

MEMORANDUM OF COOPERATION



**United States Commodity Futures Trading
Commission**



Financial Services Agency of Japan

SUPERVISION OF CROSS-BORDER COVERED ENTITIES

March 10, 2014

**MEMORANDUM OF COOPERATION
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 United States Commodity Futures Trading Commission and the Financial Services Agency of Japan (jointly, the "Authorities") have reached this Memorandum of Cooperation ("MOC") regarding cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in both the United States and Japan. The Authorities express, through this MOC, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates regarding derivatives markets, particularly in the areas of protecting investors and customers; fostering the integrity of and maintaining confidence in financial markets; and reducing systemic risk.

ITEM ONE: DEFINITIONS

For purposes of this MOC:

1. "Authority" means:
 - a. In the United States, the Commodity Futures Trading Commission ("CFTC"); or
 - b. In Japan, the Financial Services Agency ("FSA").
2. "Requesting Authority" means the Authority making a request under this MOC.
3. "Requested Authority" means the Authority to whom a request is made under this MOC.
4. "Laws and Regulations" means the Commodity Exchange Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations, and other relevant requirements in the United States, and the Financial Instruments and Exchange Act, its relevant regulations (which usually are Cabinet Office Orders or Cabinet Office Ordinances), and other FSA regulatory requirements in Japan.
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, designated, recognized, qualified, licensed, registered, supervised, or overseen by one or more of the Authorities pursuant to Laws and Regulations, which may include regulated markets and organized trading platforms, central counterparties, trade repositories, and intermediaries, dealers, or other market participants.
7. "Cross-Border Covered Entity" means:

- a. A Covered Entity of both the CFTC and the FSA;
- b. A Covered Entity in one jurisdiction that has been exempted from authorization, designation, recognition, qualification, licensure, 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 MOC, references to jurisdiction will be determined as either the jurisdiction of the CFTC or the jurisdiction of the FSA.

8. "Books and Records" means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a Cross-Border Covered Entity.
9. "On-Site Visit" means any regulatory visit by an Authority as described in Item Five to the premises of a Cross-Border Covered Entity physically located in the jurisdiction of the other Authority, including the review of Books and Records.
10. "Visiting Authority" means the Authority conducting an On-Site Visit.
11. "Local Authority" means the Authority in whose jurisdiction a Cross-Border Covered Entity that is the subject of an On-Site Visit is physically located.
12. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Covered Entity.
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 FSA, the Japanese Ministry of Finance or the Bank of Japan.

ITEM TWO: GENERAL MATTERS

14. This MOC 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 MOC should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and requirements that govern each Authority. 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 contents of this MOC are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in line with applicable laws.

15. This MOC does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOC 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 MOC.
16. This MOC 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 MOC 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 and in Japan. In particular, this MOC does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (under the procedures described in Item Five), or obtain information or documents from any Person subject to its jurisdiction that is located in the territory of another Authority.
17. This MOC is intended to complement, but does not alter, the following existing arrangements:
 - a. *The Statement of Intent between the Securities and Exchange Commission and Commodity Futures Trading Commission and the Financial Services Agency of Japan Concerning Cooperation, Consultation and the Exchange of Information* (May 17, 2002) (“SOI”), as amended (January 16, 2006).
 - 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 the FSA are signatories, which covers primarily information sharing in the context of enforcement matters.
18. To facilitate cooperation under this MOC, the Authorities hereby designate contact persons as stated in Appendix A, which may be modified from time to time by an Authority transmitting revised contact information in writing to the other Authority.

ITEM 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 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 or will be subject to enforcement actions or sanctions or significant regulatory actions.
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 with the CFTC or the FSA for authorization, designation, recognition, qualification, licensure, or registration, or exemption therefrom, by a Covered Entity that is authorized, designated, recognized, qualified, licensed, or registered by the Authority 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 by the CFTC or the FSA that may impact the operations of the entity in the jurisdiction of the other Authority; and
 - d. The provision and maintenance of direct access to information and data stored in Covered Entities that are trade repositories.

Event-Triggered Notification

22. As appropriate in the particular circumstances, each Authority will endeavor to inform the other Authority 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 any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Covered Entity, and the failure of a Cross-Border Covered Entity to satisfy any of its requirements for continued authorization, designation, recognition, qualification, licensure, or registration, or exemption therefrom, where that failure could have a material adverse effect in the jurisdiction of the other Authority. 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 and market or settlement bank difficulties that might adversely affect the central counterparty;

- c. The status of efforts to address such material financial or operating 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, designation, recognition, qualification, licensure, or registration, or exemption therefrom, concerning a Cross-Border Covered Entity.
23. The determination of what constitutes a “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 purposes of Paragraph 22 should be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

Request-Based Information Sharing

24. 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 MOC in assisting the Requesting Authority’s supervision and oversight of Cross-Border Covered Entities, 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 should be made pursuant to Item Four of this MOC, 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 information covered by Paragraph 24 includes:
- 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 early warning 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 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 Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

ITEM FOUR: EXECUTION OF REQUESTS FOR INFORMATION

27. To the extent possible, a request for information pursuant to Item Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person 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 responsive 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.

28. In an Emergency Situation, the Authorities will endeavor to notify each other 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.

ITEM FIVE: ON-SITE VISITS

29. 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. Each Authority will consult and work collaboratively with the other Authority in conducting an On-Site Visit.
30. An On-Site Visit by an Authority will be conducted in line 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 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.

- b. A Cross-Border Covered Entity that is authorized, designated, recognized, qualified, licensed, or registered, or exempt therefrom, has consented to On-Site Visits by a Visiting Authority.
- c. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the Cross-Border Covered Entity.
- d. 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 Cross-Border Covered Entity.
- e. 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.
- f. The Authorities will communicate with each other, including meetings as appropriate during the On-Site Visit. After concluding an On-Site Visit, the Visiting Authority will communicate any major issues to the Local Authority that may impact negatively the authorization, designation, recognition, qualification, license, registration, or exemption of the Cross-Border Covered Entity.

ITEM SIX: PERMISSIBLE USES OF INFORMATION

- 31. The Requesting Authority may use non-public information obtained under this MOC 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.
- 32. While the Authorities recognize that this MOC is not intended to gather information for enforcement purposes, they also understand that the Requesting Authority subsequently may want to use the non-public information provided by the Requested Authority pursuant to this MOC for enforcement purposes, and the importance and desirability of cooperation by the Authorities in this regard. In such cases, the Requesting Authority will submit to the Requested Authority a request for consent to use the information for enforcement purposes that will include:
 - a. A general description of the enforcement matter and the purpose for which consent is sought;
 - b. A general description of the non-public information for which consent is sought; and
 - c. The laws and regulations of the Requesting Authority that may have been violated.

The Requested Authority will provide a substantive response to all requests for consent in a timely fashion. A request for consent for use for enforcement purposes may be

denied by the Requested Authority for the reasons stated in Paragraph 9(d) of the SOI or Paragraph 6(e) of the IOSCO MMOU. Use for enforcement purposes and confidential treatment by the Requesting Authority of non-public information provided by the Requested Authority will be in line with the terms and conditions in Paragraphs 13 and 14 of the SOI (as well as the associated Note Verbale dated May 17, 2002) and Paragraphs 10 and 11 of the IOSCO MMOU.

33. Before using non-public information furnished under this MOC for any purpose other than those stated in Paragraphs 31 and 32, the Requesting Authority must first consult with and obtain the 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.
34. The restrictions in this Item do not apply to an Authority's use of information it obtains directly from a Cross-Border Covered Entity, whether during an On-Site Visit, through direct access provided by a Cross-Border Covered Entity that is a trade repository, or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to this MOC, the restrictions in this MOC apply to the use of the information by that Requesting Authority.

ITEM SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

35. Except as provided in Paragraphs 36 and 37, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOC, requests made under this MOC, the contents of such requests, and any other matters arising under this MOC.
36. As required by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MOC 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 as required by law; 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.
37. Except as provided in Paragraph 36, the Requesting Authority must obtain the prior written consent of the Requested Authority before sharing non-public information received under this MOC with any non-signatory to this MOC. 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 maybe 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.

38. 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 MOC prior to complying with such demand. Prior to 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.
39. 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 MOC, will not constitute a waiver of privilege or confidentiality of such information.

ITEM EIGHT: IMPLEMENTATION AND MODIFICATIONS

40. The Authorities intend periodically to review the functioning and effectiveness of the cooperation arrangements between the CFTC and the FSA with a view, *inter alia*, to expanding or altering the scope or operation of this MOC should that be judged necessary. The Authorities may decide on such practical measures as may be necessary to facilitate the implementation of this MOC. In case of a material difference with respect to the interpretation of this MOC, the Authorities will consult with each other with a view to reaching a mutually acceptable interpretation. This MOC may be modified with the written consent of the Authorities referred to in Paragraph 1.

ITEM NINE: EXECUTION OF MOC

41. Cooperation under this MOC will commence on the date this MOC is signed by the Authorities.

ITEM TEN: TERMINATION

42. Cooperation under this MOC will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MOC. If either Authority gives such notice, the parties will consult concerning the disposition of any pending requests. If a commitment cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that

were made under the MOC 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 the termination of this MOC, information obtained under this MOC will continue to be treated in the manner stated in Items Six and Seven.

This MOC is executed in duplicate, this 10th day of March 2014.



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



Ryutaro Hatanaka
Commissioner
Financial Services Agency of Japan

APPENDIX A

CONTACT PERSONS

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

CFTC

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