MEMORANDUM OF UNDERSTANDING

United States Commodity Futures Trading Commission

Comisión Nacional Bancaria y de Valores

Banco de México

COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER
CENTRAL COUNTERPARTIES AND TRADE REPOSITORIES

August 31, 2016

MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S. COMMODITY FUTURES TRADING COMMISSION AND THE COMISIÓN NACIONAL BANCARIA Y DE VALORES AND THE BANCO DE MÉXICO 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 U.S. Commodity Futures Trading Commission and the Comisión Nacional Bancaria y de Valores of the United Mexican States and the Banco de México (collectively, the "Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of central counterparties and trade repositories that operate on a cross-border basis in both the United States of America and the United Mexican States. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates.

CLAUSE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means:
   a. In the United States of America, the Commodity Futures Trading Commission ("CFTC"); or
   b. In the United Mexican States, the Comisión Nacional Bancaria y de Valores (National Banking and Securities Commission, "CNBV") or the Banco de México (Central Bank, "BDM") (individually, a "Mexican Authority", or jointly, the "Mexican Authorities"), which share supervisory authority over central counterparties and trade repositories organized in the United Mexican States.
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means:
   a. The Mexican Authority to which a request is made under this MOU, where the Requesting Authority is the CFTC; or
   b. The CFTC, where the Requesting Authority is a Mexican Authority.
4. "Laws and Regulations" means:
   a. For the CFTC, the Commodity Exchange Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations, and other relevant requirements in the United States of America; and
   b. For the Mexican Authorities, the Credit Institutions Law, Securities Market Law, National Banking and Securities Commission Law, Banco de México Law, Rules

Applicable to Participants in the Derivatives Contract Markets issued by the Secretaría de Hacienda y Crédito Público (Ministry of Finance and Public Debt, "SHCP") and the Mexican Authorities, CNBV regulations, BDM regulations, and other relevant requirements in the United Mexican States.

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, recognized, registered, supervised, or overseen by one or more of the Authorities pursuant to Laws and Regulations and includes central counterparties or trade repositories.

7. "Cross-Border Covered Entity" means:

   a. A Covered Entity of both the CFTC and the Mexican Authorities;

   b. A Covered Entity in one jurisdiction that has been exempted from authorization or registration by an Authority in the other jurisdiction;

   c. A Covered Entity in one jurisdiction that controls or is controlled by a Covered Entity located in the other jurisdiction; or

   d. A Covered Entity in one jurisdiction that is physically located 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 Mexican Authorities.

8. "Books and Records" means documents, electronic media, and books and records within the possession, custody, or 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 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 or Authorities 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" means:

    a. If the Requesting Authority is the CFTC, the U.S. Department of the Treasury or the U.S. Board of Governors of the Federal Reserve System; and

    b. If the Requesting Authority is the CNBV or BDM, the SHCP.

CLAUSE 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 other legal or regulatory requirements applicable to 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 of America or in the United Mexican States. 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 Clause Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the jurisdiction of the other Authority.

17. This MOU is intended to complement, but does not alter, the terms and conditions of the following existing arrangements:

    a. The *Memorandum of Understanding on Consultation, Technical Assistance, and Mutual Assistance for the Exchange of Information* between the CFTC and CNBV (May 11, 1995).

b. 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 CNBV are signatories, which covers primarily information sharing in the context of enforcement matters.

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 to the other Authority.

CLAUSE 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 that a Cross-Border Covered Entity, particularly one whose failure likely would be systemically important to an Authority, 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 for authorization, recognition, or registration, or exemption therefrom, by a Covered Entity that is authorized, recognized, or registered in the other jurisdiction;

    b. The ongoing supervision and oversight of a Cross-Border Covered Entity, including compliance with 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 that may impact the operations of the entity in the jurisdiction of the other Authority or Authorities; 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, the CFTC and the Mexican Authorities will endeavor to inform, respectively, the Mexican Authorities or the CFTC 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, but are not limited to, any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Covered Entity; the failure of a Cross-Border Covered Entity to satisfy any of its requirements for continued authorization, recognition, or registration, or exemption therefrom, where that failure could have a material adverse effect in the jurisdiction of the other Authority; or any action taken within a resolution procedure or the implementation of a recovery plan by a Cross-Border Covered Entity. For a Cross-Border Covered Entity that is a central counterparty, such events also include a default or potential default of a clearing member firm or participant or market or settlement bank difficulties that might adversely affect the central counterparty;

    c. The status of efforts to address any material financial or operational difficulties experienced by a Cross-Border Covered Entity as described in Subparagraph b; and

    d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant authorization, recognition, or registration, or exemption therefrom, concerning a Cross-Border Covered Entity.

23. The determination of what constitutes "significant impact", "material event", "adversely impact", "adverse material change", "material adverse effect", "market or settlement bank difficulties", "adversely affect", "material financial or operating difficulties", or "significant regulatory actions" for the purposes of Paragraph 22 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority or Authorities.

Request-Based Information Sharing

24. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide to the Requesting Authority the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority's supervision and oversight of a Cross-Border Covered Entity, including assistance in obtaining and explaining information that is relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority and that is not otherwise readily available to the Requesting Authority. Such requests shall be

made pursuant to Clause 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 cooperation covered by Paragraph 24 includes, but is not limited to:

    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 event-specific 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 regulation and supervision of Cross-Border Covered Entities, including: contingency planning and crisis management, systemic risk concerns, default procedures, the adequacy of existing cooperative arrangements, and the possible improvement of cooperation and coordination among the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

CLAUSE FOUR: EXECUTION OF REQUESTS FOR INFORMATION

27. To the extent possible, a request for information pursuant to Clause Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person(s) 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 general purpose for which the information is sought; and

    d. The desired time period for reply and, where appropriate, the urgency thereof.

    Information responsive to the request, as well as any subsequent communication among the 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. The Authorities expect each other to mark all non-public information provided under this MOU: "Confidential – Provided under Memorandum of Understanding between the CFTC and the CNBV and BDM".

29. In an Emergency Situation, the CFTC and the relevant Mexican Authority or Authorities will endeavor to notify the other(s) 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.

CLAUSE FIVE: ON-SITE VISITS

30. 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(ies). The Authorities will consult and work collaboratively in conducting an On-Site Visit.

31. 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 and, in such exceptional circumstances, the notification to the Local Authority will be made as promptly as possible.

    b. The Authorities 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, explaining, 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 visits where appropriate.

CLAUSE SIX: PERMISSIBLE USES OF INFORMATION

32. 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.

33. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, a Requesting Authority subsequently may want to use the non-public information provided pursuant to this MOU for enforcement purposes. With respect to information shared between the CFTC and CNBV, use of non-public information obtained pursuant to this MOU for enforcement purposes, including in conducting investigations or taking enforcement action, will be in accordance with the use and confidentiality provisions of the IOSCO MMOU. With respect to information shared between the CFTC and BDM, Paragraph 34 applies to such use.

34. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraph 32 and, for the CFTC and CNBV, Paragraph 33, 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.

35. If an Authority ("Receiving Authority") receives, via a party that is not a signatory to this MOU, non-public information, originally provided by another Authority ("Disclosing Authority") that is related to the Disclosing Authority's supervision and oversight of a Cross-Border Covered Entity, 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.

36. The restrictions in this Clause do not apply to an Authority's use of information it obtains directly from a Cross-Border Covered Entity, as a result of the discharge of the Authority's responsibilities pursuant to Laws and Regulations, 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 Clause Four of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

CLAUSE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

37. Except as provided in Paragraphs 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.

38. Each Mexican Authority may share non-public information obtained from the CFTC under this MOU with the other Mexican Authority so long as that other Mexican Authority uses and treats the information in accordance with the terms of this MOU.

39. 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 in its jurisdiction. In such 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's use and confidential treatment of the information, including, as necessary, assurances that:

        i. The Governmental Entity 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 with other parties without getting the prior written consent of the Requested Authority.

40. Except as provided in Paragraphs 38 and 39, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to 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.

41. 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 shall assist in preserving the confidentiality of such information by taking all appropriate measures, including asserting all appropriate legal exemptions or privileges with respect to such information as may be available.

42. The Authorities intend that the sharing or the 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.

CLAUSE EIGHT: AMENDMENTS

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

CLAUSE NINE: EXECUTION OF MOU

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

CLAUSE TEN: TERMINATION

45. Cooperation in accordance with this MOU will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate the MOU. If an Authority gives such notice, the Authorities 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 termination of this MOU, information obtained under this MOU will continue to be treated in the manner described under Clauses Six and Seven.

46. If a Mexican Authority terminates the MOU in accordance with this Clause, the MOU shall remain effective between the CFTC and the remaining Mexican Authority.

47. The text of the MOU will be executed in English.

This MOU is executed in triplicate, this 31 day of August 2016.

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

Jaime González Aguadé
President
Comisión Nacional Bancaria y de Valores

This document is signed in accordance with articles 1, 2, 4, section XXIV, 10, section II, 14 and 16, section I and penultimate paragraph of the National Banking and Securities Law (Ley de la Comisión Nacional Bancaria y de Valores).

Lorenza Martínez Trigueros
Director General of Payment Systems and Corporate Services
Banco de México

Luis Urrutia Corral
Legal Director General
Banco de México

This MOU is signed in accordance with articles 4, 8, first and third paragraphs, 10, first paragraph, 14 Bis, 15, 17 section VI, and 20, of the Bylaws of Banco de Mexico (Reglamento Interior del Banco de México).

APPENDIX A

CONTACT PERSONS

In addition to the following contact information, the CFTC and the Mexican Authorities will exchange confidential emergency contact telephone information.

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