

**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 Financial Services Authority ("FSA") 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 FSA express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of resolving troubled insured depository institutions with cross-border effects during (potential) emergency situations, and maintaining confidence and systemic stability.

**ARTICLE ONE: DEFINITIONS**

1. The following terms used in this MOU will have following meaning:
  - A. "Authority" means the FDIC or the FSA:
    - 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 FSA.
  - 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 has its headquarters 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 action, applications for judicial action, administration, conservatorship, receivership, liquidation, establishment of a bridge bank, approval or facilitation of the sale or merger of a troubled Firm.

H. "National Governmental and Redress Entities" means:

- i) the FDIC, the U.S. Treasury Department, the FRB, the OCC, or the OTS; and
- ii) the FSA, Her Majesty's Treasury, the Bank of England or the 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. Additional communications may take place under the terms of this MOU or as otherwise agreed by the Authorities.
3. 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.
4. 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.

5. 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.
6. 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 Bank of England, the FRB, the OCC, the FDIC and the FSA (November 19, 1996, as amended, May 18, 1998) Facilitating Performance of Bank Supervisory Duties.
7. 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.
8. The Authorities intend periodically 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.

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

9. 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.
10. 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.
11. 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 supervisors.

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

12. 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 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.
13. 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.
14. Each Authority will designate a contact person or persons of sufficient seniority ex ante, involved in ongoing supervision or 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 Authority's Chief Operating Officer.
15. 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, 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 Bank of England, the FRB, the OCC, the FDIC and the FSA (November 19, 1996, as amended, May 18, 1998) Facilitating Performance of Bank Supervisory Duties;
- iii) Assistance in interpreting requested information, if such assistance is needed; and
- 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 what information each should provide to the other for the purpose of Resolution contingency planning.

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

- 16. 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.
- 17. 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 in writing.

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

- 18. 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.

19. 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 20, 21, 22, and 23.
20. Except as provided in paragraphs 21, 22, and 23, 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.
21. 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 and if possible and appropriate, the Requesting Authority that is required to disclose the received information will take reasonable steps to resist disclosure, including by employing legal means to challenge the order or by advising the requesting party of the possible negative consequences that such disclosure might have on the future exchange of confidential information between the Authorities.<sup>2</sup>
22. The FDIC consents to the FSA disclosing confidential information provided by the FDIC to National Governmental Entities in the United Kingdom in furtherance of the FSA's Resolution responsibilities, and subject to assurances that the information will not be further disclosed by the receiving party except as authorized by the FSA after the FSA obtains the FDIC's consent in accordance with the terms of this MOU.
23. The FSA consents to the FDIC disclosing information provided by the FSA 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 FSA's consent in accordance with the terms of this MOU.

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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.

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



24. 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.

#### ARTICLE SEVEN: TERMINATION

25. 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 Canary Wharf, this 25 day of June, 2008.

Sheila C Bair

Sheila Bair, Chairman  
United States  
Federal Deposit Insurance Corporation

Callum McCarthy

Sir Callum McCarthy, Chairman  
United Kingdom  
Financial Services Authority

## APPENDIX "A"

### CONTACT OFFICERS

#### US Federal Deposit Insurance Corporation

550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
USA

Chief Operating Officer

Tel: 202-898-6949

Fax: 202-898-8595

Director

Division of Supervision and Consumer Protection

Tel: 202-898-3696

Director

Division of Resolutions and Receiverships

Tel: 202-898-6525

Fax: 202-898-6528

Director

Office of International Affairs

Tel: 202-898-3930

Fax: 202-898-6794

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#### UK Financial Services Authority

25 The North Colonnade  
Canary Wharf



London E 14 5HS  
UK

Financial Stability Sector Lead  
Tel: 020 7066 1000