

**MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION,  
COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO  
THE RESOLUTION OF INSURED DEPOSITORY INSTITUTIONS WITH  
CROSS-BORDER OPERATIONS IN THE UNITED STATES AND THE UNITED  
KINGDOM**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of financial service firms, including large complex insured depository institutions, the United States Federal Deposit Insurance Corporation ("FDIC") and the United Kingdom Bank of England ("Bank") have reached this Memorandum of Understanding ("MOU") on the exchange of information and cooperation in resolving troubled cross-border insured depository institutions. The FDIC and the Bank express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective statutory objectives, in the areas of resolving troubled insured depository institutions with cross-border effects and maintaining confidence and systemic stability.

**ARTICLE ONE: DEFINITIONS**

1. The following terms used in this MOU will have the following meaning:
  - A. "Authority" means the FDIC or the Bank:
    - i.) "Requested Authority" means the Authority to whom a request is made under this MOU; and
    - ii.) "Requesting Authority" means the Authority making a request under this MOU.
  - B. "Authorities" means the FDIC and Bank.
  - C. "Emergency Situation" means any circumstances in which the financial or operational condition of a Firm has been materially impaired, or can reasonably be expected to be materially impaired, in a manner likely to affect the cross-border operations of the Firm and requiring consultation or coordination by the Authorities.
  - D. "Firm" means:
    - i) a Person subject to the jurisdiction of an Authority that is an insured depository institution that is incorporated in the United States or the United Kingdom and is engaged in financial

- services activities in the other or both jurisdictions through one or more branches, subsidiaries or other offices; or
- ii) a Person subject to the jurisdiction of an Authority that is in the same group as the insured depository institution.

F. “Person” means a natural person, unincorporated association, partnership, trust, investment company, or corporation.

G. “Resolution” means actions taken by an Authority to address an Emergency Situation involving a troubled firm, consonant with its statutory mandate, through supervisory or regulatory action (in the case of the FDIC), applications for judicial action, administration, conservatorship, receivership, liquidation, establishment of a bridge bank, approval or arrangement of the sale or merger of a troubled Firm, the transfer of part or all of its business to a healthy private sector purchaser, or, under the laws of the United Kingdom, the placing of a bank into temporary public ownership.

H. “National Government Entities” means:

- i) the FDIC, the U.S. Treasury Department, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), or the Office of Thrift Supervision (OTS); and
- ii) the Bank, the United Kingdom Financial Services Authority (FSA), Her Majesty’s Treasury, or the United Kingdom Financial Services Compensation Scheme.

## **ARTICLE TWO: GENERAL PROVISIONS**

2. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with contingency planning for and the implementation of the Resolution of Firms in the United States and the United Kingdom in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities will take steps to continue and enhance ongoing cooperation and communication through periodic and ad hoc consultations between them, both during normal business-as-usual circumstances and during periods of financial stress. As the condition of a Firm deteriorates, it is expected that cooperation between the Authorities

will intensify as well. Additional communications may take place under the terms of this MOU or as otherwise agreed by the Authorities.

3. The Bank is not the supervisory or regulatory authority for Firms in the UK. Its role, so far as is relevant to this MOU, is limited to acting as Resolution Authority. The FSA is responsible for determining whether the conditions for triggering the Special Resolution Regime (SRR) of the UK are met and Her Majesty's Treasury has responsibility for approving the exercise of powers under the SRR if they have implications for public funds. The remaining provisions of this MOU shall be interpreted having regard to the role of the Bank as described in this paragraph.
4. This MOU expresses the Authorities' intent to enhance and strengthen their consultation and cooperation in mutually understanding the complexities inherent in cross-border banking operations by Firms in the United Kingdom and the United States, in conducting cooperative analyses of the challenges in the Resolution of such Firms, and in contingency planning for such challenges and Resolutions.
5. 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.
6. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its Resolution functions. In particular, this MOU does not affect any right of an Authority to communicate with, conduct an on-site visitation of, or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.
7. This MOU is not intended to alter the terms and conditions of the arrangements concerning cooperation in financial supervisory matters pursuant to the Memorandum of Understanding Between the FRB, the OCC, the FDIC and the FSA (May 18 1998, amending an earlier MOU of November 19, 1996, following the transfer of responsibility for banking supervision in the UK from the Bank of England to the FSA) Facilitating Performance of Bank Supervisory Duties.
8. The Authorities intend that the cooperation and information sharing arrangements under this MOU should be implemented in a manner that is compatible with the obligations and commitments that an Authority may have to an asset management, banking or other regulatory authority or agency pursuant to memoranda of understanding or other agreements.

9. The Authorities intend annually to review the functioning and effectiveness of cooperation arrangements between them with a view, inter alia, to expanding or altering the scope or operation of this MOU should that be judged necessary. Such annual review will seek to ensure that this MOU accommodates and responds to changed circumstances and benefits from lessons learned. It will also be updated if there are material developments – for example, changes to either Authority’s responsibilities – that are likely to impact the way the FDIC and the Bank work together.

### **ARTICLE THREE: COMMON PRINCIPLES REGARDING RESOLUTIONS OF FIRMS WITH CROSS-BORDER OPERATIONS**

10. Managing a crisis involving the cross-border activities of a Firm is a matter of common interest for the United States and the United Kingdom. The successful management and resolution of a crisis involving a Firm with significant cross-border activities in the United States and the United Kingdom requires careful ex ante preparation to establish optimal processes and steps to ensure effective coordination and implementation of possible Resolution strategies.
11. Arrangements and tools for cross-border crisis management should be flexible and designed to allow for adaptation to the specific features of a crisis and the individual institutions involved. Cross-border arrangements will build on effective national arrangements and cooperation between the Authorities and they should undertake steps to improve their ability to promptly assess the broader effects of any banking crisis and its cross-border implications based on common terminology and analyses.
12. Arrangements for crisis management and crisis resolution should be consistent with arrangements for supervision and crisis prevention. In particular, arrangements for crisis management or crisis resolution should reflect the division of responsibilities between the Authorities and other responsible regulators and supervisors, and the coordinating role of home country regulators and supervisors.

### **ARTICLE FOUR: MECHANISM AND SCOPE OF RESOLUTION CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION**

13. The Authorities recognize the importance of close and effective communication concerning the global operations of Firms, and intend to consult regularly regarding general resolution developments and issues relevant to the operations, activities and regulation of such Firms.

Furthermore, the Authorities will seek to enhance cooperation in the analysis of cross-border banking resolution issues, planning for potential resolution scenarios, and appropriate simulations, contingency planning or other work designed to improve preparations of the Authorities for managing and resolving crises involving Firms with cross-border operations in the United States or the United Kingdom. The Authorities will also work with National Government Entities and with Firms themselves in planning the development of appropriate (going-concern) recovery plans and (gone-concern) resolution plans by Firms and in ensuring that such plans remain up-to-date.

14. To the extent practicable, and as appropriate in the particular circumstances, including the status of efforts to address any difficulties experienced by a Firm, each Authority intends to endeavor to inform the other Authority in advance of regulatory changes relating to Resolution measures and which may accordingly have a significant, material impact on the operations or activities of a Firm in the other jurisdiction. This will, however, be without prejudice to any arrangements relating to specific prudential issues.
15. Each Authority will make available staff as appropriate to give presentations to, and run training sessions for, the other Authority, to share expertise and knowledge. Secondments between the two institutions will also be considered, on a case-by-case basis.
16. Each Authority will designate a contact person or persons of sufficient seniority *ex ante*, involved in ongoing resolution and crisis management of Firms. These contact people will be listed in Appendix A to this MOU. Each Authority will inform the other Authority of these appointments and any changes therein. One contact person for the FDIC will be the Deputy to the Chairman for Policy. One contact person for the Bank will be the Head of the Special Resolution Unit. Senior-level contacts will be underpinned by regular working-level contact and collaboration, potentially including joint work on issues of mutual interest.
17. To the extent necessary to supplement periodic consultations, the Authorities intend in any Emergency Situation to cooperate with each other in assisting with the Resolution of a Firm, and ensuring compliance with the laws or regulations of the United States or the United Kingdom. The assistance covered by this Paragraph may include, as appropriate to each entity, and in accordance with the rights of each Authority to collect or otherwise obtain information, providing:
  - i) Information relevant to the financial and operational condition of a Firm, including, for example, capital structure, liquidity and funding profiles, internal controls procedures, external market or ratings information, entities and locations providing important operational capabilities, and identification of materially

significant subsidiaries and affiliates, such as entities engaged in capital markets, information technology, and data processing services;

- ii) Confidential supervisory information that is made available in the manner specified in the Memorandum of Understanding Between the FRB, the OCC, the FDIC and the FSA (May 18 1998, amending an earlier MOU of November 19, 1996 following the transfer of responsibility for banking supervision from the Bank of England to the FSA) Facilitating Performance of Bank Supervisory Duties;
- iii) Assistance in interpreting requested information, if such assistance is needed;
- iv) Assistance in obtaining other information located in the Requested Authority's jurisdiction that may be relevant to the Requesting Authority's Resolution of a Firm; and
- v) In addition, the Authorities will discuss and agree on the information each should provide to the other for the purpose of Resolution contingency planning.

18. The Authorities recognize that communication and coordination can play an important role in promoting efficiency and preserving value in the Resolution of a Firm. The Authorities further acknowledge that their legal duties and objectives will often align with the goals of maximizing recoveries and minimizing losses for the benefit of different stakeholders. Where this is the case they will endeavor, subject to applicable laws, to cooperate and coordinate in order to identify and implement resolution processes that meet these goals in both of their respective jurisdictions.

#### **ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE**

19. To the extent possible, a request for information pursuant to Article Four should be made in writing, and addressed to the relevant contact person(s) in Appendix A. A request should generally specify the following:
- A. The information sought by the Requesting Authority;
  - B. A general description of the matter which is the subject of the request and the purpose for which the information is sought; and
  - C. The desired time period for reply and, where appropriate, the urgency thereof.

20. In Emergency Situations, the Authorities will endeavor to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, 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 subsequently in writing. The Authorities will endeavour to provide information as quickly as possible during Emergency Situations.

## **ARTICLE SIX: PERMISSIBLE USES AND CONFIDENTIALITY OF INFORMATION**

21. It is understood that information may be shared pursuant to this MOU to the extent such sharing is reasonable and subject to any relevant statutory and regulatory provisions, including those restricting disclosure. In addition, the provision of, or request for, information under this MOU may be denied on grounds of public interest or national security or when disclosure would interfere with an ongoing investigation.
22. Any confidential information received from a Requested Authority will be used only for Resolutions or, with the written permission of the Requested Authority, for contingency planning and preparations for Resolutions. To the extent permitted by law, a Requesting Authority will hold confidential all information (other than publicly available information) received from a Requested Authority pursuant to this MOU and will not disclose such information other than as necessary to carry out its Resolution responsibilities and consistent with paragraphs 23, 24, 25, and 26.
23. Except as provided in paragraphs 24, 25, and 26, before a Requesting Authority discloses any confidential information received from a Requested Authority to a third party, the Requesting Authority will request and obtain prior consent from the Requested Authority which will not be unreasonably withheld.
24. In the event that a Requesting Authority is required by statute or legal process to disclose confidential information provided pursuant to this MOU, it will, to the extent permitted by law,<sup>1</sup> inform the Requested Authority about such possible onward sharing. If the Requested Authority does not consent to such disclosure, then, if possible and appropriate, the Requesting Authority will take reasonable steps to resist disclosure, including by employing legal means

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<sup>1</sup> For example, a subpoena or court order requesting information may bar the FDIC from disclosing the existence of such subpoena or order.

to challenge the order or by advising the third party requiring such information of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.<sup>2</sup>

25. The FDIC consents to the Bank disclosing confidential information provided by the FDIC to National Governmental Entities in the United Kingdom in furtherance of the Bank's Resolution responsibilities, and subject to assurances that the information will not be further disclosed by the receiving party except as authorized by the Bank after the Bank obtains the FDIC's consent in accordance with the terms of this MOU.
26. The Bank consents to the FDIC disclosing information provided by the Bank to National Governmental Entities and state financial supervisors and regulators in the United States in furtherance of the FDIC's Resolution responsibilities, and subject to assurances that the information will not be further disclosed by the receiving party except as authorized by the FDIC after the FDIC obtains the Bank's consent in accordance with the terms of this MOU.
27. No privileges or confidentiality associated with information provided by an Authority are intended to be waived as a result of sharing such information pursuant to this MOU.

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<sup>2</sup> Such reasonable steps also would be taken as appropriate in the context of the instances referred to in footnote 1.

**ARTICLE SEVEN: TERMINATION**

28. Cooperation in accordance with this MOU will commence as of the date written below and continue indefinitely subject to modification by the mutual consent of the Authorities or termination by an Authority with 30 days advance notice to the other Authority. After termination, the confidentiality provisions in Article Six will continue to apply to any information provided under this MOU prior to termination.

Signed at \_\_\_\_\_, this 10th day of January, 2010.

Signed  
\_\_\_\_\_  
Sheila Bair, Chairman  
United States  
Federal Deposit Insurance Corporation

Signed  
\_\_\_\_\_  
Mervyn King, Governor  
United Kingdom  
Bank of England