TRs that could have a material effect on the access to Derivatives Trade Data held in such Authorised TRs;
- c) any enforcement, regulatory actions or sanctions, including the revocation, suspension or modification of the relevant licences of an Authorised TR it licenses that could adversely affect the other Authority's access to Derivatives Trade Data held in such Authorised TR;
- d) any changes in its own responsibilities and mandates as defined in its Laws and Regulations that could materially affect its right to access information held in Authorised TRs licensed by the other Authority; and
- e) any material changes in the confidentiality protections applying to information (including Derivatives Trade Data) obtained by the first mentioned Authority in accordance with this MoU which could affect the second mentioned Authority's assessment of the adequacy and appropriateness of the confidentiality protections regime applicable to the first mentioned Authority.

Article 5

Permissible uses of information

- 1) The Receiving Authority will use any non-public information (including Derivatives Trade Data) obtained in accordance with this MoU solely for the purpose of fulfilling its responsibilities and mandates as defined in the Laws and Regulations relating to the Receiving Authority and within the limits of this MoU and at all times, complying with the requirements of the confidentiality protections regime applicable to the Receiving Authority.
- 2) Before using any non-public information obtained in accordance with this MoU for any purpose other than that stated in paragraph 1 of this Article, the Receiving Authority must first consult with and obtain the prior written consent of the TR Authority for the intended use of such information. If such consent is denied, the Authorities will discuss the reasons for withholding consent for such use and the circumstances, if any, under which the intended use by the Receiving Authority might be allowed.

Article 6

Confidentiality and onward sharing of information

- 1) Each Authority shall keep confidential all non-public information (including Derivatives Trade Data) obtained in accordance with this MoU. Except as contemplated under Article 5 and Articles 6(3) and 6(4) or where any disclosure is required by law or pursuant to a legally enforceable demand, the Authorities shall not disclose any information (including Derivatives Trade Data) obtained in accordance with this MoU.

- 2) In the event of a legally enforceable demand, other than for Derivatives Trade Data that is obtained by the Receiving Authority as contemplated under Article 3(3), the Receiving Authority will, to the extent permissible by law, notify the TR Authority of such demand before complying with the demand, and will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 3) The Receiving Authority may disclose Derivatives Trade Data that is obtained by the Receiving Authority as contemplated under Article 3(3) to any person or body (who is a non-signatory to this MoU) pursuant to any power or authority of the Receiving Authority under the Laws and Regulations relating to it.
- 4) The Receiving Authority may disclose non-public information obtained in accordance with this MoU (including Derivatives Trade Data other than Derivatives Trade Data that is obtained by the Receiving Authority as contemplated under Article 3(3)) to any person or body (who is a non-signatory to this MoU) where the prior written consent of the TR Authority for such disclosure has been obtained.
- 5) The Authorities intend that the sharing or disclosure of non-public information, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

Article 7

Personal data

The Receiving Authority will process any personal data contained in the Derivatives Trade Data or other information obtained by it as contemplated by or in accordance with this MoU solely for the purpose of fulfilling its responsibilities and mandates as defined in the Laws and Regulations relating to the Receiving Authority and complying with the requirements set out in the privacy and data protection laws and regulations applicable in the jurisdiction of the Receiving Authority.

Article 8

Successor authorities

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of this MoU will apply to the successor authority or authorities performing those relevant functions without the need for any further amendment to this MoU and notice will be provided to the other Authorities. This will not affect the right of the successor authority or authorities to give written notice as provided in Article 11 to terminate this MoU if it wishes to do so.

Article 9

Amendment

- 1) The Authorities intend to periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities under this MoU with a view, among other things, to expanding or altering the scope or operation of this MoU should that be judged necessary.
- 2) Notwithstanding the generality of paragraph 1 of this Article 9, the terms of this MoU will be subject to review by the Authorities, if either Authority becomes aware (through receipt of a notification under Article 4(e) or from other reliable sources) of any material changes to the confidentiality protections regime applicable to the other Authority which could affect the first mentioned Authority's assessment of the adequacy and appropriateness of the confidentiality protections regime of the second mentioned Authority.

3) This MoU may be amended with the written consent of all signatories.

Article 10

Execution of the MoU

This MoU will enter into force on the date that it is signed by the Authorities.



Article 11

Termination

Cooperation in accordance with this MoU will continue until the expiration of thirty (30) calendar days after either Authority gives written notice to the other Authority of its intention to terminate the MoU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MoU before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Articles 5 to 7.

This MoU is executed in duplicate, this 16th day of September 2014.

Signatures

<p>For the Australian Securities and Investments Commission</p>  <hr/> <p>Greg Medcraft Chairman</p>	<p>For the Monetary Authority of Singapore</p>  <hr/> <p>Ong Chong Tee Deputy Managing Director (Financial Supervision)</p>
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Appendix

Contact Persons

The Australian Securities and Investments Commission	The Monetary Authority of Singapore
<p>Kim Holmes</p> <p>Senior Manager (International Cooperation Requests)</p> <p>Assessment & Intelligence</p> <p>Level 7, 120 Collins St</p> <p>Melbourne, Victoria 3000</p> <p>Australia</p> <p>Telephone: 61-3-9280 3200</p> <p>Fax: 61-3-9280 3444</p> <p>Email: international@asic.gov.au</p>	<p>Tan Beng Hwa</p> <p>Director & Head (Markets & Infrastructure Supervision Division)</p> <p>Markets Policy & Infrastructure Department</p> <p>10 Shenton Way, MAS Building,</p> <p>Singapore 079117</p> <p>Telephone: 65-6229 9004</p> <p>Fax: 65-6225 1350</p> <p>Email: bhtan@mas.gov.sg</p>