

MEMORANDUM OF UNDERSTANDING



**RESERVE BANK
OF AUSTRALIA**



AUSTRALIA

Reserve Bank of Australia

SINGAPORE

**Monetary Authority of
Singapore**

Memorandum of Understanding on Cooperation Arrangements to Access Information on Derivatives Contracts held in Trade Repositories in Singapore

The Reserve Bank of Australia (“RBA”) and the Monetary Authority of Singapore (“MAS”) have reached this Memorandum of Understanding (“MoU”) regarding cooperation arrangements to facilitate the access by the RBA to information on derivatives contracts held in authorised trade repositories in Singapore for the purpose of enabling the RBA to fulfil its responsibilities and mandates, while ensuring the privacy of that information is appropriately protected. This will contribute to the transparency, integrity, stability and effective regulation of derivatives markets.

Article 1

Definitions

For the purpose of this MoU:

- a) “Australian Governmental Entity” means any Minister assigned responsibility for the RBA's functions, the Australian Department of the Treasury, the Australian Securities and Investments Commission or the Australian Prudential Regulation Authority.
- b) “Authorised TR” means a TR which is a licensed trade repository or licensed foreign trade repository under Part IIA of the Singapore Securities and Futures Act (Cap. 289).
- c) “Authority” means:
 - (i) in Australia, the Reserve Bank of Australia or its successor; or
 - (ii) in Singapore, the Monetary Authority of Singapore or its successor.
- d) “CPSS-IOSCO Guidance” means the framework, guidelines and data access mapping for authorities' access to TR data as set out in the Committee on Payment and Settlement Systems' (“CPSS”; now known as the Committee on Payment and Market Infrastructures or “CPMI”) and the International Organization of Securities Commissions' (“IOSCO”) joint report entitled “Authorities' access to trade repository data” issued in August 2013, and unless otherwise agreed from time to time includes any subsequent amendment, replacement or reissue of such framework, guidelines and data access mapping.
- e) “Derivatives Trade Data” means information about derivatives transactions, or about positions relating to derivatives transactions, that is reported to an Authorised TR pursuant to the Laws and Regulations of Australia or Singapore, and, in relation to Derivatives Trade Data obtained or to be obtained as contemplated under Article 3(4), includes information that is created or derived from information about derivatives transactions or about positions relating to derivatives transactions that is reported to an Authorised TR pursuant to the Laws and Regulations of Singapore.
- f) “Direct Access” means access by means of an online portal or electronic data transfer system maintained by an Authorised TR.

- g) “Laws and Regulations” means:
- (i) in relation to the RBA and Australia¹, the *Corporations Act 2001*, the *Reserve Bank Act 1959*, the *Banking Act 1959*, the *Payment Systems (Regulation) Act 1998*, the *Payment Systems and Netting Act 1998* and regulations and other regulatory requirements issued from time to time pursuant to, or to amend or replace, these laws, including without limitation any derivative transaction rules or derivative trade repository rules made by the Australian Securities & Investments Commission under Part 7.5A of the *Corporations Act 2001* from time to time; and
 - (ii) in relation to MAS and Singapore, the *Securities and Futures Act* (Cap. 289) and the *Monetary Authority of Singapore Act* (Cap. 186) and regulations and other regulatory requirements issued, or which may from time to time be issued, pursuant to these laws in Singapore.
- h) “Person” includes a natural person, unincorporated association, partnership, trust investment company or corporation.
- i) “TR” or “Trade Repository” means a facility that collects and maintains information on any transaction relating to any derivatives contract.

Article 2

General provisions

- 1) This MoU is a statement of intent by each Authority to facilitate the RBA’s access to Derivatives Trade Data held in an Authorised TR.
- 2) This MoU does not create any legally binding obligations, confer any rights, or supersede any domestic laws, including the Laws and Regulations. This MoU does not confer upon any Person or TR the right or ability, directly or indirectly, to obtain, suppress, or exclude any information or to challenge the manner of provision of access under this MoU.
- 3) This MoU does not alter or supersede the terms and conditions of any existing MoUs or arrangements that either Authority may have in place with any other national or international authorities.
- 4) This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates.
- 5) To facilitate cooperation under this MoU, the Authorities hereby designate contact positions as set forth in the **Appendix**, which may be amended from time to time by an Authority transmitting revised contact information to the other Authority.

¹ The responsibilities and mandates of the RBA under Australia’s Laws and Regulations, for which the RBA will require access to Derivatives Trade Data held by an Authorised TR, include: assessing systemic risk (see s10 and s10B(3) of the *Reserve Bank Act 1959* (Cth) and the *Statement on the Conduct of Monetary Policy* agreed by the Governor of the RBA and the Australian Treasurer); being consulted by the Minister and ASIC in connection with the implementation of determinations and derivative transaction rules in respect of the execution, reporting or clearing requirements (see Part 7.5A of the *Corporations Act 2001* (Cth)); regulating, overseeing and supervising payment or settlement systems (see: the *Payment Systems (Regulation) Act 1998* (Cth), the *Payment Systems and Netting Act 1998* (Cth) and Part 7.3 of the *Corporations Act 2001* (Cth)); regulating, overseeing and supervising CCPs (see Part 7.3 of the *Corporations Act 2001* (Cth)); managing currency policy (see s10(2)(a) of the *Reserve Bank Act 1959* (Cth)); implementing monetary policy (see s10 *Reserve Bank Act 1959* (Cth)); and lender of last resort function (see s8(c) and s26 of the *Reserve Bank Act 1959* (Cth)).

Article 3

Scope of cooperation

- 1) The Authorities recognise the importance of RBA access to Derivatives Trade Data held in Authorised TRs.
- 2) The MAS will, within the framework of, and subject to, this MoU, provide the RBA with the fullest cooperation permissible under its domestic laws (including the Laws and Regulations) to facilitate RBA access to Derivatives Trade Data, where the Derivatives Trade Data:
 - a) is required by the RBA in order to fulfil its responsibilities and mandates under its Laws and Regulations; and
 - b) is held by an Authorised TR.
- 3) The MAS will take such reasonable steps as are permissible under its domestic laws (including the Laws and Regulations) to enable an Authorised TR to provide the RBA with Direct Access to Derivatives Trade Data held by the Authorised TR where such Derivatives Trade Data has been reported under Australia's Laws and Regulations or in respect of transactions that are reportable transactions under the Laws and Regulations of Australia.
- 4) The MAS will take such reasonable steps as are permissible under its domestic laws (including the Laws and Regulations) to enable an Authorised TR to provide access to Derivatives Trade Data held by the Authorised TR to the RBA where such Derivatives Trade Data:
 - a) has been reported under the Laws and Regulations of Singapore; and
 - b) is data which the RBA requires in order to fulfil its responsibilities and mandates under its Laws and Regulations, in accordance with the CPSS-IOSCO Guidance.

Article 4

Notification to other Authority

- 1) The MAS will inform the RBA as soon as practicable of:
 - a) any material event it knows of that could adversely affect the RBA's access to Derivatives Trade Data held in an Authorised TR;
 - b) any changes and pending changes to the relevant obligations and requirements to which the Authorised TRs are subject, including to any relevant Laws and Regulations applicable to such Authorised TRs that could have a material effect on RBA access to Derivatives Trade Data held in such Authorised TRs; and
 - c) any enforcement, regulatory actions or sanctions, including the revocation, suspension or modification of the relevant licences of an Authorised TR that could adversely affect the RBA's access to Derivatives Trade Data held in such Authorised TR.
- 2) The RBA will inform the MAS as soon as practicable of:
 - a) any changes in its responsibilities and mandates as defined in its Laws and Regulations or any changes in domestic laws that could materially affect its right to access information held in Authorised TRs; and

- b) any material changes in the confidentiality protections applying to information (including Derivatives Trade Data) obtained by it in accordance with this MoU which could affect the MAS' assessment of the adequacy and appropriateness of the confidentiality protections regime applicable to the RBA.

Article 5

Permissible uses of information

- 1) The RBA will use any non-public information (including Derivatives Trade Data) obtained in accordance with this MoU solely for the purpose of fulfilling its responsibilities and mandates as defined in the Laws and Regulations relating to it and within the limits of this MoU and at all times complying with the requirements of the confidentiality protections regime applicable to the RBA.
- 2) Before using any non-public information obtained in accordance with this MoU for any purpose other than that stated in paragraph 1 of this Article 5, the RBA must first consult with and obtain the prior written consent of MAS for the intended use of such information. If such consent is denied, the Authorities will discuss the reasons for withholding consent for such use and the circumstances, if any, under which the intended use by the RBA might be allowed.

Article 6

Confidentiality and onward sharing of information

- 1) The RBA shall keep confidential all non-public information (including Derivatives Trade Data) obtained in accordance with this MoU. Except as contemplated under Articles 6(3), 6(4), 6(5) and 6(6) or where any disclosure is required by law or pursuant to a legally enforceable demand, the RBA shall not disclose any information (including Derivatives Trade Data) obtained in accordance with this MoU.
- 2) In the event of a legally enforceable demand, other than for Derivatives Trade Data that is obtained by the RBA as contemplated under Article 3(3), the RBA will, to the extent permissible by law, notify the MAS of such demand before complying with the demand, and will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
- 3) The RBA may disclose Derivatives Trade Data that is obtained by the RBA as contemplated under Article 3(3) to any non-signatory to this MoU pursuant to any power or authority of the RBA under the Laws and Regulations relating to it.
- 4) The RBA may disclose non-public information obtained in accordance with this MoU (including Derivatives Trade Data other than Derivatives Trade Data that is obtained by the RBA as contemplated under Article 3(3)) to any non-signatory to this MoU where the prior written consent of the MAS for such disclosure has been obtained.
- 5) The RBA may disclose non-public Derivatives Trade Data that is obtained by the RBA in accordance with this MoU as contemplated under Article 3(3) or 3(4) to any non-signatory to this MoU provided that the information disclosed is in the form of a summary or collection of

information that is prepared so that information relating to any particular Person cannot be found out from it.²

- 6) The RBA may disclose non-public Derivatives Trade Data that is obtained by the RBA in accordance with this MoU as contemplated under Article 3(3) or 3(4) to an Australian Governmental Entity provided that:
 - a) both:
 - a. the Australian Governmental Entity has entered into an agreement, arrangement or understanding with the MAS under which the MAS has noted its intention to facilitate the Australian Governmental Entity's access to such non-public Derivatives Trade Data; and
 - b. the RBA has taken reasonable measures to ensure the confidential treatment of such non-public Derivatives Trade Data by the Australian Governmental Entity (such as requiring the non-public Derivatives Trade Data to be treated by the Australian Governmental Entity as if it had been obtained by the Australian Governmental Entity pursuant to the terms of the agreement, arrangement or understanding between the MAS and the Australian Governmental Entity referred to in Article 6(6)(a)(a)); or
 - b) both:
 - a. the Australian Governmental Entity has provided the RBA with adequate assurances concerning the use, the conditions of professional secrecy and confidential treatment of the information by the Australian Governmental Entity, including assurances that there will be no onward-sharing of the information by the Australian Governmental Entity without the prior written consent of the MAS; and
 - b. the Australian Governmental Entity has a need to gain expedient access to such non-public Derivatives Trade Data in order to fulfil its responsibilities and mandates.
- 7) The Authorities intend that the sharing or disclosure of non-public information, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

Article 7

Personal data

The RBA will process any personal data contained in the Derivatives Trade Data or other information obtained by it as contemplated by or in accordance with this MoU solely for the purpose of fulfilling its responsibilities and mandates as defined in the Laws and Regulations relating to the RBA and

² This section has been added because the RBA and other Australian regulators may wish to, among other things, publish summary statistics (that do not disclose individual persons or counterparties and their OTCD positions) in publications which are available to the general public, such as the RBA's *Financial Stability Review* (see <http://www.rba.gov.au/publications/fsr/index.html>) and the Australian Council of Financial Regulator's *Report on the Australian OTC Derivatives Market* (see <http://www.cfr.gov.au/publications/cfr-publications/2014/report-on-the-australian-otc-derivatives-market-april/index.html>.) The wording used in this section follows s79A(7) of the *Reserve Bank Act 1959* (Cth). That section excludes from the statutory prohibition of the disclosure of certain 'protected information' and 'protected documents' any information which is '*...in the form of a summary or collection of information that is prepared so that information relating to any particular person cannot be found out from it.*'

complying with the requirements set out in the privacy and data protection laws and regulations applicable in Australia.

Article 8

Successor authorities

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, 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 and notice will be provided to the other Authorities. This will not affect the right of the successor authority or authorities to give written notice as provided in Article 11 to terminate this MoU if it wishes to do so.

Article 9

Amendment

- 1) The Authorities intend to periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities under this MoU with a view, among other things, to expanding or altering the scope or operation of this MoU should that be judged necessary.
- 2) Notwithstanding the generality of paragraph 1 of this Article 9, the terms of this MoU will be subject to review by the Authorities, if the MAS becomes aware (through receipt of a notification under Article 4(2)(b) or from other reliable sources) of any material changes to the confidentiality protections regime applicable to the RBA which could affect the MAS' assessment of the adequacy and appropriateness of the confidentiality protections regime of the RBA.
- 3) This MoU may be amended with the written consent of both Authorities.

Article 10

Execution of the MoU

This MoU will enter into force on the date that it is signed by the Authorities.

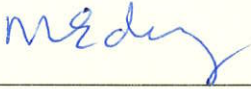
Article 11

Termination

Cooperation in accordance with this MoU will continue until the expiration of thirty (30) calendar 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 a manner prescribed under Articles 5 to 7.

This MoU is executed in duplicate, this 14 day of April 2015.

Signatures

<p>For the Reserve Bank of Australia</p> <p></p> <hr/> <p>Malcolm Edey Assistant Governor (Financial System)</p>	<p>For the Monetary Authority of Singapore</p> <p></p> <hr/> <p>Ong Chong Tee Deputy Managing Director (Financial Supervision)</p>
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