

**MEMORANDUM OF UNDERSTANDING
REGARDING
THE TREATMENT OF NON-PUBLIC INFORMATION
SHARED BETWEEN STATE SECURITIES ADMINISTRATORS AND THE
COMMODITY FUTURES TRADING COMMISSION**

This Memorandum of Understanding (“MOU”) is entered into between:

- (1) Each of the state securities administrators identified in Appendix A (individually, a “State” and collectively, the “States”); and
- (2) The Commodity Futures Trading Commission (the “CFTC” and, together with the States, the “Parties”).

This MOU is entered into for the purpose of sharing information and assisting the Parties in cooperatively enforcing the Commodity Exchange Act (“CEA”), 7 U.S.C §§ 1–27f, and the Commission Regulations promulgated thereunder, 17 C.F.R. pt. 1–190. This MOU sets forth the understanding of the Parties with respect to the treatment of non-public information (as defined below) shared by the Parties (at their discretion) pursuant to this MOU for the purpose of advancing cooperation between the CFTC and the States.¹ The North American Securities Administrators Association (“NASAA”) negotiated this MOU on behalf of the States and facilitated the execution of this MOU by each signatory State. As set forth herein, NASAA shall act as a liaison, as necessary, to facilitate communications between the Parties. As a non-Party, NASAA will not receive any Non-Public Information, as defined below, from the CFTC.

Accordingly, the Parties hereby mutually agree to the following:

¹ States have specific authority under the CEA to enjoin violations of the CEA. Pursuant to Section 6d of the CEA, 7 U.S.C. § 13a-2:

Whenever it shall appear to the attorney general of any State, the administrator of the securities laws of any State, or such other official as a State may designate, that the interests of the residents of that State have been, are being, or may be threatened or adversely affected because any person (other than a contract market, derivatives transaction execution facility, clearinghouse, floor broker, or floor trader) has engaged in, is engaging or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order of the Commission thereunder, the State may bring a suit in equity or an action at law on behalf of its residents to enjoin such act or practice, to enforce compliance with this chapter, or any rule, regulation, or order of the Commission thereunder, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

1. For purposes of this MOU, “Non-Public Information” means any data, information, or reports submitted, received, or shared among the Parties pursuant to this MOU. Such Non-Public Information includes the information itself, in any form (including electronic, printed, or oral), and any document or database to the extent it contains such information. The provisions of this MOU do not apply to data, information, or reports obtained by the Parties through a source outside this MOU or pursuant to the Parties’ own authority, and this MOU is not intended to modify or replace any existing agreements or practices regarding the sharing of information between the Parties. This MOU does not alter the terms and conditions of bilateral or multilateral arrangements concerning cooperation in enforcement matters between the Parties.
2. This MOU does not require any Party to create or maintain Non-Public Information or to provide or share Non-Public Information with another Party, and all sharing of Non-Public Information pursuant to this MOU shall be at the sole discretion of each Party and in keeping with any disclosure regulation or policy to which such Non-Public Information may be subject and each Party’s budgetary and other priorities.
3. It is the intent of the Parties that when one of the Parties provides Non-Public Information pursuant to this MOU to another Party (hereafter such entity providing information shall be designated a “Providing Party” and any such receiving party shall be designated a “Receiving Party”), the Receiving Party shall presume the information so provided to be *confidential* Non-Public Information, and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Party designates otherwise in writing.
4. This MOU does not apply to Non-Public Information that becomes publicly available in a manner other than by a breach of this MOU by a Receiving Party. This MOU does not create any right enforceable against the Parties or any of their officers or employees or any other person to obtain, suppress, or exclude any information shared pursuant to this MOU, or to challenge the execution of a request pursuant to the MOU.
5. All Non-Public Information transferred from the Providing Party to the Receiving Party shall not be disclosed by the Receiving Party except as provided for in this MOU.
6. The CFTC may use Non-Public Information it receives under this MOU from the States to inform any investigation, proceeding, or civil action. Other than in any action or proceeding under the laws of the United States to which the CFTC or the United States is a party, and other than as provided in paragraph 11(e) or paragraph 12, the CFTC will disclose such information to the public only with the prior written consent of the Providing Party.

7. A Receiving Party State may use Non-Public Information it receives from the CFTC under this MOU to inform any investigation, proceeding, or civil action. Other than in any action or proceeding under the laws of the United States or a state to which the Receiving Party or the United States is a party, and other than as provided in paragraph 11(e) or paragraph 12, the Receiving Party will disclose such information to the public only with the prior written consent of the CFTC. *Additionally*, Non-Public Information furnished by the CFTC shall not be disclosed by a Receiving Party to any other person, except in connection with an adjudicatory action or proceeding under the Commodity Exchange Act or under the laws of such state or political subdivision thereof to which the Receiving Party, or a state, political subdivision, or any department or agency thereof, is a party. This limitation is imposed by Section 8(e) of the Commodity Exchange Act, 7 U.S.C. §12(e).
8. Unless otherwise authorized in writing by a Providing Party, or as contemplated in this MOU, only officials and employees of a Receiving Party who have a need to know the information in the performance of their official work duties consistent with applicable law may receive Non-Public Information. All officials and employees of a Receiving Party with whom Non-Public Information is shared must be advised of and, as a condition of receiving Non-Public Information, be bound by the terms of this MOU and instructed to comply with all of its terms.
9. Except as provided in paragraphs 4, 6, 7, 11, and 12 of this MOU, a Receiving Party may not share Non-Public Information with any other person without the prior written consent of the Providing Party. This restriction on sharing extends to any person, agency, or other entity.
10. A Receiving Party will take all steps reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to Non-Public Information that is subject to this MOU.
11. If a Receiving Party receives a request from a third party for Non-Public Information of the Providing Party, such as a subpoena or Freedom of Information Act request, or if the CFTC as the Receiving Party has an obligation under 17 C.F.R. § 10.42 to make a disclosure of Non-Public Information of the Providing Party, the Receiving Party will:
 - a) unless prohibited by law, as soon as practicable notify the Providing Party of such request, subpoena, order, or other process (including the CFTC's obligation under 17 C.F.R. § 10.42) and furnish to the Providing Party copies of any such request or order, as well as any documents related thereto;
 - b) afford the Providing Party a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith;

- c) cooperate fully with the Providing Party to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Party's behalf that may reasonably be requested to be asserted;
- d) notify the requestor seeking the Non-Public Information—or, in the case of the CFTC's obligation under 17 C.F.R. § 10.42, the party to whom the CFTC owes the obligation—that the information was obtained from the Providing Party and, where applicable, notify the requester that requests for such information should be made directly to the Providing Party in accordance with applicable federal or state law;
- e) absent written consent from the Providing Party or as provided in paragraph 12, not produce the Non-Public Information unless ordered to do so by the court or administrative body adjudicating the third-party request, except that the CFTC need not wait for an order or the written consent of the Providing Party before initiating production under 17 C.F.R. § 10.42(b); and
- f) consent to application by the Providing Party to intervene in any action in order to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith.

12. Nothing in this MOU will prevent a Receiving Party from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to request and receive the Non-Public Information or a legally valid and enforceable subpoena or order by a court of competent jurisdiction for the Non-Public Information or testimony related thereto.

In complying with a subpoena or court order, the Receiving Party shall:

- a) reasonably determine that efforts to quash, appeal, or resist compliance with the subpoena or order would be unsuccessful or against its interest;
- b) attempt, to the extent practicable, to secure a protective order to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith; and
- c) immediately notify the Providing Party of its intent to comply with the subpoena or order, and of any actions taken in compliance with the subpoena or order.

In complying with a request received from a duly authorized Committee of the United States Congress, the Receiving Party shall:

- a) notify the Providing Party in writing, as soon as practicable, of the request, order, or subpoena;

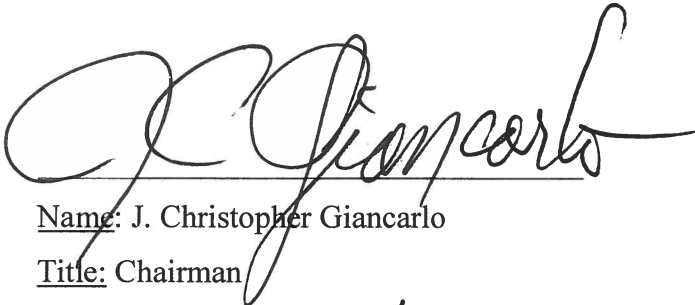
- b) advise the Committee that the Non-Public Information being produced belongs to the Providing Party; and
 - c) use its best efforts to obtain the commitment or agreement of the Committee that it will maintain the confidentiality of the Non-Public Information.
13. Should a question arise as to whether information is public or non-public, the Receiving Party will immediately contact the Providing Party and seek a determination as to the status of the information. If the Providing Party determines that the information is Non-Public Information, the Receiving Party will treat it in accordance with this MOU.
14. The Parties intend that sharing of information that is subject to this MOU will not constitute public disclosure, nor will it constitute a waiver of confidentiality or any privilege applicable to such information (including, but not limited to deliberative and consultative materials such as written analyses, opinions, or recommendations relating to Non-Public Information that are prepared by or on behalf of one of the Parties). The Parties expressly reserve all evidentiary privileges and immunities applicable to the information shared under this MOU.
15. NASAA shall serve a liaison function to facilitate communications between the States and the CFTC, as necessary.² Further, NASAA shall assist the Parties in coordinating and promoting the sharing of public information relating to State enforcement initiatives, investor / customer protection, and State anti-fraud resources to advance the objectives of this MOU.
16. Each Party represents that it has authority to enter into this MOU and to maintain the confidentiality of Non-Public Information in accordance with this MOU. In the event of any material change in a Party's authority to either enter into this MOU or maintain the confidentiality of Non-Public Information that is subject to this MOU, written notification will be provided immediately to the other Party. If there has been a material change in a Party's authority to either enter into this MOU or maintain the confidentiality of Non-Public Information that is subject to this MOU, such Party agrees that Non-Public Information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU.
17. The MOU shall become effective as of the date of its signing and may be revised or modified upon agreement. The Party recommending the revision or

² Because NASAA is not a department or agency of a state or any political subdivision thereof as required by Section 8(e) of the CEA, 7 U.S.C. § 12(e), the CFTC is not able to share Non-Public Information with NASAA. Accordingly, in carrying out this liaison function, NASAA shall not receive any Non-Public Information. NASAA and the Parties will take appropriate steps to ensure that NASAA is not inadvertently provided with Non-Public Information.

modification shall provide the other Parties with thirty calendar days advance written notice of the proposed change. Any Party may withdraw from this MOU with respect to prospective sharing of information by providing thirty calendar days advance written notice to the other Parties. In the event of such a withdrawal, the Parties agree that (1) Non-Public Information provided or obtained pursuant to this MOU will remain confidential and continue to be governed by the terms of this MOU; and (2) at the request of a Providing Party, any record or material provided by that Providing Party to the Receiving Party subject to this MOU shall be returned to such Providing Party or destroyed in accordance with the records retention policies of the Receiving Party.

18. The CFTC designates its Director of the Division of Enforcement and his or her designee(s) as its point(s) of contact for purposes of notices and exchanges of information.
19. Each State designates its respective undersigned representative and his or her designee(s) as its point(s) of contact for purposes of notices and exchanges of information.
20. This MOU and all of its terms and conditions are not intended to relieve either a Providing Party or a Receiving Party of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a, or the Right to Financial Privacy Act, 12 U.S.C §§ 3401-22.
21. This MOU may be executed in two or more counterparts, each of which together shall constitute one and the same agreement.

This MOU shall be effective for each individual Party hereto as of the date of signing by such Party.



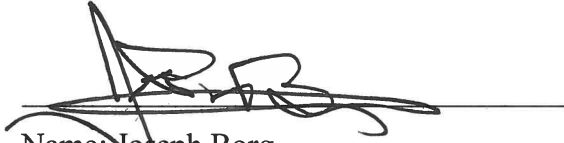
Name: J. Christopher Giancarlo

Title: Chairman

Organization: Commodity Futures Trading Commission

Date: 5/21/18

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be 'J. Borg', is written over a horizontal line.

Name: Joseph Borg

Title: President

Organization: North American Securities Administrators Association

Date: 5 / 21 / 2018