

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. SECURITIES AND EXCHANGE COMMISSION
AND
THE U.S. COMMODITY FUTURES TRADING COMMISSION
REGARDING
COORDINATION IN AREAS OF COMMON REGULATORY INTEREST
AND INFORMATION SHARING**

The mission of the SEC is to protect investors, maintain fair, orderly, and efficient securities markets, and facilitate capital formation. The mission of the CFTC is to foster open, transparent, competitive and financially sound markets. Notably, the SEC and the CFTC have certain joint responsibilities under Dodd-Frank and the CFMA, including joint responsibility for regulating security futures products.

The SEC and CFTC recognize that enhanced coordination and cooperation concerning issues of common regulatory interest is necessary in order to foster market innovation and fair competition and to promote efficiency in regulatory oversight. Moreover, the SEC and the CFTC recognize the need to share information and data concerning issues of common regulatory interest in connection with matters deemed appropriate by the Parties to fulfill their respective regulatory mandates, including, but not limited to, in connection with a specific incident, event or activity.¹ The SEC and CFTC further recognize that through increased coordination and cooperation, the agencies can facilitate the introduction of novel derivative products or other products to market users and investors, and enhance the functioning of the underlying markets. Accordingly, the SEC and CFTC are entering into this MOU in order to establish a regulatory liaison and facilitate the discussion and coordination of regulatory action, as well as information exchange and data sharing, regarding issues of common regulatory interest.

ARTICLE I: DEFINITIONS

For purposes of this MOU:

“Broker” and **“Dealer”** shall have the meaning given the terms in Sections 3(a)(4) and 3(a)(5) of the Exchange Act, respectively.

“CEA” shall refer to the Commodity Exchange Act.

“CFMA” shall refer to the Commodity Futures Modernization Act of 2000.

¹ While this agreement includes Swaps and Security-Based Swaps, the Parties will generally seek relevant data pertaining to Swaps and Security-Based Swaps from Swap Data Repositories and Security-Based Swap Data Repositories, respectively, as provided in CFTC and SEC regulations.

“**CFTC**” shall mean the U.S. Commodity Futures Trading Commission.

“**Commodity Pool Operator**” shall mean a commodity pool operator, as defined under Section 1a(11) of the CEA, that is registered with the CFTC pursuant to Section 4m of the CEA and the rules and regulations thereunder.

“**Commodity Trading Advisor**” shall refer to a commodity trading advisor, as defined under Section 1a(12) of the CEA, that is registered with the CFTC pursuant to Section 4m of the CEA and the rules and regulations thereunder.

“**Clearing Agency**” shall have the meaning given the term in Section 3(a)(23) of the Exchange Act.

“**Derivatives Clearing Organization**” shall have the meaning given the term in Section 1a(15) of the CEA.

“**Dodd-Frank**” shall mean the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

“**Exchange Act**” shall mean the Securities Exchange Act of 1934.

“**Futures Commission Merchant**” shall refer to a futures commission merchant, as defined under Section 1a(28) of the CEA, that is registered with the CFTC pursuant to Section 4d of the CEA.

“**Introducing Broker**” shall refer to an introducing broker, as defined under Section 1a(31) of the CEA, that is registered with the CFTC pursuant to Section 4d of the CEA.

“**Investment Adviser**” shall mean an investment adviser, as defined under Section 202(a)(11) of the Investment Advisers Act, that is registered with the SEC pursuant to Section 203 of the Investment Advisers Act.

“**Investment Advisers Act**” shall mean the Investment Advisers Act of 1940.

“**MOU**” shall mean this Memorandum of Understanding.

“**Parties**” shall mean the SEC and CFTC.

“**SEC**” shall mean the U.S. Securities and Exchange Commission.

“**SFP**” shall mean security futures product, as defined in Section 1a(32) of the CEA and Section 3(a)(56) of the Exchange Act.

“**Security-Based Swap**” shall have the meaning given the term in Section 1a(42) of the CEA and Section 3(a)(68) of the Exchange Act.

“Security-Based Swap Data Repository” shall have the meaning given the term in Section 3(a)(75) of the Exchange Act.

“Security-Based Swap Dealer” shall have the meaning given the term in Section 1a(43) of the CEA and Section 3(a)(71) of the Exchange Act.

“Swap” shall have the meaning given the term in Section 1a(47) of the CEA and Section 3(a)(69) of the Exchange Act.

“Swap Data Repository” shall have the meaning given the term in Section 1a(48) of the CEA.

“Swap Dealer” shall have the meaning given the term in Section 1a(49) of the CEA and Section 3(a)(76) of the Exchange Act.

ARTICLE II: GENERAL PROVISIONS

1. The MOU is a statement of intent to consult, cooperate, exchange information, and share data in connection with areas of common regulatory interest, in a manner consistent with, and permitted by, the laws and requirements that govern the Parties. It is anticipated that cooperation will be achieved primarily through ongoing, informal, oral consultations, as well as periodic meetings, written requests as needed, and other practical arrangements as may be developed by the Parties.

2. For purposes of this MOU, “Non-Public Information” means any data, information or reports submitted, received or shared between the Parties pursuant to this MOU. Such Non-Public Information includes the information itself, in any form (including oral), and any document to the extent it contains such information. The provisions of this MOU do not apply to data, information, or reports obtained by the Parties through a source outside this MOU or pursuant to the Parties’ own authority, and this MOU is not intended to modify or replace any existing agreements or practices regarding the sharing of information between any of the Parties.

3. The MOU does not create any legally binding obligations, 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 the MOU. This MOU does not require either Party to maintain Non-Public Information or to provide or share Non-Public Information with the other Party, and all sharing of Non-Public Information pursuant to this MOU shall be at the sole discretion of each Party and in keeping with any disclosure regulation or policy to which such Non-Public Information may be subject.

4. The MOU is intended to complement, but does not alter the terms and conditions of, existing bilateral or multilateral arrangements concerning cooperation in supervisory or enforcement matters, between the SEC and the CFTC, except as provided in

paragraph 6 below. In addition, the Parties encourage their respective staffs to maintain ongoing, ad hoc, communications to ensure coordination, as appropriate, of the day-to-day operations of the Parties. The Parties intend to continue their ongoing practice of sharing information between their enforcement divisions, pursuant to customary access requests and grants, and nothing in this MOU is intended to modify or replace such sharing, agreements, or the current practices of the Parties governing and permitting the use of such enforcement referral information by a Receiving Party.

5. The Parties hereby reaffirm the Memorandum of Understanding between the SEC and the CFTC Regarding the Oversight of SFP Trading and the Sharing of SFP Information, dated March 17, 2004.

6. The Parties agree that the Memorandum of Understanding between the SEC and the CFTC Regarding Coordination in Areas of Common Regulatory Understanding, dated March 11, 2008, and the Addendum to the CFTC-SEC Memorandum of Understanding Regarding Coordination in Areas of Common Regulatory Interest: *Principles Governing the Review of Novel Derivative Products*, dated March 11 2008, are superseded by this Memorandum of Understanding.

7. The Parties agree that nothing in the MOU modifies in any way each Party's ability and responsibility to enforce its statutes and regulations.

8. The Parties intend periodically to review the functioning and effectiveness of the cooperation arrangement with a view to expanding or altering the scope or operation of the MOU should such expansion or alteration be judged to further the intent of the Parties.

ARTICLE III: PROCEDURES FOR COORDINATION IN AREAS OF COMMON REGULATORY INTEREST GENERALLY

9. Representatives of the Parties, each designated pursuant to Article IV hereof, endeavor to meet as needed to identify and discuss issues of regulatory interest to either or both Parties, and to identify and discuss at early stages the regulatory implications of such issues.

10. The Parties agree to consult in the interest of developing practical arrangements to coordinate and cooperate in areas of common regulatory interest.

11. The Parties agree to exchange information about examinations and other supervisory information relating to firms who are of common regulatory interest to the Parties, including but not limited to firms registered both as Investment Advisers with the SEC and Commodity Pool Operators and/or Commodity Trading Advisors with the CFTC, firms registered both as Broker-Dealers with the SEC and Futures Commission Merchants or Introducing Brokers with the CFTC, firms registered both as Clearing Agencies and Derivatives Clearing Organizations, and firms registered both as Swap Dealers and Security-Based Swap Dealers.

12. The Parties agree to share data, upon request, regarding issues of common regulatory interest in connection with or related to a specific incident, event, or activity, or other matter deemed appropriate by the Parties.²

13. To the extent practicable and as appropriate in the particular circumstances, each Party endeavors to inform the other Party in advance of issues that may impact the regulatory interests of either Party and /or affect operations across both jurisdictions. Issues for consultation and coordination include, but are not limited to:

- a. General supervisory developments and decisions taken by either Party that affect operations across both jurisdictions;
- b. Material events that may have a significant impact on the operations or activities of an entity or market under the other Party's jurisdiction;
- c. Enforcement actions, investigations, or sanctions that could adversely impact an entity, product or market under the other Party's jurisdiction;
- d. Proposals to list or trade novel derivative products;
- e. Alliances, mergers, or cross-shareholdings that occur at the holding company level, where regulatory approval by either Party is required;
- f. Amendments to the ownership or governance structure of an entity under common jurisdiction, where regulatory approval by either Party is required; or
- g. Other material changes to areas of common regulatory interest.

ARTICLE IV: POINT(S) OF CONTACT

14. The SEC:

- a. Designates the Director of the Office of Compliance Inspections and Examination, or his or her designee, as its point(s) of contact for examinations related to firms registered with both Parties;
- b. Designates the Director of the Division of Trading and Markets, who shall in turn designate two (2) members of his or her staff as his or her point of contact for matters relating to product classification, including novel derivative products and Security-Based Swaps; and

² See n.1 *supra*.

c. Designates the Director of the Division of Trading and Markets, or his or her other designees, as point(s) of contact for all other purposes of the MOU.

15. The CFTC:

a. Designates the Director of the Division of Market Oversight, who shall in turn designate two (2) members of CFTC staff for each subject area, as his or her point(s) of contact for matters relating to novel derivative products, swap data reporting requirements, and swap execution facilities; and

b. Designates the Director of the Division of Swap Dealer and Intermediary Oversight, who shall in turn designate two (2) members of CFTC staff for each subject area, as his or her point(s) of contact for matters related to firms registered with both Parties; and

c. Designates the Director of the Division of Clearing and Risk, who shall in turn designate two (2) members of CFTC staff, as his or her point(s) of contact for matters relating to clearinghouses; and

d. Designates the General Counsel, or his or her designee, as point(s) of contact for all other purposes of the MOU.

ARTICLE V: PERMISSIBLE USES AND CONFIDENTIALITY OF INFORMATION

16. It is the intent of the Parties that when one of the Parties provides Non-Public Information pursuant to this MOU to the other Party (hereafter such entity providing information shall be designated a “Providing Party” and any such receiving party shall be designated a “Receiving Party”), the Receiving Party shall presume the information so provided to be confidential Non-Public Information, and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Party designates otherwise in writing.

17. This MOU does not apply to Non-Public Information that becomes publicly available in a manner other than by a breach of this MOU by a Receiving Party. This MOU does not obligate the Parties to create, maintain, share or provide any information, and does not create any right enforceable against the Parties or any of their officers or employees or any other person to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge the execution of a request pursuant to the MOU.

18. The Parties agree to treat as confidential, to the extent permitted by applicable laws, all Non-Public Information provided pursuant to the MOU. Nothing in the MOU waives or alters any provisions of any applicable laws relating to Non-Public Information.

19. The Parties will not share information received pursuant to the MOU with self-regulatory organizations without notice and consent of the other Party.

20. Non-Public Information received under this MOU from a Providing Party

may be used by the Receiving Party internally to inform any examination, proceeding, civil action, rulemaking, research or any other activity or matter within the jurisdiction of the Receiving Party.

21. Non-Public Information received under this MOU from a Providing Party may be used by the Receiving Party in any enforcement investigation or, with advance notice to the Providing Party where feasible and otherwise as soon as practicable, in any proceeding or civil action.

22. Other than as provided in paragraphs 21, 25, or 28 of the MOU, the Receiving Party will disclose Non-Public Information to a third party or the public only with the prior written consent of the Providing Party, which shall not be unreasonably withheld. The Parties agree that they shall expeditiously discuss such requests for disclosure, including with respect to disclosure of analyses containing information aggregated from data and information provided pursuant to this MOU.

23. The Parties agree to take all actions reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to Non-Public Information provided pursuant to the MOU, in accordance with applicable law. The Parties agree to establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of any such information provided.

24. If a Receiving Party receives a request from a third party for Non-Public Information of the Providing Party, such as a Freedom of Information Act request, the Receiving Party will:

a. unless prohibited by law, as soon as practicable notify the Providing Party of such request and furnish to the Providing Party copies of any such request as well as any documents related thereto;

b. afford the Providing Party a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of Non-Public Information or any privileges associated therewith;

c. cooperate fully with the Providing Party to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Party's behalf that may reasonably be requested to be asserted, including withholding (except as provided in paragraphs 21, 25, or 28) Non-Public Information from disclosure that the Providing Party has advised is privileged.

d. notify the requester seeking the Non-Public Information that the information was obtained from the Providing Party and, where applicable, notify the requester that requests for such information should be made directly to the Providing Party in accordance with applicable federal or state law;

e. absent written consent from the Providing Party or as provided in paragraphs 21, 25, or 28, not produce the Non-Public Information; and

f. consent to application by the Providing Party to intervene in any action in order to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith.

25. Nothing in the MOU will prevent a Receiving Party from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the Non-Public Information or a legally valid and enforceable subpoena, or order by a court or administrative body of competent jurisdiction for the Non-Public Information or testimony related thereto if, in the case of a subpoena or such order, the Receiving Party:

a. reasonably determines that efforts to quash, appeal, or resist compliance with the subpoena or order would be unsuccessful or against its interest;

b. attempts, to the extent practicable, to secure a protective order to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith; and

c. immediately notifies the Providing Party of its intent to comply with the subpoena or order and of any actions taken in compliance with the subpoena or order.

In complying with the request received from a duly authorized Committee of the United States Congress, the Receiving Party shall:

a. advise the Committee that the Non-Public Information being produced belongs to the Providing Party; and

b. use its best efforts to obtain the commitment or agreement of the Committee that it will maintain the confidentiality of the information.

26. Should a question arise as to whether information is public or non-public, the Receiving Party will immediately contact the Providing Party and seek a determination as to the status of the information. If the Providing Party determines that the information is Non-Public Information, the Receiving Party will treat it in accordance with this MOU.

27. The Parties intend that sharing of Non-Public Information with each other pursuant to the terms of the MOU will not constitute public disclosure, nor will it constitute a waiver of confidentiality or any privilege applicable to such information.

28. Nothing in the MOU shall prevent a Party from complying with an order of a court of the United States.

ARTICLE VI: EFFECTIVE DATE AND TERMINATION

The MOU shall become effective as of the date of its signing, shall remain effective unless terminated by either Party, and may be revised or modified, upon agreement, or as required by changes in relevant laws. The Party recommending the revision or modification shall provide the other Party with 30 days' written notice of the proposed change. Issues raised by the Parties relating to administration of the MOU shall be resolved by the Chairmen of the respective Parties, or by the Chairmen's designees. The MOU does not create legally binding obligations on the Parties and does not create any right enforceable against the Parties or any of their officers or employees or any other person.

Either Party may terminate the MOU upon 30 days' written notice to the other Party. Following termination, all information that was provided subject to the MOU shall remain confidential pursuant to its terms.

Agreed to this ____ day of _____, 2018.

Jay Clayton
Chairman
Securities and Exchange Commission

J. Christopher Giancarlo
Chairman
Commodity Futures Trading Commission