

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

This Memorandum of Understanding (“MOU”) establishes a framework pursuant to which the United States Commodity Futures Trading Commission (“CFTC”) and the United Kingdom Financial Services Authority (“FSA”) (collectively “the Authorities”) express their willingness to cooperate with each other in the interest of fulfilling their statutory functions.

## ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. “Authority” means the CFTC or the FSA:
  - a) “Requested Authority” means the Authority to whom a request is made under this MOU; and
  - b) “Requesting Authority” means the Authority making a request under this MOU.
2. “Books and Records” means documents, electronic media, books and records of, and other information about, a Covered Clearing Organization.
3. “Covered Clearing Organization” means any organization that falls within either of the following categories:
  - i. Category 1 – An organization that satisfies both of the following criteria under this category:
    - a) A derivatives clearing organization registered as such under the Commodity Exchange Act (“DCO”) or a clearing organization that is the subject of an order issued by the CFTC pursuant to Section 409(b)(3) of the Federal Deposit Insurance Corporation Improvement Act 1991; and
    - b) A recognised clearing house or recognised investment exchange (that provides clearing services in relation to transactions conducted on that exchange) under the Financial Services and Markets Act 2000 (“FSMA”), which is based in the United Kingdom.
  - ii. Category 2 – An organization that satisfies both of the following criteria under this category:
    - a) A DCO; and
    - b) A recognised overseas clearing house under Section 292 of FSMA, which is based in the United States of America.

4. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Clearing Organization.
5. "Host Authority" means the Authority in whose jurisdiction a Covered Clearing Organization is located.
6. "Inspecting Authority" means the Authority performing an On-Site Visit.
7. "National 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, Her Majesty's Treasury or the Bank of England.
8. "On-Site Visit" means:
  - a) In the case of an On-Site Visit conducted by the CFTC as described in Paragraphs 24-25, a regulatory visit to the premises of a Covered Clearing Organization in the United Kingdom; and
  - b) In the case of an On-Site Visit conducted by the FSA as described in Paragraphs 24-25, a regulatory visit to the premises of a Covered Clearing Organization in the United States.
9. "Person" means a natural person, unincorporated association, partnership, trust, investment company, or corporation.

## **ARTICLE TWO: GENERAL PROVISIONS**

10. This MOU is a statement of intent to consult, cooperate and exchange information in connection with each of the Authorities' functions relating to Covered Clearing Organizations. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and requirements that govern each Authority, including relevant government policies and guidelines, and obligations and commitments to other regulatory authorities. The Authorities anticipate that cooperation will be primarily achieved through ongoing informal consultations, supplemented by more in-depth, *ad hoc* formal cooperation. The provisions of this MOU are not intended to discourage or hinder such informal communication.

11. 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.
12. 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. 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 located in the territory of the other Authority.
13. This MOU is intended to complement, but does not alter, the terms and conditions of the following existing arrangements concerning cooperation in securities and futures matters:
  - i. The *Memorandum of Understanding on Mutual Assistance and the Exchange of Information between (among others) the CFTC and FSA* (September 1991) (“US-UK MOU”), which covers primarily information sharing in the context of enforcement matters;
  - ii. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (October 2003) (“MMOU”) to which the CFTC and FSA are signatories, which also covers primarily information sharing in the context of enforcement matters;
  - iii. The *Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations* (as amended March 1998), to which the CFTC and FSA are signatories; and
  - iv. The *Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight between the CFTC and FSA* (November 2006).

However, this MOU supersedes the *Supplemental Bilateral Side letter dated May 24, 1999 between the FSA and CFTC to the US-UK MOU*.

14. The Authorities intend periodically to review the functioning and effectiveness of cooperation arrangements between the FSA and CFTC with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary.

15. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

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

16. The Authorities recognize the importance of close communication concerning their supervision of Covered Clearing Organizations, and intend to consult regularly, as necessary, regarding general supervisory developments and issues relevant to the operations, activities and regulation of such Covered Clearing Organizations.
17. 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.

#### **Event-Triggered Notification**

18. As appropriate in the particular circumstances, each Authority endeavors to inform the other Authority promptly, and where practicable in advance of:
  - a) Pending regulatory changes or proposed regulatory actions with regard to a Covered Clearing Organization that may have a significant impact on the operations, activities, or reputation of a Covered Clearing Organization, including changes in default rules or procedures; and
  - b) Any material event that could adversely impact the financial or operational stability of a Covered Clearing Organization. Such events include a default or potential default of a clearing member firm, market or settlement bank emergencies that might adversely impact the Covered Clearing Organization, its failure to satisfy any of its requirements for continued recognition or registration, or any known material changes in the operating environment, operations, management, or systems and controls that may adversely impact its operations or financial stability; and
  - c) The status of efforts to address any material financial or operating difficulties experienced by a Covered Clearing Organization or clearing member firm.
19. The determination of what constitutes a “significant impact,” “material event,” “adverse impact,” or “material change” shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.
20. The above is without prejudice to any arrangements relating to specific prudential issues.

## **Request-Based Information Sharing**

21. To the extent necessary to supplement informal consultations, upon written request, each Authority intends to provide to the other Authority the fullest possible cooperation subject to the terms in this MOU in assisting the other Authority's exercise of its functions relating to a Covered Clearing Organization and ensuring compliance with the laws or regulations of the Requesting Authority. The Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens, and will relate to information that is not otherwise readily available to the Requesting Authority.
22. The assistance covered by Paragraph 21 includes, where appropriate, providing information based upon documents held in the files of the Requested Authority that is relevant to the Requesting Authority's functions relating to the operations or activities of a Covered Clearing Organization. The Requested Authority will provide maximum assistance, to the extent necessary, in interpreting such information. Such information includes, without limitation:
  - i. Information relevant to the financial and operational condition of a Covered Clearing Organization including, for example, interim and annual financial statements, information drawn from reports or filings, early warning notices that a Covered Clearing Organization is required to submit to an Authority; and
  - ii. Copies of regulatory reports (including examination reports) and filings, or information contained therein, that may be relevant to the Requesting Authority's function relating to a Covered Clearing Organization.

## **Periodic Meetings**

23. Representatives of the CFTC and FSA will meet periodically, 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: contingency planning and crisis management, the adequacy of existing cooperative arrangements, any systemic risk concerns, default procedures, and the possible improvement of cooperation and coordination among the Authorities. Such meetings may be conducted over conference call or on a face-to-face basis, as judged appropriate by the Authorities.

## **ARTICLE FOUR: ON-SITE VISITS**

24. In fulfilling their regulatory functions relating to Covered Clearing Organizations, the CFTC may need to conduct On-Site Visits of such organizations located in the United Kingdom with respect to their operations and activities as Covered Clearing Organizations and the FSA may need to conduct On-Site Visits of such organizations located in the United States with respect to their operations and activities as Covered Clearing Organizations.
25. It is anticipated that an On-Site Visit by an Authority will be conducted in accordance with the following procedure:
  - a) The Inspecting Authority will notify the Host Authority of its intent to conduct an On-Site Visit and the intended time frame for, and the scope of, the On-Site Visit. Other than in exceptional circumstances, the Inspecting Authority will notify the Host Authority prior to notifying the Covered Clearing Organization.
  - b) Having due regard to each other's supervisory activities or functions, 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 Clearing Organization. Following consultation with the Host Authority, the Inspecting Authority will use the information provided in informing its decisions concerning both the scope of, and the continued necessity for, the On-Site Visit.
  - c) The Host Authority may, in its discretion, accompany the Inspecting Authority during the On-Site Visit and assist in the On-Site Visit, or conduct joint inspections where appropriate.

## **ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE**

26. To the extent possible, a request for written information pursuant to Article Three should be made in writing, and addressed to the relevant contact person in Appendix A. To expedite requests for assistance, requests may be sent by electronic mail. 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 and the purpose for which the information is sought; and

- c) The desired time period for reply and, where appropriate, the urgency thereof.
27. In Emergency Situations, the Authorities will endeavor to notify each other of the Emergency Situation and communicate information to the other as appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing.

## **ARTICLE SIX: PERMISSIBLE USES AND CONFIDENTIALITY OF INFORMATION**

28. Except for disclosures in accordance with this MOU, including permissible uses of information under this Article, each Authority intends to keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
29. Subject to Paragraphs 30, 32, 33, 34, 35 and 36 below, the Requesting Authority may use non-public information obtained under this MOU solely for exercising its functions in relation to Covered Clearing Organizations and seeking to ensure compliance with the laws or regulations of the Requesting Authority.
30. In cases where a Requesting Authority seeks to onward share non-public information obtained pursuant to this MOU with a third securities, futures, insurance, banking or other regulatory authority in its jurisdiction (third authority), the Requesting Authority may only do so provided that it is for the purpose of its exercise of its regulatory function and undertakes to consult with the Requested Authority prior to providing the information to the third authority and:
- a) Provides assurances to the Requested Authority that the third authority has confirmed that it requires the non-public information for a relevant supervisory purpose related to a Covered Clearing Organization; and
  - b) Obtains confirmation from the Requested Authority that the third authority has in place an information sharing arrangement with the Requested Authority related to supervisory matters, which governs the use and confidentiality of any non-public information shared under such arrangement.
31. If the conditions described in (a) and (b) of Paragraph 30 are not met, the Requesting Authority must obtain consent from the Requested Authority prior to providing non-public information obtained under this MOU to a third

authority. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner.

32. If an Authority receives, via a third party, information related to the Authority's functions relating to a Covered Clearing Organization provided by the other Authority, the first Authority will treat the information in accordance with the terms of this MOU.
33. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 29 and 34, the Requesting Authority must first inform and gain the approval of the Requested Authority of the intended use. As necessary, the Authorities will consult to discuss the reasons for any denial by the Requested Authority of such use and the circumstances under which such use might be allowed.
34. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, the Authorities subsequently may want to use the information for law enforcement. Use of information for enforcement purposes will be in accordance with the terms and conditions in Part V, Paragraph 16 of the US-UK MOU and Paragraph 10 of the IOSCO MMOU. It is anticipated that the Requesting Authority would use best endeavors to notify the Requested Authority before making use of the information provided for enforcement purposes.
35. 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. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
36. In extraordinary circumstances, it may become necessary for a Requesting Authority to share information obtained under this MOU with other National Governmental Entities. 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 passing on the information, the Requested Authority will receive adequate assurances concerning the National Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
37. The Authorities intend that the sharing or the disclosure of non-public information, including but not limited to deliberative and consultative materials,



pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

38. The restrictions in this Article 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 that information is provided to the Requesting Authority pursuant to an information-sharing request under this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

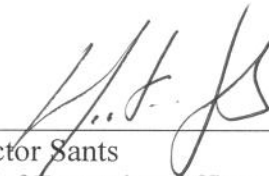
## ARTICLE SEVEN: TERMINATION

39. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MOU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Article Six.

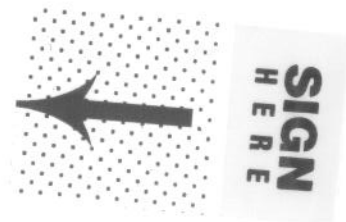
This MOU is executed in duplicate, this 14<sup>th</sup> day of September 2009



\_\_\_\_\_  
Gary Gensler  
Chairman  
U.S. Commodity Futures Trading Commission



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Hector Sants  
Chief Executive Officer  
U.K. Financial Services Authority



## APPENDIX A

### CONTACT PERSONS

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

#### FSA

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