

**MEMORANDUM OF UNDERSTANDING BETWEEN THE U.S.  
COMMODITY FUTURES TRADING COMMISSION AND THE OFFICE  
OF FINANCIAL RESEARCH REGARDING THE SHARING OF DATA  
AND INFORMATION COLLECTED ON FORM CPO-PQR**

This Memorandum of Understanding (“MOU”) is entered into between the U.S. Commodity Futures Trading Commission (“Commission”) and the Office of Financial Research (“OFR”) (the Commission and OFR each a “Party,” and collectively, the “Parties”) for the purpose of setting forth the understanding of the Parties with respect to the use, treatment, handling, transmittal, and applicable disclosure restrictions concerning certain data and information collected, reported, or submitted on Form CPO-PQR and shared between the Parties. Form CPO-PQR is filed by certain Commodity Pool Operators registered with the Commission. Form CPO-PQR is filed with the National Futures Association (“NFA”) as the Commission’s delegatee. The Commission receives Form CPO-PQR information from NFA and maintains such information for the purpose of performing proper oversight of registrants. OFR has requested access to Form CPO-PQR information pursuant to its authority under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) for its use in connection with the functions and activities of OFR and the Financial Stability Oversight Council (“FSOC”) under the Dodd-Frank Act.

*Accordingly*, the Parties hereby mutually agree to the following:

1. For the purposes of this MOU:
  - (a) “Form CPO-PQR Information” means any data or information collected, reported, or submitted on Form CPO-PQR that is shared or received among the Parties pursuant to this MOU, including historical and current data and information.
  - (b) “Form CPO-PQR Work Product” means any OFR or FSOC analysis, study, research paper, report, internal policy document, publication, article, speech, presentation, testimony, or other work product that includes or is derived from Form CPO-PQR Information shared or received pursuant to this MOU.
2. The Commission, as the Party providing the Form CPO-PQR Information, represents the following:
  - (a) Form CPO-PQR Information is information received and maintained by the Commission in connection with its administration of the Commodity Exchange Act (“CEA”).
  - (b) The Commission will provide OFR with the Form CPO-PQR Information consistent with the provisions of Section 8(e) of the CEA, 7 U.S.C. § 12(e), which states that, upon the request of any department or agency of the Government of the United States, acting within the scope of its jurisdiction, the Commission may furnish to such department or agency any information in the possession of the Commission obtained in connection with administering the CEA. However, any information furnished under Section 8(e) of the CEA shall not be disclosed by the

recipient except in any action or proceeding under the laws of the United States to which it, the Commission, or the United States is a party. For the avoidance of doubt, this restriction applies equally to Form CPO-PQR Work Product, except that such Form CPO-PQR Work Product may be disclosed as set forth in paragraphs 3(c) and 3(d) below.

- (c) Commission staff understands that both OFR and FSOC, on behalf of which OFR acquires data, will have access to Form CPO-PQR Information in connection with activities within the scope of their respective jurisdictions.

### 3. OFR:

- (a) will establish and maintain necessary and appropriate safeguards to protect the confidentiality of the Form CPO-PQR Information and the Form CPO-PQR Work Product;
- (b) will use the Form CPO-PQR Information solely in connection with OFR's statutory responsibility, mission, purpose, function, and activity under the Dodd-Frank Act;
- (c) may provide access to, and share Form CPO-PQR Information and Form CPO-PQR Work Product with: (i) OFR staff; (ii) FSOC and its staff; and (iii) staff from FSOC member agencies working on FSOC or OFR matters (collectively "Authorized Recipients"), on a need to know basis for the purpose of performing their official work duties consistent with applicable law. All Authorized Recipients of Form CPO-PQR Information and/or Form CPO-PQR Work Product must be advised of, and, as a condition of receiving the Form CPO-PQR Information or Form CPO-PQR Work Product, be bound by and instructed to comply with the terms of this MOU. For the avoidance of doubt, Authorized Recipients may not share Form CPO-PQR Information or Form CPO-PQR Work Product with any person not an Authorized Recipient, or otherwise disclose such Form CPO-PQR Information or Form CPO-PQR Work Product;
- (d) may copy, reproduce, distribute, publish, or otherwise make Form CPO-PQR Work Product available to the public in print, electronic, digital, or other form, including on behalf of FSOC, provided that:
  - (i) all Form CPO-PQR Information contained in the Form CPO-PQR Work Product is sufficiently aggregated, anonymized, or otherwise masked to prevent the identification of the business transactions or market positions of any person or trade secrets or names of customers, consistent with the requirements of Sections 8(a) and 8(e) of the CEA; and
  - (ii) Commission staff is provided, reasonably in advance of making the Form CPO-PQR Work Product available to the public, with a copy of the Form CPO-PQR Work Product for review to determine that the Form CPO-PQR Information is sufficiently aggregated, anonymized, or otherwise masked to

prevent the identification of the business transactions or market positions of any person or trade secrets or names of customers, consistent with the requirements of Section 8(a) and 8(e) of the CEA, and as a result consents in writing that it can be publicly disclosed in accordance with the requirements of Section 8(a) and 8(e) of the CEA;

- (e) will not share Form CPO-PQR Information or Form CPO-PQR Work Product with any third party (other than as described in paragraphs 3(c) and 3(d)) except in connection with an action or proceeding under the laws of the United States to which OFR, the Commission, or the United States is a party; and
  - (f) will take all steps reasonably necessary to preserve, protect, and maintain all privileges and claims of confidentiality related to the Form CPO-PQR Information and Form CPO-PQR Work Product.
4. Sharing or receipt of the Form CPO-PQR Information or Form CPO-PQR Work Product pursuant to this MOU does not constitute public disclosure of the Form CPO-PQR Information or Form CPO-PQR Work Product or a waiver of confidentiality or any privilege applicable to the Form CPO-PQR Information or Form CPO-PQR Work Product, except to the extent that Form CPO-PQR Work Product is made available to the public under paragraph 3(d) above.
5. If OFR receives a request from a third party for Form CPO-PQR Information or Form CPO-PQR Work Product, such as a Freedom of Information Act request or subpoena, OFR will:
- (a) unless prohibited by law, as soon as practicable notify the Commission of such request, subpoena, order, or other process and furnish to the Commission copies of any such request or order as well as any documents related thereto;
  - (b) afford the Commission a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Form CPO-PQR Information or Form CPO-PQR Work Product or any privileges associated therewith;
  - (c) cooperate fully with the Commission to preserve, protect, and maintain the confidentiality of the Form CPO-PQR Information or Form CPO-PQR Work Product and any privileges associated therewith, including asserting any legal exemptions or privileges on the Commission's behalf that may reasonably be requested to be asserted;
  - (d) with respect to Form CPO-PQR Information, notify the requestor seeking the Form CPO-PQR Information that the Form CPO-PQR Information was obtained from the Commission and, where applicable, notify the requestor that requests for such Form CPO-PQR Information should be made directly to the Commission in accordance with applicable federal or state law;

- (e) resist and agree to not initiate production of the Form CPO-PQR Information or Form CPO-PQR Work Product, and testimony related thereto, pending written consent of the Commission, except as provided in paragraph 6; and
  - (f) consent to application by the Commission to intervene in any action in order to preserve, protect, or maintain the confidentiality of the Form CPO-PQR Information or Form CPO-PQR Work Product or any privileges associated therewith.
- 6. Nothing in this MOU will prevent OFR from complying with a request or demand from a duly authorized Committee of the United States Congress with authority to require and receive the Form CPO-PQR Information or Form CPO-PQR Work Product, or a legally valid and enforceable subpoena, or order by a court of competent jurisdiction for the Form CPO-PQR Information or Form CPO-PQR Work Product or testimony related thereto if, in the case of a subpoena or court order, OFR:
  - (a) reasonably determines that efforts to quash, appeal, or resist compliance with the subpoena or order would be unsuccessful or against its interest;
  - (b) attempts, to the extent practicable, to secure a protective order to preserve, protect, and maintain the confidentiality of the Form CPO-PQR Information or Form CPO-PQR Work Product and any privileges associated therewith; and
  - (c) immediately notifies the Commission 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, OFR shall:

- (a) advise the Committee that any Form CPO-PQR Information, whether or not included in Form CPO-PQR Work Product, being produced belongs to the Commission; and
  - (b) use its best efforts to obtain the commitment or agreement of the Committee that it will maintain the confidentiality of the Form CPO-PQR Information or Form CPO-PQR Work Product.
- 7. Nothing in this MOU waives or alters any provision of any applicable law or regulation relating to the Form CPO-PQR Information, Form CPO-PQR Work Product, or any other non-public, confidential data or information.
- 8. This MOU is not intended to modify or replace any existing arrangements or practices regarding the sharing of information between the Parties, except that the Parties agree that the access letter dated February 4, 2015, signed by Susan Nathan, Deputy General Counsel, on behalf of the Commission, to Matthew Reed, Chief Counsel, OFR, re: *OFR Request for Form CPO-PQR Data*, is superseded by this MOU. This MOU is intended to complement, but does not alter, the terms and conditions of the existing Memorandum of Understanding Regarding the Treatment of Non-Public Information Shared Among

Parties Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (“FSOC MOU”). To the extent any provision in this MOU is construed to conflict with any provision in the FSOC MOU, the provision in this MOU shall prevail.

- 9.** This MOU does not modify the ability and responsibility of the Parties to enforce or administer their respective statutes and regulations, nor does it create any legally binding obligations on the Parties or supersede any applicable laws or regulations.
- 10.** This MOU does not create any rights enforceable by third parties, nor does it affect any arrangements under any of the Parties’ existing MOUs.
- 11.** Each of the Parties has authority to enter into this MOU and to maintain the confidentiality of Form CPO-PQR Information and Form CPO-PQR Work Product in accordance with this MOU. In the event of any material change in a Party’s authority either to enter into this MOU or to maintain the confidentiality of Form CPO-PQR Information or Form CPO-PQR Work Product 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 either to enter into this MOU or to maintain the confidentiality of Form CPO-PQR Information or Form CPO-PQR Work Product that is subject to this MOU, such Party agrees that all Form CPO-PQR Information and all Form CPO-PQR Work Product will continue to be governed by the terms of this MOU.
- 12.** This MOU will become effective as of the date of its signing. This MOU may be revised or modified on written agreement of all Parties. Any Party may terminate this MOU upon 30 days’ written notice to the other Party. Following termination of this MOU, all Form CPO-PQR Information and Form CPO-PQR Work Product provided or received pursuant to this MOU will continue to be governed by the terms of this MOU.
- 13.** This MOU may be executed in separate counterparts, each of which when executed and delivered shall be deemed an original, and all of which taken together shall constitute one and the same MOU.

This MOU is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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**Heath P. Tarbert**

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