MEMORANDUM OF UNDERSTANDING

United States Commodity Futures Trading Commission

United Kingdom Financial Conduct Authority

COOPERATION AND THE EXCHANGE OF INFORMATION
IN THE CONTEXT OF SUPERVISING COVERED FIRMS

October 6, 2016

MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION AND THE EXCHANGE OF INFORMATION IN THE CONTEXT OF SUPERVISING COVERED FIRMS

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 Financial Conduct Authority (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 firms that operate on a cross-border basis in both the United States and the United Kingdom. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates in the context of supervising firms within the scope of this MOU, 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 the United Kingdom, the Financial Conduct Authority ("FCA").

2. "Requesting Authority" means an Authority making a request under this MOU.

3. "Requested Authority" means the Authority to whom a request is made under this MOU.

4. "Covered Firm" means an entity physically located in either the United States or United Kingdom that satisfies all of the following criteria:
   a. A swap dealer ("SD") or major swap participant ("MSP") that is, or that has applied to be, registered as such under the Commodity Exchange Act ("CEA"); and
   b. An entity authorized, or that has applied to be authorized, by the FCA in accordance with any of the European single market directives mentioned in Article 2(8) of EU Regulation No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR"), and in accordance with the UK Financial Services and Markets Act 2000 ("FSMA") and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and that is, or will be, regulated and supervised by the FCA ("AE").

5. "Covered Matters" means all derivatives-related activities and conduct of a Covered Firm that are governed by U.S. Laws and Regulations with respect to the CFTC or UK Laws and Regulations with respect to the FCA.

6. "U.S. Laws and Regulations" means the requirements relating to the activities and conduct of SDs and MSPs under the CEA, Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations, and other relevant requirements in the United States.

7. "UK Laws and Regulations" means the requirements relating to AEs carrying out derivatives activities under EMIR, applicable EU Regulations made pursuant to EMIR, the UK Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013, FSMA, other relevant regulations made pursuant to FSMA, and other relevant requirements in the United Kingdom.

8. "Laws and Regulations" means the U.S. Laws and Regulations with respect to the CFTC and the UK Laws and Regulations with respect to the FCA.

9. "Person" means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Covered Firm.

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

11. "On-Site Visit" means any regulatory visit to the premises of a Covered Firm for the purposes of ongoing supervision and oversight in relation to its Covered Matters, including the inspection of Books and Records.

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

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

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

15. "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 FCA, the Bank of England ("BOE"), the Prudential Regulation Authority ("PRA"), and Her Majesty's Treasury ("HM Treasury").

ARTICLE TWO: GENERAL PROVISIONS

16. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of Covered Firms with respect to their Covered Matters. 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 legal requirements applicable to each Authority. With respect to cooperation pursuant to this MOU, the Authorities consider that there are no domestic secrecy or blocking laws or regulations

which would adversely affect or hinder the ordinary operation of this MOU. 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 Covered Firms with respect to their Covered Matters. 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.

17. 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.

18. This MOU is not intended to:

    a. Limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities pursuant to Laws and Regulations;

    b. Prejudice the individual responsibilities or autonomy of any Authority; or

    c. 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 Firms but may be subject to regulatory requirements under laws and regulations in the United States and in the United Kingdom.

    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 jurisdiction of another Authority.

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

    a. The *Memorandum of Understanding on Exchange of Information* between the United States Securities and Exchange Commission ("SEC") and, as successor in interest, the FCA in Matters Relating to Securities and between the CFTC and, as successor in interest, the FCA in Matters Relating to Futures (September 23, 1986) ("1986 MOU");

    b. The *Financial Information Sharing Memorandum of Understanding* between the CFTC and U.S. self-regulatory organizations and, as successor in interest, the FCA and U.K. self-regulatory organizations (September 1, 1988) and Addendum (May 15, 1989);

    c. The *Memorandum of Understanding on Mutual Assistance and the Exchange of Information* between the SEC and CFTC and, as successors in interest, the FCA, PRA, and BOE (September 25, 1991), amended to include HM Treasury (May 9, 1994) ("1991 MOU");

    d. The *Memorandum of Understanding* between the SEC and CFTC and, as successors in interest, the FCA, PRA, and BOE (October 28, 1997);

    e. The *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations* (as amended March 1998), to which the CFTC and, as successor in

interest, FCA are signatories;

f. The *Arrangement on Warehouse Information* between the CFTC and, as successors in interest, the FCA and BOE (May 17, 2000);

g. The *Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight* between the CFTC and, as successors in interest, the FCA and BOE (November 17, 2006);

h. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) ("IOSCO MMOU"), to which the Authorities are signatories, which covers primarily information sharing in the context of enforcement matters; and

i. The *MoU concerning consultation, cooperation and the exchange of information related to the supervision of covered entities in the alternative investment fund industry* between the CFTC and the FCA (July 22, 2013).

20. 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

21. The Authorities recognize the importance of close communication concerning Covered Firms 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 and regulation of Covered Firms with respect to their Covered Matters; and

    c. Any other areas of mutual supervisory interest.

22. The Authorities recognize in particular the importance of close cooperation in the event that a Covered Firm, 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.

23. 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 as an SD or MSP by a Covered Firm that is an AE supervised by the FCA, or the initial application to the FCA for authorization by a Covered Firm that is an SD or MSP supervised by the CFTC;

    b. The ongoing supervision and oversight of a Covered Firm with respect to its Covered Matters, including compliance with Laws and Regulations in either jurisdiction; and

c. Regulatory or supervisory actions or approvals taken in relation to a Covered Firm by the CFTC or the FCA that may materially impact the operations of the entity with respect to its Covered Matters in the jurisdiction of the other Authority.

Event-Triggered Notification

24. As appropriate in the particular circumstances and with respect to Covered Matters, the relevant Authority will endeavor to inform the other Authority promptly, and where practicable in advance, of:

    a. Pending regulatory changes that may have a material impact on the operations, reputation, rules, or procedures of a Covered Firm with respect to its Covered Matters;

    b. Any material event of which the Authority is aware that could impact the financial or operational stability of a Covered Firm. Such events include the failure of the Covered Firm to satisfy any of its requirements for continued registration as an SD or MSP, or continued authorization as an AE, where that failure could have an adverse effect in the jurisdiction of the other Authority, as well as any known material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Covered Firm; and

    c. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of registration or authorization, concerning a Covered Firm and/or any individual involved in the Covered Matters of a Covered Firm.

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

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 the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority's supervision and oversight of Covered Firms with respect to Covered Matters, 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 reasonably 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 Firm, including, for example, financial resources, risk management, and internal control procedures;

b. Relevant regulatory information and filings that a Covered Firm 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 Covered Firms.

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 Firms, 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

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(s) 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 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 Authorities will endeavor to notify each other as soon as possible of the Emergency Situation and will 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 their respective supervision and oversight responsibilities and to ensure compliance with respective Laws and Regulations in connection with Covered Matters of Covered Firms, the CFTC may need to conduct On-Site Visits to a Covered Firm located in the United Kingdom, and the FCA may need to conduct On-Site Visits to a Covered Firm located in the

United States. Each Authority will consult and work collaboratively with the other Authority 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 will provide advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended timeframe for, and the scope of, the On-Site Visit. Other than in exceptional circumstances, the Visiting Authority will notify the Local Authority prior to notifying the Covered Firm.

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

    c. The Authorities intend to assist each other regarding On-Site Visits, including providing information 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 Firm.

    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.

    e. The Authorities will communicate with each other as soon as practicable following completion of an On-Site Visit. The Visiting Authority will communicate any major issues to the Local Authority that may impact negatively on a Covered Firm.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

33. The Requesting Authority may use non-public information obtained under this MOU solely for the supervision and oversight of Covered Firms and to ensure compliance with the Laws and Regulations of the Requesting Authority with respect to Covered Matters.

34. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, subsequently an Authority may want to use the non-public information provided pursuant to this MOU for enforcement purposes under its Laws and Regulations. In cases where a Requesting Authority seeks to use non-public information obtained pursuant to this MOU for enforcement purposes, including in conducting investigations or taking enforcement action, treatment of the non-public information will be in accordance with the use and confidentiality provisions of the IOSCO MMOU and the 1986 and 1991 MOUs.

35. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 33 and 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 Requesting and Requested 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 the other Authority ("Disclosing Authority") that is related to the Disclosing Authority's supervision and oversight of a Covered Firm with respect to its Covered Matters, the Receiving Authority will use and treat the information in accordance with the terms of this MOU.

37. Where non-public information is provided to a Requesting Authority in response to an information-sharing request pursuant to Article Four of this MOU or as described in Paragraph 32(e), the restrictions in this MOU apply to the use and onward sharing of the information by that Requesting Authority. However, the restrictions in this MOU do not apply to an Authority's use or onward sharing of information that it obtains directly from a Covered Firm.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

38. Except as provided in Paragraphs 39-42, 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. 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 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'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. As required by EMIR, it may become necessary for the FCA to share non-public information obtained from the CFTC under this MOU with the European Securities and Markets Authority, the European Central Bank, the national central bank located in a European Union ("EU") member state where a Covered Firm is operating, or the competent authority with functions and responsibilities under EMIR located in an EU member state where a Covered Firm is operating (each an "EU Entity"). In these circumstances and to the extent permitted by law:

    a. The FCA will notify the CFTC prior to sharing the information and indicate the purpose for which the information will be shared with an EU Entity; and

    b. Prior to the FCA sharing the non-public information, the FCA will provide adequate assurances to the CFTC concerning the EU Entity's use and confidential treatment of the

information, including, as necessary, assurances that:

i. The EU Entity has confirmed that it requires the information and will use the information only for a purpose within the scope of its jurisdiction; and

ii. The information will not be shared by the EU Entity with other parties without getting the prior written consent of the CFTC.

41. Except as provided in Paragraphs 39, 40 and 42, 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.

42. 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.

43. 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 non-public information.

ARTICLE EIGHT: AMENDMENTS

44. The Authorities will periodically review the functioning and effectiveness of this MOU 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 the Authorities referred to in Paragraph 1.

ARTICLE NINE: EXECUTION OF MOU

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

ARTICLE TEN: TERMINATION

46. Cooperation in accordance with this MOU will continue until the expiration of 180 days after

an Authority gives written notice to the other Authority of its intention to terminate the MOU. If an 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 180-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 prescribed under Articles Six and Seven.

Signed in duplicate, this 6th day of October 2016.

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

Andrew Bailey
Chief Executive
Financial Conduct Authority

APPENDIX A

CONTACT PERSONS

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

CFTC

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