

MEMORANDUM OF UNDERSTANDING



**United States Commodity Futures
Trading Commission**



**United Kingdom Financial Conduct
Authority**

**CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF COVERED ENTITIES
IN THE ALTERNATIVE INVESTMENT FUND INDUSTRY**

June 20, 2019

MoU concerning consultation, cooperation and the exchange of information related to the supervision of covered entities in the alternative investment fund industry

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of Alternative Investment Fund Managers (AIFMs), Commodity Pool Operators (CPOs), Commodity Trading Advisors (CTAs), Alternative Investment Funds (AIFs) and Commodity Pools, the United States Commodity Futures Trading Commission (CFTC) and the United Kingdom Financial Conduct Authority (FCA) have reached this Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of AIFMs, CPOs, CTAs, Delegates, AIFs and Commodity Pools that operate on a cross-border basis between the United Kingdom and the United States. The Authorities express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering market and financial integrity, and maintaining confidence and systemic stability. This MoU is a bilateral arrangement between the CFTC and the FCA.

Article 1. Definitions

For the purpose of this MoU:

- a) "Authority" means a signatory to this MoU, or any such signatory's successor.
- b) "Requested Authority" means the Authority to whom a request is made under this MoU.
- c) "Requesting Authority" means the Authority making a request under this MoU.
- d) "UK AIFM Regime" means the UK legislation which, when made, implemented Directive 2011/61/EU in the United Kingdom, including the FCA's rules in Investment Funds Sourcebook (as amended), the Alternative Investment Fund Managers Regulations 2013 (as amended), and the Regulated Activities Order 2001 (as amended), and any EU laws made under or in relation to Directive 2011/61/EU which are incorporated into UK law by or under the European Union (Withdrawal) Act 2018 (subject to any amendments made to those EU laws as they apply in the United Kingdom).
- e) "AIF" means a collective investment undertaking, including investment compartments thereof, which: (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) is not a UK UCITS, as defined in section 237(2) of the Financial Services and Markets Act 2000, as amended.
- f) "AIFM" means a legal Person whose regular business is managing one or more AIFs in accordance with the UK AIFM Regime.
- g) "Delegate" means an entity to which an AIFM delegates the tasks of carrying out the portfolio management or risk management of one or more Covered Funds under its management in accordance with section 3.10 of the Investment Funds sourcebook in the FCA's Handbook of rules and guidance.
- h) "Covered Entity" means:
 - i. An AIFM, as defined in Article 1(f);
 - ii. A CPO, as defined in the Commodity Exchange Act (CEA) and relevant regulations;
 - iii. A CTA, as defined in the CEA and relevant regulations;

- iv. An AIF, as defined in Article 1(e);
 - v. A Commodity Pool, as defined in the CEA and relevant regulations; and
 - vi. Delegates, as defined in Article 1(g).
- i) "On-Site Visit" means any regulatory visit by one Authority to, or inspection of the books and records and the premises of, a Covered Entity located in the other Authority's territory, for the purposes of on-going supervision.
 - j) "Governmental Entity" means:
 - i. If the Requesting Authority is the CFTC, the U.S. Department of the Treasury, the U.S. Board of Governors of the Federal Reserve System or the Financial Stability Oversight Council; and
 - ii. If the Requesting Authority is the Financial Conduct Authority, Her Majesty's Treasury or the Bank of England.
 - k) "Local Authority" means the Authority in whose territory a Covered Entity is located.
 - l) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity.
 - m) "Person" includes a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Covered Entity.

Article 2. General provisions

- 1) This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Covered Entities that operate on a cross-border basis in the territories of the Authorities, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through on-going, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MoU are intended to support such informal and oral consultations as well as to facilitate the written exchange of non-public information where necessary.
- 2) 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.
- 3) This MoU does not intend to limit an Authority to taking solely those measures described herein in fulfillment of its supervisory or oversight functions. In particular, this MoU does not affect any right of any Authority to communicate with, or obtain information or documents from, any Person or Covered Entity subject to its jurisdiction that is established in the territory of the other Authority.
- 4) This MoU complements, but does not alter the terms and conditions of the *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (IOSCO MMoU) and the *IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (Appendix A.2, May 4, 2018) (IOSCO

EMMoU), to which the Authorities are signatories, which covers primarily information sharing in the context of enforcement matters; and any of the existing arrangements concerning cooperation in matters between the Authorities. This MOU supersedes 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 Authorities (July 22, 2013).

- 5) The Authorities intend to, within the framework of this MoU, provide one another with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Entities. Following consultation, cooperation may be denied:
 - a) Where the cooperation would require an Authority to act in a manner that would violate its domestic law;
 - b) Where a request for assistance is not made in accordance with the terms of this MoU; or
 - c) On the grounds of the national public interest.
- 6) No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to the other Authority.
- 7) To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A.

Article 3. Scope of cooperation

- 1) The Authorities recognize the importance of close communication concerning Covered Entities, and intend to consult where appropriate regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Covered Entities; and (iii) any other areas of mutual supervisory interest.
- 2) Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:
 - a) The initial application of a Covered Entity for authorization, registration or exemption from registration in the other jurisdiction;
 - b) The on-going oversight of a Covered Entity; or
 - c) Regulatory approvals or supervisory actions taken in relation to a Covered Entity by one Authority that may impact the operations of the Covered Entity in the other territory.
- 3) *Notification.* Each Authority will, where reasonable, seek to inform the other relevant Authority as soon as practicable of:
 - a) Any known material event that could adversely impact a known Covered Entity; and
 - b) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration, concerning or

related to a known Covered Entity which may have a material effect on the Covered Entity.

The information to be provided by one Authority pursuant to this paragraph will refer to Covered Entities registered or authorized by the Authority. The determination of what constitutes “material event,” “adversely impact,” or “material effect” will be left to the reasonable discretion of the Authority that determines to notify the other Authority.

- 4) *Exchange of Information.* To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in endeavouring to obtain information not otherwise available to the Requesting Authority, and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations, provided that the Authority is authorized to collect such information.
 - a) The information covered by this paragraph includes:
 - i. Information that would permit the Requesting Authority to verify that the Covered Entities covered by this MoU comply with the relevant obligations and requirements of the national law of the Requesting Authority;
 - ii. Information relevant for monitoring and responding to the potential implications of the activities of Covered Entities, including, for example, disclosure reports and investor complaints;
 - iii. Information relevant to the financial and operational condition of a Covered Entity;
 - iv. Relevant regulatory information and filings that a Covered Entity is required to submit to an Authority; and
 - v. Regulatory reports prepared by an Authority relating to a Covered Entity.
 - b) The information to be provided by one Authority pursuant to this paragraph will refer to Covered Entities registered or authorised by the Authority.

Article 4. On-Site Visits

- 1) Each Authority may need to conduct, itself or by a third party commissioned by it, On-Site Visits of the Covered Entities subject to its supervisory authority that are located in the Local Authority’s territory. Authorities should discuss and reach understanding on the terms regarding On-Site Visits, taking into full account each other’s sovereignty, legal framework and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities. The Authorities will act in accordance with the following procedure before conducting an On-Site Visit.
 - a) The Authority seeking to conduct an On-Site Visit will provide advance notice to the Local Authority of its intent for conducting an On-Site Visit and the intended timeframe for, and the scope of, such a visit. The Authorities will consult with a view to reaching an understanding on the intended timeframe for, and scope of, any On-Site Visit.

- b) The Local Authority may, in its discretion, accompany the other Authority during the On-Site Visit, or conduct joint visits where appropriate.
- c) When establishing the scope of any proposed On-Site Visit, the Authority seeking to conduct the On-Site Visit will give due and full consideration to the supervisory activities of the Local Authority and any information that was made available or is capable of being made available by such Local Authority.
- d) The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from directors and senior management of Covered Entities or any other relevant Person, provided that the Authorities are authorized to collect such information.
- e) It is understood that the Local Authority will provide assistance in connection with an On-Site Visit as described in this Article 4 only with respect to Covered Entities that are registered with the Local Authority.

Article 5. Execution of requests for assistance

- 1) To the extent possible, a request for written information pursuant to Article 3(4) should be made in writing, 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, including specific questions to be asked and an indication of any sensitivity about the request;
 - b) A concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions applicable to the supervisory activity; and
 - c) The desired time period for reply and, where appropriate, the urgency thereof.
- 2) If a Local Authority becomes aware of an Emergency Situation through its supervisory activities, such Local Authority will endeavour to notify the other Authority of the Emergency Situation, 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 as promptly as possible following such notification. Notwithstanding the foregoing, the notification obligation for the Local Authority pursuant to this paragraph will be limited to Covered Entities that are registered with the Local Authority.

Article 6. Cooperation on enforcement

As the Authorities are signatories to the IOSCO MMoU and IOSCO EMMoU (and other enforcement arrangements or bilateral enforcement MoUs), the Authorities note that these enforcement MoUs recognize the importance and desirability of providing mutual assistance and exchanging information for the purpose of enforcing, and securing compliance with, the securities or derivatives laws and regulations applicable in their respective jurisdictions. These laws and regulations include those concerning Covered Entities. Accordingly, where information relating to an enforcement investigation or action is necessary, the Authorities will request this information via the frameworks established under the IOSCO MMoU or IOSCO EMMoU, other enforcement arrangements or a relevant bilateral enforcement MoU. The types of information available to be shared under the IOSCO MMoU, IOSCO EMMoU, other enforcement arrangements or applicable

bilateral MoUs include information that will assist the Requesting Authority in investigating whether a Covered Entity is violating any relevant laws, regulations and orders that apply to it in the Requesting Authority's jurisdiction.

Article 7. Permissible uses of information

- 1) The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Covered Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority.
- 2) This MoU is intended to complement, but does not alter the terms and conditions of the existing arrangements between Authorities, including the IOSCO MMoU and IOSCO EMMoU. The Authorities recognize that, while information is not to be gathered under this MoU for enforcement purposes, subsequently the Authorities may want to use the non-public information provided pursuant to this MoU for enforcement purposes. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMoU, IOSCO EMMoU or other applicable enforcement MoUs.

Article 8. Confidentiality and onward sharing of information

- 1) Except for onward sharing and disclosures in accordance with this MoU, including permissible uses of information under Article 7, 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.
- 2) To the extent legally permissible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been 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.
- 3) In extraordinary circumstances, it may become necessary for a Requesting Authority to share non-public information obtained under this MoU with a Governmental Entity. 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 use and confidential treatment of the information by the Governmental Entity, 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.
- 4) Except as provided in this Article 8, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. If consent is not obtained from the Requested Authority, the Authorities will 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.

- 5) The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.
- 6) In certain circumstances, the CFTC may wish to share non-public information obtained under this MoU with a futures association registered under the CEA. In these circumstances:
 - a) The CFTC will notify the FCA prior to sharing the information and indicate the purpose for which the information is passed to the registered futures association.
 - b) The registered futures association will use the information only for a purpose within the scope of its authority.
 - c) The information will not be shared by the registered futures association with other parties without getting the prior written consent of the FCA.

Article 9. Termination of the MoU; Successor authorities

- 1) If an Authority wishes to terminate this MoU, it will give written notice to the other Authority. Cooperation in accordance with this MoU will continue until the expiration of 30 days after an Authority gives written notice to the other Authority. If an 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 an Authority gives written notice as provided in this paragraph, non-public information obtained under this MoU will continue to be treated in the manner set forth under Articles 7 and 8.
- 2) Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, that authority or each authority will become an Authority, and the terms of this MoU will apply to the successor Authority or Authorities performing those relevant functions without the need for any further amendment to this MoU. This will not affect the right of the successor Authority or Authorities to give written notice as provided in Article 9(1) that it no longer wishes to be a signatory to this MoU if it wishes to do so.

Article 10. Amendment

- 1) The Authorities intend to periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities 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.

Article 11. Execution of the MoU

- 1) This MoU enters into force on the date European Union legislation ceases to have direct effect in the United Kingdom.

Signatures



United Kingdom Financial Conduct Authority



U.S. Commodity Futures Trading Commission

Appendix A of the MoU – List of contact persons

<p>Financial Conduct Authority (United Kingdom)</p>	<p>Manager, Investment Funds Policy Address: 12 Endeavour Square, Stratford, London, E20 1JN Phone: +44 (0)20 7 066 1000 Email: aifmndsupervisorycooperation@fca.org.uk</p>
<p>U.S. Commodity Futures Trading Commission</p>	<p>Matthew B. Kulkin, Director Division of Swap Dealer and Intermediary Oversight Address: 1155 21st Street, N.W., Washington, DC 20581 Phone: 1-202-418-5213 Fax: 202-418-5407 Email: mkulkin@cftc.gov</p> <p>Amanda L. Olear, Deputy Director Division of Swap Dealer and Intermediary Oversight Address: 1155 21st Street, N.W., Washington DC 20581 Phone: 1-202-418-5283 Fax: 1-202-418-5407 Email: aolear@cftc.gov</p>