

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE U.S. SECURITIES AND EXCHANGE COMMISSION  
AND  
THE U.S. COMMODITY FUTURES TRADING COMMISSION  
REGARDING  
THE USE OF FORM PF DATA**

The mission of the U.S. Securities and Exchange Commission (“SEC”) is to protect investors, maintain fair, orderly, and efficient securities markets, and facilitate capital formation. The mission of the U.S. Commodity Futures Trading Commission (“CFTC”) is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.

The CFTC has regulatory oversight of derivatives markets utilities and participants, such as swap execution facilities, market intermediaries, including commodity trading advisers (“CTAs”), and commodity pool operators (“CPOs”).

This Memorandum of Understanding between the SEC and the CFTC (“Form PF MOU”) reflects the SEC’s intent to share with the CFTC data contained in, or derived from, reports on Form PF (collectively, the “Data”). Accordingly, the SEC and the CFTC are entering into this Form PF MOU to establish a framework for sharing the Data.

**ARTICLE I: DEFINITIONS**

For purposes of this Form PF MOU:

“Advisers Act” will refer to the Investment Advisers Act of 1940, as amended.

“CFTC Data” will refer to Data that is solely (1) contained in, or derived from, information required to be reported on Sections 1 or 2 of Form PF by a Dual-Registrant Filer, and (2) with respect to any commodity pool the adviser manages that is a private fund (as defined by Form PF).

The “Chief Data Officer” or “CDO” will refer to the Chief Data Officer of either the SEC or the CFTC, as appropriate, or such Officer’s designee or successor.

“CISA” will refer to the Department of Homeland Security’s (DHS) Cybersecurity & Infrastructure Security Agency (“CISA”)

“Data Users” will refer to employees or contractors of the CFTC who are authorized by the CFTC, through the procedures set forth in the CFTC Protocols (as defined in Article III), to access and use the Data.

“Dual-Registrant Filer” will refer to a Filer that is dually registered as an investment adviser with the SEC and as a commodity pool operator or commodity trading advisor with the CFTC.

“Federal Incident Notification Guidelines” will refer to CISA’s published guidelines, which provide information or information system guidance to Federal Government departments and agencies and others for submitting incident notifications to CISA.

“Filer” will refer to the respondent that submits the Form PF.

“Form PF” will refer to Form PF: Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors, OMB No. 3235-0679. Form PF is the confidential reporting form for certain SEC-registered investment advisers to private funds, including advisers that are Dual-Registrant Filers.

“Level 1 Data” will refer to the Data that is not Proprietary Information.

*Example:* Adviser X filed Form PF on August 29, 2012.

*Example:* 2,500 advisers filed Form PF; 450 are large hedge fund advisers, 30 are large liquidity fund advisers, and 170 are large private equity fund advisers.

“Level 2 Data” will refer to Data aggregating results from a subset of Filers where the limited size of the subset leaves the data susceptible to being reverse-engineered or analyzed such that it could, alone or together with other publicly-available data sources, identify and disclose Proprietary Information about a particular adviser or a discrete set of advisers.

*Example:* Disclosing the average leverage for hedge fund advisers pursuing strategy X, if there is publicly available information that strategy X is concentrated among a small number of advisers.

*Example:* Disclosing the average risk exposures for hedge fund advisers pursuing strategy X, if there is publicly available information that strategy X is dominated by a small number of large funds.

“Level 3 Data” will refer to the Data regarding a single Filer or multiple Filers not aggregated that may include Proprietary Information.

*Example:* The Form PF reports or line-item responses provided on Form PF reports submitted by an adviser relating to Hedge Fund A.

“Office of the Chief Data Officer” or “OCDO” will refer to the Office of the Chief Data Officer of either the SEC or the CFTC, as appropriate, or its designee or successor.

“Proprietary Information” is defined in section 204(b)(10)(B) of the Advisers Act. It includes, but is not limited to, sensitive, non-public information regarding: (1) the investment or trading strategies of the adviser; (2) analytical or research methodologies; (3) trading data; and (4) computer hardware or software containing intellectual property.<sup>1</sup> Section 204(b)(10) of the Advisers Act restricts the disclosure and dissemination of Proprietary Information.

References to “SEC” or “CFTC” in this Form PF MOU include staff. All actions or other activities set forth in this Form PF MOU may be undertaken by authorized SEC or CFTC staff or, the SEC or the CFTC, respectively.

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<sup>1</sup> 15 U.S.C. 80b-4(b)(10)(B).

“SEC Data” will refer to any Data that is not CFTC Data.

“Work Duties” will refer to responsibilities relating to individual’s job within the SEC and/or CFTC.

“Work Product” will refer to any analysis, study, research paper, report, internal policy document, publication, article, speech, presentation, testimony, or other work product that includes or is derived from the Data.

## **ARTICLE II: GENERAL PROVISIONS**

1. The SEC and the CFTC enter into this Form PF MOU to document the unique arrangements established for the sharing and use of the Data. This Form PF MOU applies only to the Data. This Form PF MOU complements, but does not alter, the terms and conditions of existing bilateral or multilateral arrangements regarding any other sharing between or involving the SEC and CFTC, including those concerning cooperation in supervisory, enforcement, and or other matters, between the SEC and the CFTC.
2. It is anticipated that the SEC and the CFTC may collaborate regarding the review and analysis of the Data.
3. This Form PF MOU does not create legally binding obligations on the SEC or the CFTC and does not create any right enforceable against the SEC or the CFTC or any of its officers or employees or any other person. This Form PF MOU also does not confer upon any third-party the right or ability, directly or indirectly, to obtain, suppress, or exclude any information, or to challenge the execution of a request under this Form PF MOU.
4. Nothing in this Form PF MOU modifies or limits in any way the ability and responsibility of the SEC and the CFTC to enforce their respective statutes and regulations.

## **ARTICLE III: ACCESS TO DATA**

5. Any Data the SEC provides to the CFTC will be subject to this Form PF MOU, except that the provisions of this MOU do not apply to any Data that: (a) the CFTC obtains through a source outside of this Form PF MOU; (b) becomes publicly available in a manner other than by breach of this MOU by the CFTC; (c) the SEC specifies in writing is not subject to the terms of this Form PF MOU. The CFTC will limit access to any Data provided by the SEC to the CFTC to Data Users who are authorized to use the Data in accordance with policies and procedures established by the CFTC (the “CFTC Protocols”). The CFTC Protocols will, at a minimum, contain the following:
  - (A) procedures to document that Data Users have a need to access the Data for their Work Duties and that Data Users are educated regarding their obligations under this Form PF MOU;
  - (B) procedures requiring written approval by at least one of a Data User’s supervisors concurring with a request to access Data;
  - (C) policies governing the periodic review of Data Users’ continued need to have access to the Data;

- (D) procedures for handling any disclosure, dissemination, or publication of the Data in contravention of this Form PF MOU, including a requirement for documentation of and reporting to the SEC consistent with paragraph 6 of this MOU;
  - (E) policies regarding the storage, handling, and security of the Data on CFTC systems, consistent with applicable Federal Government information security standards and best practices established by the National Institute of Standards and Technology (NIST);
  - (F) procedures regarding the disclosure of Data by Data Users to other individuals within the CFTC (e.g., Commissioners; staff), including a requirement that disclosure be made only to individuals who need to have the information for Work Duties;
  - (G) procedures regarding the destruction or secure storage of hard copies of the Data after such Data has ceased to be used or needed by Data Users or other individuals within the CFTC for their Work Duties;
  - (H) procedures regarding access and use of Data obtained pursuant to this Form PF MOU relating to the CFTC's participation on the Financial Stability Oversight Council ("FSOC"), FSOC workstreams, or other FSOC activities; and
  - (I) a requirement for an initial certification by the CFTC that attests that the CFTC Protocols satisfy the requirements identified in the foregoing clauses A through H.
6. *Notification of Incidents.* The CFTC will comply with applicable Federal law and policy on information and information systems management, including the CISA Federal Incident Notification Guidelines. If an incident, as defined by 44 U.S.C. § 3552(b)(2), occurs related to Form PF data, the CFTC will notify the SEC by calling the SEC Security Operations Center (SOC) 202-511-2478 or by emailing [SOC@SEC.gov](mailto:SOC@SEC.gov) at the same time the CFTC notifies CISA. In the event CISA opens an incident ticket, the CFTC will keep the SEC apprised of any updates in connection with the incident. The CFTC will coordinate with the SEC on responses to any applicable oversight entities regarding the incident.
7. *Suspension or Limitation of Access to the Data.* The SEC OCDO may determine, at any time, to suspend or limit the CFTC's access to SEC Data.

#### **ARTICLE IV: DISCLOSURE OF DATA**

8. *Confidentiality of SEC Data.* The CFTC will keep SEC Data confidential in a manner consistent with Section 204(b)(8)-(10) of the Advisers Act and CFTC will not disclose any SEC Data to a third party or to the public except as specifically set forth in paragraphs 10 through 14 of this Form PF MOU.
9. *Electronic Transmission of SEC Data.* All electronic communications containing SEC Data will be transmitted only to individuals who are permitted to receive such information under this Form PF MOU and will be transmitted exclusively through a secure internal system or through encrypted external email.

10. *Subpoena*. If the CFTC is served with a subpoena or other similar legal process (“Legally Valid and Enforceable Demand”) that purports to compel production of information containing SEC Data, the CFTC will:

- (A) Unless prohibited by law, as soon as practicable, notify the SEC OCDO in writing of the Legally Enforceable Demand for the information prior to complying with the demand and furnish the SEC OCDO with copies of any such demand as well as any documents related thereto;
- (B) Afford the SEC a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the information or any related privilege;
- (C) Cooperate with the SEC OCDO to preserve, protect, and maintain the confidentiality of such information or any related privileges, including asserting any legal exemptions or privileges on behalf of the SEC that may reasonably be requested to be asserted;
- (D) Notify the requestor seeking the information that the information was obtained from the SEC and, where applicable, notify the requestor that requests for such information should be made directly to the SEC in accordance with applicable federal or state law;
- (E) Resist, to the extent practicable, production of such information and testimony related thereto, pending receipt of written consent from the SEC OCDO to the production of that information; and
- (F) Consent to any application by the SEC to intervene in any action to preserve, protect, and maintain the confidentiality of such information or any related privilege.<sup>2</sup>

11. *Freedom of Information Act*. To the extent consistent with law, if the CFTC receives a request under the Freedom of Information Act (5 U.S.C. § 552)<sup>3</sup> that seeks SEC Data, other than Level 1 Data, the CFTC will refer the request to the SEC OCDO to the extent the request seeks SEC Data that can be segregated from CFTC documents, so that the SEC can respond to the requester. If the SEC Data cannot be segregated from CFTC documents or cannot be referred to the SEC OCDO because such a referral is not consistent with law, the CFTC will confer with the SEC OCDO if the CFTC is considering releasing any SEC Data, other than Level 1 Data.

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<sup>2</sup> Under the Advisers Act, the SEC may not be compelled to reveal Data except in limited circumstances. Section 204(b)(8) of the Advisers Act states that “[n]otwithstanding any other provision of law, the Commission may not be compelled to disclose any [Data]” except to Congress upon agreement of confidentiality.” 15 U.S.C. 80b-4(b)(8)(A). In addition, section 204(b)(9) of the Advisers Act states that “[a]ny department, agency, or self-regulatory organization that receives [Data] from the Commission . . . shall maintain the confidentiality of such [Data] in a manner consistent with the level of confidentiality established for the Commission under [section 204(b)(8)].” 15 U.S.C. 80b-4(b)(9). Section 204(b)(8)(B) of the Advisers Act also provides that nothing “prevents the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction or an order of a court of the United States in an action brought by the United States or the Commission.” 15 U.S.C. 80b-4(b)(8)(B).

<sup>3</sup> Section 204(b)(10)(A) of the Advisers Act states that “the Commission . . . and any other department, agency, or self-regulatory organization that receives [Data from the Commission] shall be exempt from the provisions of section 552 of title 5, United States Code, with respect to any such [Data].” 15 U.S.C. 80b-4(b)(10)(A).

12. *Legally Enforceable Order.* Nothing in this Form PF MOU will prevent the CFTC from complying with a legally valid and enforceable order of a court or adjudicatory body of competent jurisdiction for the SEC Data or information containing or describing the SEC Data, provided that the CFTC:
- (A) Reasonably determines that efforts to quash, appeal, or resist compliance with the order would be unsuccessful or against the CFTC's interest;
  - (B) Attempts, to the extent practicable, to secure a protective order providing for the preservation, protection, and maintenance of the confidentiality of such information and any privileges associated therewith; and
  - (C) Immediately notifies the SEC OCDO of its intent to comply with the order and of any actions taken in compliance with the order.
13. *Congressional Request.* Nothing in this Form PF MOU will prevent the CFTC from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the information containing or describing the SEC Data. In complying with the request from a duly authorized Committee of the United States Congress, the CFTC will:
- (A) Advise the Committee of the United States Congress that the information being produced was obtained from the SEC; and
  - (B) Use its best efforts to obtain the commitment or agreement of the Committee of the United States Congress that it will maintain the confidentiality of the information.
14. *Publication of Data.* Excepting information contained in or derived from Sections 5 or 6 of Form PF, the CFTC may copy, reproduce, distribute, publish, or otherwise make available to a third party or the public Work Product in print, electronic, digital, or other form, provided that:
- (A) all information contained therein is sufficiently aggregated, anonymized, or otherwise masked such that it could not, alone or together with other publicly-available data sources, be identifiable to any particular adviser or private fund, or disclose any Proprietary Information about a particular adviser or a discrete set of advisers; and
  - (B) for Work Product containing or derived from SEC Data, the CFTC, prior to making the Work Product available to a third party or the public, provides the SEC CDO with a copy of the Work Product, and the SEC CDO does not object to public disclosure of the Work Product within 90 days.
- The CFTC will not copy, reproduce, distribute, publish, or otherwise make available to a third party or the public, Work Product containing or derived from information from Sections 5 or 6 of Form PF.
- For the avoidance of doubt, subparagraph 14(B) above does not apply to Work Product that includes or is derived from solely CFTC Data.
15. *Confidentiality of CFTC Data.* The CFTC will keep CFTC Data confidential in a manner consistent with Section 204(b)(8)-(10) of the Advisers Act and with the statutes and regulations governing the confidentiality of CFTC information, including Section 8 of the Commodity Exchange Act.

16. *CFTC Information.* The SEC will treat information, including Work Product, that the CFTC shares with the SEC under this Form PF MOU as non-public information of the CFTC and will not disclose such information outside of the SEC without the CFTC's approval. If the SEC receives a Legally Enforceable Demand, a Freedom of Information Act request, an enforceable order by a court or duly-constituted tribunal, or a Congressional request for the CFTC's non-public information, the SEC will comply with paragraphs 10 through 14 of this Form PF MOU, in the same manner as is required of the CFTC.

#### **ARTICLE V: SECURITY OF DATA**

17. The CFTC acknowledges that access to, and use of, the Data has been granted in part based upon the CFTC's assurances to the SEC that the CFTC's use, storage, processing, or transmission of the Data is controlled by the relevant CFTC Protocols and that any CFTC system used to store, process, or transmit the Data has a FIPS 199 Security Categorization of either Moderate or High, and a valid authorization to operate (ATO) in accordance with the Federal Information Security Modernization Act of 2014 (FISMA). The CFTC acknowledges that it will notify SEC if the CFTC's systems lapse in accreditation or there is unauthorized access, use, and or disclosure related to the Data as required by paragraph 6 of this Form PF MOU.

#### **ARTICLE VI: USES OF DATA**

18. *Filer Contact.* The CFTC may communicate with a Dual-Registrant Filer with respect to any CFTC Data submitted by that Filer. The CFTC may also communicate with a Dual-Registrant Filer with respect to any other data, information, or report that is public or that it has obtained through a source outside this MOU or pursuant to CFTC's own authority. The CFTC will not communicate with any Filers with respect to any SEC Data without first contacting and obtaining the consent of the SEC OCDO.
19. *Point(s) of Contact.* The SEC CDO and the CFTC CDO will be each agency's point of contact for interpretation or application of this Form PF MOU and any authorizations, approvals, or notices of requested modifications under this Form PF MOU.

#### **ARTICLE VII: EFFECTIVE DATE AND TERMINATION**

This Form PF MOU will become effective as of the date of its signing, will remain effective unless terminated by either the SEC or the CFTC, and may be revised or modified upon agreement of the SEC and CFTC or as required by changes in relevant laws. The party recommending the revision or modification will provide the other party with 30 days' written notice of the proposed change.

Either the SEC or CFTC may terminate this Form PF MOU upon 30 days' written notice to the other party. Following termination, all information that was provided subject to this Form PF MOU will remain confidential and will continue to be governed by the terms of this Form PF MOU.

This MOU may be executed in two counterparts, each of which together will constitute one and the same agreement.

Agreed to this 2/8/2024



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Gary Gensler  
Chair  
Securities and Exchange Commission



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Rostin Behnam  
Chairman  
Commodity Futures Trading Commission