

## MEMORANDUM OF UNDERSTANDING

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**United States Commodity Futures Trading  
Commission**



**ASIC**

Australian Securities & Investments Commission

**Australian Securities and Investments  
Commission**

COOPERATION AND THE EXCHANGE OF INFORMATION  
RELATED TO THE SUPERVISION OF CROSS-BORDER COVERED ENTITIES

29 September 2014

**MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION  
AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION  
OF CROSS-BORDER COVERED ENTITIES**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the United States Commodity Futures Trading Commission and the Australian Securities and Investments Commission (jointly, the "Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of certain regulated entities that operate on a cross-border basis in both the United States and Australia. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates particularly in the areas of protecting customers; fostering the integrity of and maintaining confidence in financial markets; and reducing systemic risk.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. "Authority" means:
  - a. In the United States, the Commodity Futures Trading Commission ("CFTC"); or
  - b. In Australia, the Australian Securities and Investments Commission ("ASIC").
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means the Authority to whom a request is made under this MOU.
4. "Laws and Regulations" means the Commodity Exchange Act ("CEA"), Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations, and other applicable legal or regulatory requirements in the United States, and the Corporations Act 2001 (Cth) ("CA"), Australian Securities and Investments Commission Act 2001, ASIC rules, and other applicable legal or regulatory requirements in Australia.
5. "Person" means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Covered Entity or Cross-Border Covered Entity.
6. "Covered Entity" means a Person that is, or that has applied to be, authorized, designated, recognized, qualified, licensed, registered, supervised, or overseen by one or more of the Authorities pursuant to Laws and Regulations and may include regulated markets and organized trading platforms, trade repositories, and intermediaries, dealers, or other market participants, but does not include Covered Clearing Organizations.

6A. "Covered Clearing Organization" means a central counterparty organized in either the United States or Australia that satisfies both of the following criteria:

- a. A derivatives clearing organization that is, or that has applied to be, registered as such or that has been granted, or that has applied for, an exemption from registration under the CEA; and
- b. A domestic or overseas clearing and settlement facility that is, or that has applied to be, licensed or exempted from the licensing requirements under the CA and that serves or will serve as a central counterparty.

7. "Cross-Border Covered Entity" means:

- a. A Covered Entity of both the CFTC and the ASIC;
- b. A Covered Entity of one Authority that has been exempted from authorization, designation, recognition, qualification, licensure, or registration by the other Authority;
- c. A Covered Entity in one jurisdiction that controls or is controlled by a Covered Entity located in the other jurisdiction, or a Covered Entity in each jurisdiction where each is controlled by the same Person; or
- d. A Covered Entity in one jurisdiction that is organized in the other jurisdiction.

For purposes of this MOU, references to jurisdiction will be determined as either the jurisdiction of the CFTC or the jurisdiction of the ASIC.

8. "Books and Records" means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a Cross-Border Covered Entity.
9. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Covered Entity.
10. "On-Site Visit" means any regulatory visit as described in Article Five to the premises of a Cross-Border Covered Entity for the purposes of ongoing supervision and oversight including the inspection of Books and Records.
11. "Local Authority" means the Authority in whose jurisdiction a Cross-Border Covered Entity that is the subject of an On-Site Visit is physically located.
12. "Visiting Authority" means the Authority conducting an On-Site Visit.
13. "Governmental Entity or Third Authority" means:
  - a. The U.S. Department of the Treasury or the U.S. Board of Governors of the Federal Reserve System, if the Requesting Authority is the CFTC; and

- b. The Australian Department of the Treasury, any Minister assigned responsibility for ASIC's functions, the Reserve Bank of Australia, or the Australian Prudential Regulation Authority, if the Requesting Authority is the ASIC.

## ARTICLE TWO: GENERAL PROVISIONS

14. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of Cross-Border Covered Entities. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and requirements that govern each Authority. With respect to cooperation pursuant to this MOU, no domestic secrecy or blocking laws or regulations should prevent an Authority from providing assistance to the other Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation, including through mutual assistance in obtaining information related to Cross-Border Covered Entities. The provisions of this MOU are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws.
15. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.
16. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions, or preclude Authorities from sharing information or documents with respect to Persons that are not Cross-Border Covered Entities but may be subject to regulatory requirements in the United States and in Australia. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the territory of another Authority.
17. This MOU is intended to complement, but does not alter except where explicitly noted, the following existing arrangements:
  - a. *The Memorandum of Understanding between the Commodity Futures Trading Commission and the Australian Securities Commission Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws* (October 19, 1994).

- b. The *Memorandum of Understanding between the Commodity Futures Trading Commission and the Reserve Bank of Australia and the Australian Securities and Investments Commission Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Clearing Organizations* (June 5, 2014).
  - c. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“IOSCO MMOU”) to which the CFTC and ASIC are signatories, which covers primarily information sharing in the context of enforcement matters.
  - d. The *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations* (as amended March 1998), to which the CFTC and ASIC are signatories.
18. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authority.

### **ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION AND EXCHANGE OF INFORMATION**

#### **General**

19. The Authorities recognize the importance of close communication concerning Cross-Border Covered Entities and intend to consult regularly, as appropriate, regarding:
- a. General supervisory issues, including regulatory, oversight, or other related developments;
  - b. Issues relevant to the operations, activities, and regulation of Cross-Border Covered Entities; and
  - c. Any other areas of mutual supervisory interest.
20. The Authorities recognize in particular the importance of close cooperation in the event a Cross-Border Covered Entity, particularly one whose failure would be, in the reasonable judgment of an Authority, systemically important, experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
21. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- a. The initial application with the CFTC or the ASIC for authorization, designation, recognition, qualification, licensure, or registration, or exemption therefrom, by a Covered Entity that is authorized, designated, recognized, qualified, licensed, or registered by the Authority in the other jurisdiction;

- b. The ongoing supervision and oversight of a Cross-Border Covered Entity including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards;
- c. Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Covered Entity by the CFTC or the ASIC that may impact the operations of the entity in the jurisdiction of the other Authority; and
- d. The provision and maintenance of direct access to information and data stored in Covered Entities that are trade repositories, where such information and data is provided by a Covered Entity and maintained pursuant to Laws and Regulations.

#### **Event-Triggered Notification**

22. As appropriate in the particular circumstances, each Authority endeavors to inform the other Authority promptly, and where practicable in advance, of:
- a. Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Covered Entity, including those that may affect the rules or procedures of a Cross-Border Covered Entity;
  - b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a Cross-Border Covered Entity. Such events include the failure of the Cross-Border Covered Entity to satisfy any of its requirements for continued authorization, designation, recognition, qualification, licensure, registration, or exemption therefrom, where that failure could have a material adverse effect in the jurisdiction of the other Authority, as well as any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Covered Entity; and
  - c. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant authorization, designation, recognition, qualification, licensure, or registration, or exemption therefrom, concerning a Cross-Border Covered Entity.
23. The determination of what constitutes a “significant impact”, “material event”, “adversely impact”, “material adverse effect”, “adverse material change”, or “significant regulatory actions” for purposes of Paragraph 22 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

#### **Request-Based Information Sharing**

24. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide the Requesting Authority with the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority’s supervision and oversight of Cross-Border Covered Entities, including assistance in obtaining and interpreting information that is relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority and that is not

otherwise available to the Requesting Authority. Such requests shall be made pursuant to Article Four of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.

25. The information covered by Paragraph 24 includes:
- a. Information relevant to the financial and operational condition of a Cross-Border Covered Entity including, for example, financial resources, risk management, and internal control procedures;
  - b. Relevant regulatory information and filings that a Cross-Border Covered Entity is required to submit to an Authority including, for example, interim and annual financial statements and early warning notices; and
  - c. Regulatory reports prepared by an Authority including, for example, examination reports, findings, or information contained in such reports regarding Cross-Border Covered Entities.

#### **Periodic Meetings**

26. Representatives of the Authorities intend to meet periodically, as appropriate, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of Cross-Border Covered Entities, including: contingency planning and crisis management, systemic risk concerns, the adequacy of existing cooperative arrangements, and the possible improvement of cooperation and coordination between the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

#### **ARTICLE FOUR: EXECUTION OF REQUESTS FOR INFORMATION**

27. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:
- a. The information sought by the Requesting Authority;
  - b. A general description of the matter that is the subject of the request;
  - c. The purpose for which the information is sought; and
  - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information provided by a Requested Authority in response to the request, as well as any subsequent communication among Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

28. In an Emergency Situation, the Authorities will endeavor to notify each other as soon as possible of the Emergency Situation and communicate information as appropriate in the

particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

#### **ARTICLE FIVE: ON-SITE VISITS**

29. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, its Laws and Regulations, an Authority may need to conduct On-Site Visits to a Cross-Border Covered Entity physically located in the jurisdiction of the other Authority. Each Authority will consult and work collaboratively with the other Authority in conducting an On-Site Visit.
30. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
  - a. The Visiting Authority intends to provide advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended timeframe for, and the purpose and scope of, the On-Site Visit. Other than in exceptional circumstances, the Visiting Authority will notify the Local Authority prior to notifying the Cross-Border Covered Entity.
  - b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the Cross-Border Covered Entity.
  - c. The Authorities intend to assist each other regarding On-Site Visits, including providing information that the Visiting Authority may request and that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Cross-Border Covered Entity.
  - d. The Authorities will consult with each other, and the Local Authority may in its discretion accompany or assist the Visiting Authority during the On-Site Visit, or the Authorities may conduct joint On-Site Visits where appropriate.

#### **ARTICLE SIX: PERMISSIBLE USES OF INFORMATION**

31. The Requesting Authority may use non-public information obtained under this MOU solely for the supervision and oversight of Cross-Border Covered Entities pursuant to, and to ensure compliance with, the Laws and Regulations of the Requesting Authority.
32. The Authorities recognize that, while this MOU is not intended to enable the Authorities to gather information for enforcement purposes, subsequently the Authorities may want to use the non-public information provided pursuant to this MOU for enforcement



purposes. Use of non-public information for enforcement purposes will be in accordance with the terms and conditions in Paragraph 10 of the IOSCO MMOU.

33. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 31 and 32, the Requesting Authority must first consult with and obtain the written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
34. If an Authority (“Receiving Authority”) receives, via a party that is not a signatory to this MOU, non-public information originally provided by the other Authority (“Disclosing Authority”) that is related to the Disclosing Authority’s supervision and oversight of a Cross-Border Covered Entity and that the Receiving Authority is aware was obtained by the third party from the Disclosing Authority on a confidential basis, the Receiving Authority will use and treat the information in accordance with the terms of this MOU.
35. The restrictions in this Article do not apply to an Authority’s use of information it obtains directly from a Cross-Border Covered Entity, whether during an On-Site Visit or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to an information-sharing request pursuant to Article Four of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

#### **ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

36. Except as provided in Paragraphs 37, 38, and 39, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
37. As required by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MOU with a Governmental Entity or Third Authority in its jurisdiction. In these circumstances and to the extent permitted by law:
  - a. The Requesting Authority intends to notify the Requested Authority; and
  - b. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity or Third Authority’s use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The Governmental Entity or Third Authority 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 Governmental Entity or Third Authority with other parties without getting the prior written consent of the Requested Authority.

- 38. Except as provided in Paragraph 37 or 39, the Requesting Authority must obtain the prior written consent of the Requested Authority before sharing non-public information received under this MOU with any non-signatory to this MOU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
- 39. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. When complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 40. The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, such as written analysis, opinions, or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

#### **ARTICLE EIGHT: AMENDMENTS**

- 41. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the CFTC and the ASIC with a view, *inter alia*, to expanding or altering the scope or operation of the arrangements should that be judged necessary. This MOU may be amended with the written consent of the Authorities referred to in Paragraph 1.

#### **ARTICLE NINE: EXECUTION OF MOU**

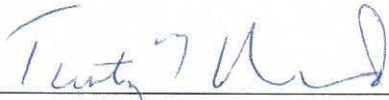
- 42. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by both Authorities.

#### **ARTICLE TEN: TERMINATION**

- 43. Cooperation in accordance with this MOU will continue until the expiration of 30 days after an Authority gives written notice to the other Authority of its intention to terminate

the MOU. If either Authority gives such notice, the parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MOU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance. In the event of the termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Articles Six and Seven.

This MOU is executed in duplicate, this 29<sup>th</sup> day of September 2014.



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Timothy G. Massad  
Chairman  
U.S. Commodity Futures Trading Commission



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Greg Medcraft  
Chairman  
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