MEMORANDUM OF UNDERSTANDING

United States Commodity Futures Trading Commission

Reserve Bank of Australia

Australian Securities and Investments Commission

COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING ORGANIZATIONS

5 June 2014

MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING ORGANIZATIONS

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 Reserve Bank of Australia and Australian Securities and Investments Commission (collectively, the "Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of clearing organizations 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.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means:
   a. In the United States, the Commodity Futures Trading Commission ("CFTC"); and
   b. In Australia, the Reserve Bank of Australia ("RBA") or the Australian Securities and Investments Commission ("ASIC") (individually, an "Australian Authority", and together referred to as the "Australian Authorities").
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means:
   a. The Australian 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 an Australian Authority.
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, Reserve Bank Act 1959, ASIC rules, RBA instruments and regulations, 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 Clearing Member, Clearing Participant, or Covered Clearing Organization.
6. "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 ("DCO") 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 ("CS") 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. "Clearing Member" means a member of a Covered Clearing Organization that also serves as an intermediary through which market participants access the Covered Clearing Organization's services.

8. "Clearing Participant" means a participant of a Covered Clearing Organization that does not serve as an intermediary, but trades and clears only for its own account as principal.

9. "Books and Records" means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a Covered Clearing Organization.

10. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Clearing Organization.

11. "On-Site Visit" means any regulatory visit as described in Article Five to the premises of a Covered Clearing Organization for the purposes of ongoing supervision and oversight including the inspection of Books and Records.

12. "Local Authority" means the Authority in whose jurisdiction a Covered Clearing Organization that is the subject of an On-Site Visit is physically located.

13. "Visiting Authority" means the Authority conducting an On-Site Visit.

14. "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;

    b. The Australian Department of the Treasury or the Australian Prudential Regulation Authority, if the Requesting Authority is the RBA or ASIC;

    c. Any Minister assigned responsibility for ASIC's functions, if the Requesting Authority is the ASIC; and

    d. Any Minister assigned responsibility for RBA's functions, if the Requesting Authority is the RBA.

ARTICLE TWO: GENERAL PROVISIONS

15. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with each of the Authorities' respective functions relating to Covered

Clearing Organizations. The cooperation and information sharing arrangements under this MOU will be interpreted and implemented in a manner and to the extent that is permitted by, and consistent with, the laws and requirements that govern each Authority. With respect to cooperation pursuant to this MOU, at the date this arrangement is executed, each Authority believes that no domestic secrecy or blocking laws or regulations should prevent it from providing assistance to any other Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation. 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.

16. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede domestic laws or regulations. 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.

17. 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 Covered Clearing Organizations, Clearing Members, or Clearing Participants 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, or obtain information or documents from any Person subject to its jurisdiction that is physically located in the territory of another Authority.

18. 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 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.

    c. 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.

19. 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 Authorities.

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

General

20. The Authorities recognize the importance of close communication concerning their supervision of Covered Clearing Organizations 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 Covered Clearing Organizations; and

    c. Any other areas of mutual supervisory interest.

21. The Authorities recognize in particular the importance of close cooperation in the event that a Covered Clearing Organization experiences, or is threatened by, a potential financial crisis or other Emergency Situation.

22. 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 registration or licensure, or exemption therefrom, by a Covered Clearing Organization that is licensed or registered in the other jurisdiction;

    b. The ongoing supervision and oversight of a Covered Clearing Organization including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards; and

    c. Regulatory or supervisory actions or approvals taken in relation to a Covered Clearing Organization that may impact the operations of the entity in the jurisdiction of the other Authority or Authorities.

Event-Triggered Notification

23. As appropriate in the particular circumstances, the CFTC and each Australian Authority endeavors to inform, respectively, the Australian 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 Covered Clearing Organization, including those that may affect the rules or procedures of a Covered Clearing Organization;

    b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a Covered Clearing Organization including such events as a default or potential default of a Clearing Member or Clearing Participant; market or settlement bank difficulties that might adversely impact the Covered Clearing Organization; failure by a Covered Clearing Organization to satisfy any of its requirements for continued registration, licensure, or exemption where that failure

could have a material adverse effect in the other jurisdiction; or any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Covered Clearing Organization;

c. The status of efforts of which the Authority is aware to address any material event that could adversely impact the financial or operational condition of a Covered Clearing Organization, Clearing Member, or Clearing Participant; and

d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant licensure or registration, or exemption therefrom, concerning a Covered Clearing Organization.

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

25. Paragraphs 23 and 24 shall not preclude the Authorities from entering into any further arrangements relating to notification regarding specific financial or operational issues related to a Covered Clearing Organization.

Request-Based Information Sharing

26. 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 exercise of its functions relating to a Covered Clearing Organization, 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.

27. The information covered by Paragraph 26 includes:

a. Information relevant to the financial and operational condition of a Covered Clearing Organization including, for example, financial resources, risk management, and internal control procedures;

b. Relevant regulatory information and filings that a Covered Clearing Organization 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 Covered Clearing Organizations.

Periodic Meetings

28. 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 Covered Clearing Organizations, including:

    a. Assessment of risks affecting Covered Clearing Organizations' clearing services or systems subject to the Authorities' supervision;

    b. Material and substantive developments to Covered Clearing Organizations' provision of clearing services;

    c. Compliance with CFTC, Australian, and international standards for clearing services or systems;

    d. Contingency planning and crisis management;

    e. Default procedures; and

    f. Enhancement of cooperation and coordination among 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

29. 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 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.

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

31. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, Laws and Regulations, an Authority may need to conduct On-Site Visits to a Covered Clearing Organization physically located in the jurisdiction of the other Authority. The Authorities will consult and work collaboratively in conducting an On-Site Visit.

32. 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 time frame 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 Covered Clearing Organization.

    b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the Covered Clearing Organization.

    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 Covered Clearing Organization.

    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

33. The Requesting Authority may use non-public information obtained under this MOU solely for the purposes of supervision and oversight of Covered Clearing Organizations pursuant to, and to ensure compliance with, the Laws and Regulations of the Requesting Authority.

34. The Authorities recognize that, while this MOU is not intended to enable the Authorities to gather information for enforcement purposes, the Authorities 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 ASIC, use of non-public information for enforcement purposes will be in accordance with the terms and conditions in Paragraph 10 of the IOSCO MMOU. With respect to information shared between the CFTC and RBA, Paragraph 35 applies to such use.

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

36. 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 Covered Clearing Organization 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.

37. The restrictions in this Article Six do not apply to an Authority's use of information it obtains directly from a Covered Clearing Organization, 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

38. Except as provided in Paragraphs 39, 40, 41, 42, or 43, 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.

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

40. 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.

41. In the context of the RBA's powers and obligations under the CA to assess Covered Clearing Organisations that are, or that have applied to be, licensed CS facilities against the financial stability standards that it sets and to report the outcome of those assessments to the ASIC and the relevant Minister or Ministers, and its practice to publish each assessment as permitted by the CA, the RBA will:

    a. Comply with the requirements of Paragraphs 39 and 40 with respect to the sharing with ASIC or any Minister of non-public information obtained under this MOU;

    b. Consult with the CFTC about publication of any assessment of a Covered Clearing Organization registered with or exempted from registration by the CFTC as a DCO that includes non-public information provided by the CFTC; and

    c. Not publish any report of a review or examination, or the results thereof, by the CFTC of a Covered Clearing Organization registered with or exempted from registration by the CFTC as a DCO.

    The restrictions in Paragraph 41 do not apply to publication or other disclosure of information that the RBA obtains directly from a Covered Clearing Organization.

42. Except as provided in Paragraphs 40, 41, or 43, the Requesting Authority must obtain the prior written consent from 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.

43. 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.

44. 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

45. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the CFTC and the RBA and/or 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 all of the Authorities referred to in Paragraph 1.

ARTICLE NINE: EXECUTION OF MOU

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

ARTICLE TEN: TERMINATION

47. 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 one Australian Authority terminates this MOU, the MOU shall remain effective between the CFTC and the remaining Australian Authority. If an Authority gives notice of termination, the relevant 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 involving a terminating Authority that were made under this MOU before the expiration of the 30-day period until all such 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 Articles Six and Seven.

This MOU is executed in triplicate, this 05 day of June 2014.

Mark Wetjen
Acting Chairman
U.S. Commodity Futures Trading Commission

Malcolm Edey
Assistant Governor (Financial Systems Group)
Reserve Bank of Australia

Greg Medcraft
Chairman
Australian Securities and Investments Commission

APPENDIX A

CONTACT PERSONS

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

CFTC

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Alternate Contacts:

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RBA

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