

## COOPERATION ARRANGEMENT

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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  
ON FINANCIAL TECHNOLOGY INNOVATION**

October 4, 2018

## **COOPERATION ARRANGEMENT ON FINANCIAL TECHNOLOGY INNOVATION**

In view of emerging technology in financial markets and services, the United States Commodity Futures Trading Commission and the Australian Securities and Investments Commission (jointly, the “Authorities”) have reached this cooperation arrangement (“Arrangement”) in order to enhance mutual understanding, identify market developments and trends, facilitate innovation with respect to financial technology (“FinTech”), and foster the use of technology for more effective and efficient regulation and oversight of financial markets and participants (“RegTech”). The Authorities express, through this Arrangement, their willingness to cooperate and share information in the interest of fulfilling their respective regulatory mandates and advancing the understanding, utilization, and advancement of FinTech and RegTech in the United States and Australia.

### **ARTICLE ONE: DEFINITIONS**

For purposes of this Arrangement:

1. “Authority” means:
  - a. In the United States, the Commodity Futures Trading Commission (“CFTC”); and
  - b. In Australia, the Australian Securities and Investments Commission (“ASIC”).
2. “Requesting Authority” means an Authority making a request under this Arrangement.
3. “Requested Authority” means the Authority to whom a request is made under this Arrangement.
4. “Innovation Function” means:
  - a. “LabCFTC” for the CFTC; and
  - b. “Innovation Hub” for the ASIC.
5. “Innovator Business” means an entity or individual that has been offered, or that would qualify for, support as described in Paragraph 19 from an Authority through its Innovation Function.
6. “Referring Authority” means the Authority that is referring an Innovator Business to the other Authority.
7. “Receiving Authority” means the Authority that is receiving an Innovator Business referral or information relating to that referral.
8. “Criteria for Referral” means the criteria of a Referring Authority that an Innovator Business is required to meet before the Referring Authority will refer the Innovator Business to a Receiving Authority.

9. "Authorization" means the process of licensing, registering, approving, or otherwise making an entity or individual subject to the regulatory requirements of an Authority.

## ARTICLE TWO: GENERAL PROVISIONS

10. The purpose of this Arrangement is to provide a framework for cooperation, information sharing, and referrals between the Authorities in connection with their Innovation Functions. The Authorities intend to provide the fullest possible mutual assistance to each other within the terms of this Arrangement.
11. This Arrangement should be interpreted and implemented in a manner that is permitted by, and consistent with, the legal requirements applicable to each Authority. This Arrangement is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or prejudice the individual responsibilities or autonomy of either Authority.
12. This Arrangement does not create any legally binding obligations, confer any rights, or supersede domestic laws or regulations. This Arrangement 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 information under this Arrangement.
13. This Arrangement is intended to complement but does not alter the terms and conditions of existing arrangements, including:
- a. The *Memorandum of Understanding Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws* between the Authorities (October 19, 1994);
  - b. The *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations* (as amended March 1998), to which the Authorities are signatories;
  - c. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012), to which the Authorities are signatories, and the *IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information*, to which the CFTC is a signatory (Appendix A.1, April 3, 2018) and to which the ASIC is a signatory (Appendix A.2, May 4, 2018), which cover primarily information sharing in the context of enforcement matters;
  - d. The *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Clearing Organizations* between the CFTC and the Reserve Bank of Australia and the ASIC (June 5, 2014); and
  - e. The *Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Covered Entities* between the Authorities (September 29, 2014).

14. To facilitate cooperation under this Arrangement, 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: COOPERATION FRAMEWORK**

15. The framework for cooperation centers on a mechanism for information sharing, referrals, and learning from events, proofs of concept, trials, or innovation competitions that will enable the Authorities to share information on FinTech and RegTech and to refer Innovator Businesses to each other.
16. The Authorities have established Innovation Functions; have a demonstrated commitment to the advancement of FinTech and/or RegTech; anticipate completing events, proofs of concept, trials, or innovation competitions intended to stimulate innovation; have received inquiries from Innovator Businesses that currently operate or seek to operate in the United States and Australia; and have a sustained relationship of mutual cooperation and information sharing.

#### **Description of Innovation Functions**

17. LabCFTC is a CFTC initiative to facilitate FinTech innovation while fostering open, transparent, competitive, and financially sound markets to serve the public interest. The CFTC established LabCFTC to encourage business innovators, identify market-enhancing FinTech, and increase the CFTC's understanding of RegTech that may enable the CFTC to perform its mission in a more efficient and cost-effective manner.
18. The ASIC established the Innovation Hub to assist innovative FinTech businesses navigate its regulatory system. Through its Innovation Hub, the ASIC engages with the FinTech and RegTech community, provides assistance to innovative start-ups, and liaises with FinTech experts through its Digital Finance Advisory Committee.

#### **Support for Innovator Businesses**

19. The support offered by the Authorities to Innovator Businesses through their Innovation Functions may include, but is not limited to:
  - a. A contact person(s) for each Innovator Business;
  - b. Assistance to an Innovator Business regarding understanding the regulatory framework in the relevant Authority's jurisdiction and the framework's potential application to the Innovator Business;
  - c. Assistance during the pre-Authorization application phase by discussing the application process and any regulatory issues that the Innovator Business has identified;

- d. Support during the Authorization process, including the allocation of staff that are knowledgeable about financial innovation in their respective markets to provide guidance to the Innovator Business with respect to its Authorization application; and
- e. Assistance with inquiries that identify ambiguity in existing rules or regulations that may inhibit beneficial innovation.

### **Information Sharing**

20. The Authorities undertake, subject to applicable domestic laws and regulations, to share information related to FinTech or RegTech, where appropriate. Such information may include, but is not limited to:
- a. Information on Innovator Businesses that have been referred to a Receiving Authority for support through its Innovation Function by a Referring Authority (including the nature of the support to the Innovator Business by the Referring Authority pursuant to Paragraph 19);
  - b. Material developments and changes related to support offered by an Authority to Innovator Businesses and to an Authority's Criteria for Referral and process for referring an Innovator Business;
  - c. Emerging trends and developments pertaining to FinTech and RegTech;
  - d. Innovations in FinTech and regulatory issues pertaining to such innovations;
  - e. Experiences with and best practices by each Authority in engaging with FinTech and RegTech innovation; and
  - f. Activities of domestic and international organizations or bodies that promote innovation in FinTech and RegTech.
21. Requests, referrals, responsive information, and 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.

### **Requests for Information**

22. To the extent possible, a request for information should be made in writing and addressed to the relevant contact(s) at the Requested Authority identified in Appendix A. The Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.
23. 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.

### **Referral Mechanism**

24. The Authorities, through their Innovation Functions, will refer to each other Innovator Businesses that seek to operate in or have questions about operating in the other Authority's jurisdiction.
25. Information about an Innovator Business included by a Referring Authority in a referral to a Receiving Authority should be sent to that Receiving Authority only if the Innovator Business consents to such disclosure of the information.
26. Referrals should include information demonstrating that the Innovator Business seeking to operate in the Receiving Authority's jurisdiction meets, or would meet, the Referring Authority's Criteria for Referral.
27. Each Authority should notify the other Authority of any material changes to its Criteria for Referral.
28. Following a referral, the Receiving Authority's Innovation Function should offer support to the Innovator Business in accordance with Paragraph 19 above.
29. The Referring Authority acknowledges that an Innovator Business that receives support from the Receiving Authority's Innovation Function may or may not ultimately meet the requirements for Authorization and that, in providing assistance through the Innovation Function, the Receiving Authority is not expressing an opinion about whether an Innovator Business ultimately will meet the requirements for such Authorization.

### **Innovation Learning**

30. The Authorities intend to invite each other to observe in and to consider hosting jointly, where permitted, events, proofs of concept, trials, or innovation competitions supported by sandboxes, accelerators, launchpads, or similar endeavors related to FinTech and RegTech organized by their Innovation Functions.

### **Periodic Meetings**

31. Representatives of the Authorities intend to meet periodically, as appropriate, to update each other on FinTech and RegTech developments and trends and to discuss issues of common interest. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

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

32. An Authority may use non-public information obtained from the other Authority under this Arrangement solely for the purposes for which the information was provided.

33. If an Authority wishes to use non-public information furnished under this Arrangement for any purpose other than that stated in Paragraph 32, that Authority first must consult with, and obtain the prior written consent of, the other Authority for the intended use. If consent is denied, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use might be allowed.
34. The restrictions in this Arrangement do not apply to information obtained by an Authority directly from an Innovator Business.

#### **ARTICLE FIVE: CONFIDENTIALITY OF INFORMATION**

35. Except as provided in Paragraphs 36 and 37, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this Arrangement including under Paragraph 30, requests and referrals made under this Arrangement, the contents of such requests and referrals, and any other matters arising under this Arrangement.
36. Except as provided in Paragraph 37, each Authority must obtain the prior written consent of the other Authority before sharing non-public information received under this Arrangement with any non-signatory to this Arrangement. The Authority whose consent is being sought will take into account the level of urgency of the request and respond in a timely manner. If consent is denied, the Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure might be allowed.
37. To the extent possible, each Authority intends to notify the other Authority of any legally enforceable demand for non-public information furnished under this Arrangement. When complying with the demand, the Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
38. 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 Arrangement, will not constitute a waiver of privilege or confidentiality of such non-public information.

#### **ARTICLE SIX: AMENDMENTS**

39. The Authorities intend periodically to review the operation of this Arrangement and update its terms as required. The Authorities acknowledge that review may be required if there is a material change to the support offered by a Receiving Authority's Innovation Function to an Innovator Business referred by a Referring Authority.

40. This Arrangement may be amended with the written consent of the Authorities referred to in Paragraph 1.

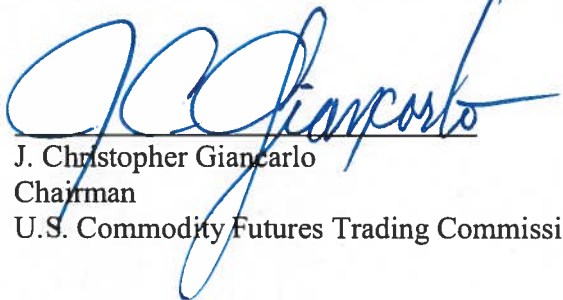
**ARTICLE SEVEN: EXECUTION OF ARRANGEMENT**


41. Cooperation in accordance with this Arrangement will become effective on the date this Arrangement is signed by the Authorities.

**ARTICLE EIGHT: TERMINATION**

42. Cooperation in accordance with this Arrangement will continue until the expiration of 30 days after an Authority gives written notice to the other Authority of its intention to terminate the Arrangement. If an Authority gives such notice, the parties will consult concerning the disposition of any pending requests or referrals. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests and referrals that were made under the Arrangement before the expiration of the 30-day period until all requests are fulfilled and all referrals are processed or until the Requesting Authority withdraws such request(s) and the Referring Authority withdraws such referral(s). In the event of termination of this Arrangement, information obtained under this Arrangement will continue to be treated in the manner prescribed under Articles Four and Five.

This Arrangement is executed in duplicate, this 4<sup>th</sup> day of **October** 2018.

  
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J. Christopher Giancarlo  
Chairman  
U.S. Commodity Futures Trading Commission

  
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James Shipton  
Chair  
Australian Securities and Investments  
Commission