

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM,**  
**THE U.S. COMMODITY FUTURES TRADING COMMISSION**  
**AND THE U.S. SECURITIES AND EXCHANGE COMMISSION**  
**REGARDING CENTRAL COUNTERPARTIES FOR CREDIT DEFAULT SWAPS**

The Board, the CFTC, and the SEC each have responsibilities in overseeing certain systemically important payment, clearing, and settlement activities and certain market utilities that support those activities.

The Board has regulatory and supervisory responsibilities and authorities over banking companies, including state member banks and their subsidiaries, bank holding companies and their subsidiaries, financial holding companies and their subsidiaries, foreign banking organizations with U.S. banking operations, Edge Corporations, and Agreement Corporations. The CFTC has regulatory and supervisory responsibilities and authorities over markets and trading facilities with respect to futures on commodities, options on futures, and options on commodities as well as DCOs that clear and settle derivatives transactions and certain financial intermediaries, including futures commission merchants. The SEC has regulatory and supervisory responsibilities and authorities over Clearing Agencies, securities markets, securities brokers, securities dealers, transfer agents, certain investment advisers, investment companies, and nationally recognized statistical rating organizations.

This MOU reflects the Parties' intent to cooperate, coordinate and share information, including by establishing regulatory liaisons, in carrying out their respective responsibilities and exercising their respective authorities with regard to Central Counterparties for credit default swaps. The Parties have a common interest in strengthening the infrastructure supporting the clearing and settlement of credit default swaps. A Central Counterparty for credit default swaps may be one or more of the following: a state-chartered bank that is a member of the Federal Reserve; a DCO; or a Clearing Agency.

The Parties recognize the importance of cooperation and coordination in their respective approval, ongoing supervision, and oversight of CCPs for credit default swaps, and that sharing information concerning such CCPs is important in maintaining effective oversight, fostering stability in the market for credit default swaps and in the financial system as a whole, and promoting compliance with the banking, commodities, and securities laws. The Parties further recognize that cooperation and coordination enhance the ability of the Parties to effectively carry out their respective statutory responsibilities and minimize duplicative efforts.

**ARTICLE I: DEFINITIONS**

For the purposes of the MOU:

“Board” shall refer to the Board of Governors of the Federal Reserve System.

“CCP,” or Central Counterparty, shall refer to any entity that is engaged in the business of interposing itself, either through a guarantee or as a principal, between counterparties in

providing clearing and settlement facilities for the post-trade processing of OTC credit default swap transactions or both OTC and exchange-traded credit default swap transactions. This definition does not include interdealer brokers or financial institutions providing prime brokerage services.

“CDS” shall refer to credit default swaps.

“CEA” shall refer to the Commodity Exchange Act.

“CFTC” shall refer to the Commodity Futures Trading Commission.

“Clearing Agency” shall refer to a clearing agency as defined by the Exchange Act.

“DCO” shall refer to a derivatives clearing organization as defined in Section 1a(9) of the CEA and that is registered with the CFTC.

“Exchange Act” shall refer to the Securities Exchange Act of 1934.

“Federal Reserve” shall refer to the Board and the individual Federal Reserve Banks, except that when used with respect to a particular CCP that is supervised by the Federal Reserve, it shall mean the Board and the appropriate Federal Reserve Bank that has primary responsibility for supervising the CCP.

“MOU” shall refer to this Memorandum of Understanding.

“OTC” shall refer to over-the-counter.

“Parties” shall refer to the Board or Federal Reserve, as appropriate, CFTC, and SEC, collectively.

“RFPA” shall refer to the Right to Financial Privacy Act of 1978.

“SEC” shall refer to the Securities and Exchange Commission.

## **ARTICLE II: GENERAL PROVISIONS**

1. This MOU is a statement of intent of the Parties to coordinate, cooperate and share information in connection with the respective oversight, regulatory and supervisory responsibilities and authorities of the Parties regarding CCPs in a manner consistent with, and permitted by, the laws and requirements that govern the Parties. The Board, CFTC, and SEC each acknowledge the other Parties’ respective needs for and interests in the information to be shared and in coordinating their respective regulatory and supervisory activities related to CCPs.

2. The MOU does not create legally binding obligations on the Parties and does not create any right enforceable against the Parties or any of their officers or employees or any other person. The MOU also does not confer upon any third party any right and specifically does not confer on any third party the ability directly or indirectly to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge the execution of a request under the MOU.
3. The MOU is intended to complement, but does not alter the terms and conditions of, existing bilateral or multilateral arrangements concerning cooperation in supervisory, enforcement or other matters between the Parties. To the extent any provision in this MOU is construed to be in conflict with a provision in another arrangement between the relevant Parties, the provision in this MOU shall govern the arrangements between such Parties in connection with a CCP. In addition, the Parties encourage their respective staffs to maintain ongoing, ad hoc, communications to ensure coordination, as appropriate, of their respective day-to-day operations.
4. Nothing in the MOU modifies in any way the ability and responsibility of the Parties to enforce their respective statutes and regulations.
5. Nothing in this MOU shall be deemed to diminish or impair in any way the independence of the Board, the SEC or the CFTC in any of their respective functions.
6. Nothing in this MOU shall be deemed to obligate the Parties to create or maintain any information.
7. The Parties intend periodically to review the functioning and effectiveness of this MOU in light of, among other things, changes in applicable law or international standards relating to CCPs and the Parties' experience in implementing the MOU with a view to expanding or altering the scope or operation of the MOU as appropriate.

**ARTICLE III:           COORDINATION, COOPERATION, AND SHARING  
                                  INFORMATION RELATING TO CCPs**

8. The Parties recognize that the use of consistent principles in the supervision and regulation of CCPs is important to promote the effective and efficient supervision and regulation of CCPs, minimize the burden on CCPs, and reduce duplication of effort by the Parties. Consistent with otherwise applicable statutes and rules, the Parties will take into account in setting supervisory expectations for CCPs, among other things, the "Recommendations for Central Counterparties" developed by the Committee on Payment and Settlement Systems of the central banks of the Group of Ten countries in conjunction with the Technical Committee of the International Organization of Securities Commissions.

9. The Parties agree to cooperate and, to the extent requested, share information in connection with the fulfillment of their respective supervisory and regulatory responsibilities for CCPs. Without limiting the generality of the foregoing, the Parties agree:
  - a. To the extent practicable and as appropriate in the particular circumstances, to inform each other, in advance where feasible and otherwise as soon as practicable, of issues that may affect the respective regulatory or supervisory interests of the other Party or Parties with respect to CCPs and CDS;
  - b. To consult with each other and, to the extent requested, share information concerning the review and approval of any proposed CCP, including the manner in which a proposed CCP will be assessed against applicable regulatory or supervisory rules or expectations;
  - c. To consult with each other and, to the extent requested, share information concerning material proposed changes to the rules, policies or procedures of a CCP regarding the CCP's risk management systems, internal controls, liquidity and financial resources, operations, or governance;
  - d. To consult with each other and, to the extent requested, share information, including examination reports or results where appropriate, regarding the financial condition, risk management systems, internal controls, liquidity and financial resources, operations and governance of a CCP; and
  - e. That information requests under the MOU shall not be overly burdensome and, upon request, shall be initiated by written request.
10. The Parties also agree to consult with each other and, to the extent requested, share information concerning the market for CDS and the Parties' assessments of the conditions in such market.
11. Each Party agrees to designate an individual to serve as its primary regulatory liaison with the other Parties to arrange and facilitate ongoing and periodic discussions and meetings related to matters under this MOU. The Liaison will, among other things, discuss and specify details for implementing this Article III including matters such as the specific reports or categories of information that will be subject to information sharing, the frequency with which such information will be shared, and the particular person(s) within each Party to receive the information.

**ARTICLE IV: PERMISSIBLE USES AND CONFIDENTIALITY OF INFORMATION**

12. For purposes of this Article IV, the Federal Reserve, CFTC or SEC is referred to as the "Providing Party" when it is providing information to one or both of the other Parties and is referred to as the "Receiving Party" when it is receiving information from one or both of the other Parties. This Article IV applies only to information shared under this MOU and does not apply to information obtained by the Federal Reserve, the CFTC or the SEC directly from a CCP pursuant to such agency's own authority.

13. To the extent permitted by applicable laws (including with respect to the CFTC, 7 USC § 12) and in accordance with the regulations of the Providing Party, the Parties will maintain the confidentiality of all non-public information obtained pursuant to this MOU and will not disclose such information to any person outside the Federal Reserve, CFTC, or SEC. In addition, when acting as a Receiving Party, the Federal Reserve, CFTC, and SEC will:
- a. establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of any non-public information provided pursuant to this MOU, as well as any information derived therefrom;
  - b. notify the Providing Party in writing, as soon as practicable, of any legally enforceable demand or request for such information (including but not limited to, a subpoena, court order, or request pursuant to the Freedom of Information Act), provide the Providing Party a reasonable opportunity to respond to the demand or request prior to complying with the demand or request, and assert all such legal exemptions or privileges on behalf of the Providing Party as the Providing Party may reasonably request be asserted;
  - c. not grant any other demand or request for the information, not furnish the information to any third party, make public any portions of the information or information derived therefrom, or make public use of the information, without the prior written permission of the Providing Party; and
  - d. consent to application by the Providing Party to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to non-public information it provided.

14. Use of Information Shared by the Parties under this MOU

- a. The Parties intend to continue their ongoing practice of sharing information between their enforcement functions and nothing in this MOU, including this Article IV, is intended to modify or replace such sharing or the current practices of the Parties governing and permitting the use of such enforcement referral information by a Receiving Party.
- b. Information received under this MOU from a Providing Party that, in the judgment of the Providing Party, reflects the judgment, analysis, opinion or findings of the Providing Party may be used by the Receiving Party for or in any enforcement investigation, proceeding, or civil action only with the written consent of the Providing Party. In considering whether to grant consent under this paragraph, the Providing Party will take into account, among other things, the public interest, applicable law, and the need to protect its judgments, analyses, opinions and findings to preserve the integrity of its supervision, enforcement, examination and oversight processes.
- c. A Receiving Party may use non-public information (other than information referred to in subparagraph b.) that was received from a Providing Party and obtained by such Providing Party from a person that the Receiving Party has authority to examine regularly for or in any enforcement investigation, proceeding or civil action. Notwithstanding the preceding sentence, the Receiving Party may disclose any non-public information described in the preceding sentence to a third party or to the public only with the written consent of the Providing Party as provided in paragraph 13.c. above. For purposes of this

subparagraph c., the term “third party” shall not include a person or entity, such as a consultant or expert, retained by the Receiving Party to assist in the conduct of an examination, inspection, enforcement investigation, proceeding or civil action and who has signed a non-disclosure agreement with the Receiving Party that obligates the person to comply with the restrictions in this Article IV.

- d. The Parties share a strong common interest in maintaining an open flow of information in the supervisory and oversight processes involving CCPs under their respective supervision or oversight. As a matter of principle, the Parties agree that issues raised by information obtained from a Providing Party and not dealt with under subparagraphs a., b., or c. above should be addressed through supervisory or oversight means and should be addressed through the enforcement function only if supervisory and oversight tools are inadequate or ineffective. The Parties intend to apply this prudential supervisory and oversight approach with respect to information shared under this MOU that is not otherwise dealt with under subparagraphs a., b., or c. above. Each Party will promptly inform and consult with the other Parties in the event the Party intends to change this practice, either as a general matter or with regard to a specific CCP and in any case in which information under this subparagraph is to be used for or in connection with any enforcement investigation, proceeding, or civil action.
15. Nothing in the MOU waives or alters any provision of any applicable laws relating to non-public information.
  16. The Parties agree to take all actions reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to non-public information provided pursuant to the MOU, in accordance with applicable law.
  17. The Parties intend that sharing of non-public information with each other pursuant to the terms of the MOU will not constitute public disclosure, nor will it constitute a waiver of confidentiality or any privilege applicable to such information. The Board has authorized the disclosure of information to the CFTC and SEC under this MOU subject to the provisions of 12 U.S.C. § 1821(t). The Parties expressly reserve all evidentiary privileges and immunities applicable to the information shared under this MOU.
  18. In the event that the files or information provided by the Parties to each other pursuant to this MOU contain "financial records" of "customers" of "financial institutions," as those terms are defined in the RFP, the exchange of such information is exempt from the customer notice requirement of Sections 1112(a) and (b) of the RFP.
  19. Nothing in this MOU should be construed to prohibit a Party from complying with an order of a court of competent jurisdiction.

## 20. Point(s) of Contact

The Parties designate the following persons as their point(s) of contact for issues related to the interpretation or application of this MOU and any authorizations, approvals or notices of requested modifications under this MOU:

- a. With respect to the Board, its *General Counsel*, or his or her designee.

- b. With respect to the CFTC, the *Director of the Division of Clearing and Intermediary Oversight*, or his or her designee.
- c. With respect to the SEC, the *Director of the Division of Trading and Markets*, or his or her designee.

**ARTICLE V: EFFECTIVE DATE AND TERMINATION**

The MOU shall become effective as of the date of its signing, shall remain in effect unless terminated by any Party, and may be revised or modified on written agreement of all Parties. The Party recommending the revision or modification shall provide the other Parties with 30 days' written notice of the proposed change.

Any of the Parties may terminate the MOU upon 30 days' written notice to the other Parties. Following the termination, all information that was provided subject to this MOU shall remain confidential and shall continue to be governed by the terms of Article IV.

Agreed to this \_\_\_\_\_ day of November 2008.

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Ben S. Bernanke  
Chairman  
Board of Governors of the Federal Reserve System

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Walter L. Lukken  
Acting Chairman  
Commodity Futures Trading Commission

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Christopher Cox  
Chairman  
Securities and Exchange Commission