

Memorandum of Understanding



European Securities and Markets Authority

and



United States Securities and Exchange Commission

Memorandum of Understanding Related to ESMA's Assessment of Compliance and Monitoring of the Ongoing Compliance with Recognition Conditions by Certain Clearing Agencies Established in the United States

In view of certain central counterparties ("CCPs") established in the United States ("U.S.") and registered with the United States Securities and Exchange Commission ("SEC") as clearing agencies (as defined below) having applied or that may apply to the European Securities and Markets Authority ("ESMA") for recognition as third-country CCPs (as defined below), pursuant to Article 25 of *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories*¹ ("EMIR"), the SEC and ESMA (each, "Authority" and, together, the "Authorities") have reached this Memorandum of Understanding ("MoU") regarding arrangements for cooperation related to ESMA's assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs (as defined below) with the recognition conditions set out in Article 25(2) of EMIR ("Article 25(2) Conditions") and with the conditions of Article 1 ("Equivalence Conditions") in the European Commission's Equivalence Decision (as defined below) (collectively, "Recognition Conditions"), as well as ESMA's reviews of recognition and tiering of the Covered CCPs and ESMA's monitoring of regulatory and supervisory developments in third countries with respect to the Covered CCPs, in light of the SEC's and ESMA's relevant supervisory and monitoring responsibilities.

Under Article 25(6) of EMIR, the European Commission adopted the Equivalence Decision determining that (i) the legal and supervisory arrangements of the SEC ensure that Covered CCPs comply with legally binding requirements which are equivalent to the requirements of EMIR (provided that the Covered CCPs fulfil the Equivalence Conditions), (ii) Covered CCPs are subject to effective supervision and enforcement in the United States on an ongoing basis, and (iii) the legal framework of the United States provides for an effective equivalent system for the recognition of CCPs authorized under third-country legal regimes.

Under Article 25(6b) of EMIR, ESMA shall monitor the regulatory and supervisory developments in third countries for which implementing acts have been adopted pursuant to Article 25(6) of EMIR. In addition, in accordance with the Equivalence Decision, ESMA monitors on a regular basis the evolution of the legal and supervisory framework applicable in the U.S. to the Covered CCPs and the fulfilment of the conditions on the basis of which the Equivalence Decision has been taken. Furthermore, in accordance with Article 33 of *Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)* ("ESMA Regulation"), ESMA is required to monitor, with a particular focus on their implications for financial stability, market integrity, investor protection and the functioning of the EU internal market, relevant regulatory and supervisory developments and enforcement practices and market developments in third countries, to the extent they are relevant to risk-based equivalence assessments, for which equivalence decisions have been adopted by the European Commission; and is required to verify whether the criteria, on the basis of which

¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; OJ L 201, 27.7.2012, p. 1–59.

those equivalence decisions have been taken, and any conditions set out therein, are still fulfilled.

Article 25(2)(c) of EMIR requires the establishment of cooperation arrangements as a precondition for ESMA to recognise CCPs established in the United States to provide clearing services to clearing members or trading venues established in the European Union (“EU”). Article 25(7) of EMIR provides for ESMA confidentially to inform the European Commission of any failure by any third-country authority to apply provisions of a cooperation arrangement, and the European Commission may decide to review its implementing act on equivalence for that third country. This MoU also recognises the role of the European Central Bank and other CBIs (as defined below) under EMIR.

Regulation (EU) No 2019/2099² enhanced the EU framework for recognition and supervision of third-country CCPs and expanded the role and powers of ESMA. Under Article 25(2a) of EMIR and *Commission Delegated Regulation (EU) 2020/1303 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States³*, ESMA considers the systemic importance of a third-country CCP applying or having applied for recognition based upon specified criteria, elements and indicators. Based upon an assessment of the elements of the criteria and the indicators, ESMA determines whether the CCP is not or is not likely to become systemically important (a “Tier 1 CCP”) or is or is likely to become systemically important (a “Tier 2 CCP”) and this determination is reviewed periodically as per Article 25(5) of EMIR.

In accordance with EMIR, third-country CCPs can only provide services to EU clearing members and EU trading venues when they are recognised by ESMA.

Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) directs the SEC to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions. In facilitating the establishment of the national clearance and settlement system, the SEC must have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.

The SEC has used its authority to establish a comprehensive regulatory and supervisory framework for the Covered CCPs. In addition, in 2012, the Financial Stability Oversight Council

² Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs; OJ L 322, 12.12.2019, p. 1–44.

³ Commission Delegated Regulation (EU) 2020/1303 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States; OJ L 305, 21.9.2020, p. 7–12.

designated each of the Covered CCPs systemically important because of their respective critical roles in the U.S. financial markets. In the fulfilment of its Covered Responsibilities (as defined below), ESMA will rely as appropriate upon the regulatory framework and oversight of the SEC as the Authority with direct supervisory and enforcement powers over the Covered CCPs, recognising that the SEC has primary oversight responsibility in the U.S. for the resilience of a Covered CCP.

With regard to the Covered CCPs, ESMA and the SEC, as set out in this MoU, affirm their willingness to cooperate and exchange information to proportionately fulfil their respective supervisory and regulatory responsibilities.

Therefore, the primary purposes of this MoU are: (1) ensuring the fulfilment of the condition set out in Article 25(2)(c) of EMIR, *i.e.*, that cooperation arrangements have been established as regards the Covered CCPs covering the exchange of information in all the areas set out in Article 25(7) of EMIR; (2) providing ESMA with adequate tools to fulfil its Covered Responsibilities; and (3) establishing a framework that enables ESMA to rely, as appropriate, on the SEC's oversight of the Covered CCPs in accordance with the Laws and Regulations applicable to the SEC and to ESMA.

Article 1

Definitions

For the purpose of this MoU:

- a) "Authority" means a signatory to this MoU or any successor thereto;
- b) "Books and Records" means documents, electronic media, and books and records within the possession, custody and control of, and other information about, a Covered CCP;
- c) "CCP" means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;
- d) "Clearing agency" has the meaning ascribed to it in Section 3(a)(23)(A) of the Exchange Act;
- e) "Covered CCP" is a CCP established in the United States and registered with the SEC as a clearing agency, which has applied, or is in the process of applying, to ESMA for recognition, or which has been recognized by ESMA, as a third-country CCP pursuant to Article 25 of EMIR;
- f) "Covered Responsibilities" means, collectively, ESMA's: (i) assessment of compliance and monitoring of ongoing compliance by Covered CCPs with the

Recognition Conditions, and implementation of corresponding decisions or measures; (ii) reviews of recognition and tiering of Covered CCPs as required under Article 25(5) of EMIR; (iii) monitoring of and assessing regulatory and supervisory developments in the U.S., as required under Article 25(6b) of EMIR and Article 33(3) of the ESMA Regulation; and (iv) cooperating with the European Commission in monitoring the legal and supervisory framework applicable to the Covered CCPs and the fulfilment of the conditions on the basis of which the Equivalence Decision has been taken, as required by the Equivalence Decision;

- g) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP;
- h) “Equivalence Conditions” means the conditions set out in Article 1 of the Equivalence Decision;
- i) “Equivalence Decision” means the *European Commission Implementing Decision (EU) 2021/85 of 27 January 2021 on the equivalence to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the U.S. Securities and Exchange Commission*⁴;
- j) “Governmental Entity” means:
 - i. If the Requesting Authority is the SEC, the U.S. Department of the Treasury, the U.S. Board of Governors of the Federal Reserve System or the Commodity Futures Trading Commission; and
 - ii. If the Requesting Authority is ESMA:
 - (a) the competent authority of a Member State in the EU in which the Covered CCP provides or intends to provide clearing services and which has been selected by the Covered CCP;
 - (b) the competent authority of a Member State in the EU which is responsible for the supervision of a trading venue established in the EU that is served or to be served by the Covered CCP;
 - (c) the competent authority of a Member State in the EU supervising a CCP established in the EU with which interoperability arrangements with a Covered CCP have been established;
 - (d) with respect to notification provided by the SEC to ESMA pursuant to Article 3(4)(e) of this MoU, the competent authority of a Member State in

⁴ Commission Implementing Decision (EU) 2021/85 of 27 January 2021 on the equivalence to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the U.S. Securities and Exchange Commission; OJ L 29, 28.1.2021, p. 27–33.

- the EU where, pursuant to Article 25(5) of EMIR, a Covered CCP has extended the range of its activities and services in that Member State;
- (e) the central bank(s) of issue of any of the EU currencies of the financial instruments cleared or to be cleared by the Covered CCP (“CBI”);
 - (f) the competent authorities of Member States in the EU responsible for the supervision of the clearing members of the Covered CCP that are established in the three Member States which make or are anticipated by the Covered CCP to make the largest contributions to the default fund of the Covered CCP on an aggregate basis over a one-year period;
 - (g) the relevant members of the European System of Central Banks (ESCB) of the Member States in which the Covered CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements with a Covered CCP have been established; or
 - (h) each of the members, except for the chair and the two independent members who are staff of ESMA, of the third-country CCP college described in Article 25c of EMIR in their legal capacity as members of the college and for purposes of their college responsibilities with regard to a Covered CCP;
- k) “Laws and Regulations” means, in relation to ESMA, applicable EU law, and namely, the EU legal acts within ESMA’s scope of action as set out in Article 1(2) of the ESMA Regulation and in particular Chapter 4 of Title III of EMIR, and other relevant applicable EU law; and in relation to the SEC, the *Exchange Act*, the *Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010*, SEC rules and regulations, and other relevant requirements in the United States;
 - l) “On-site Visit” means any regulatory visit, consistent with the provisions in Article 5 of this MoU, to the premises of a Covered CCP, including inspection of Books and Records;
 - m) “Person” includes a natural person or an entity, including but not limited to, an unincorporated association, a partnership, a trust, an investment company or a corporation. This definition includes Covered CCPs;
 - n) “Recognition Conditions” has the meaning set forth in the Preamble;
 - o) “Requested Authority” means the Authority to whom a request is made or which provided information under this MoU; and

- p) “Requesting Authority” means the Authority making a request or receiving information under this MoU.

Article 2

General provisions

1. This MoU is a statement of intent to consult, cooperate and exchange information between the Authorities in the fulfilment of their respective supervisory responsibilities and objectives to the greatest extent appropriate and permitted by applicable Laws and Regulations. ESMA will rely as appropriate upon the regulatory framework and oversight of the SEC as the Authority with direct supervisory powers over the Covered CCPs, recognising that the SEC has primary oversight responsibility in the U.S. for the resilience of a Covered CCP. Further, the Authorities acknowledge that ESMA’s supervisory objectives with respect to Covered CCPs would focus on the fulfilment of ESMA’s Covered Responsibilities.
2. This MoU does not cover cooperation with regards to SEC-registered CCPs established in the EU because ESMA does not have direct supervisory powers with respect to such CCPs. For the avoidance of doubt, this MoU does not cover, in particular, cooperation in respect of SEC-registered CCPs established in the EU for which ESMA is a member of a supervisory college.
3. The cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other legal or regulatory requirements applicable to each Authority. The Authorities also intend to cooperate through ongoing informal consultations, supplemented as needed by more formal cooperation.
4. This MoU does not create any legally binding obligations, confer any rights or supersede any U.S. or EU 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 is not intended to limit or condition the discretion of an Authority in any way in the discharge of its tasks and responsibilities under the Laws and Regulations or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoU does not limit the ability of an Authority to take measures not described in this MoU in fulfilment of its responsibilities and mandates. In particular, this MoU does not limit any right of any Authority to communicate with, conduct an on-site visit of, or obtain documents or information from any Person subject to its jurisdiction that is located in the territory of another Authority.
6. The Authorities will endeavour, within the framework of this MoU, to provide each other with the fullest cooperation permissible under their Laws and Regulations in relation to ESMA’s Covered Responsibilities. Following consultation, cooperation may be denied:

- a) where the cooperation would require an Authority to act in a manner that would violate U.S. or EU laws; or
 - b) on the grounds of national public interest for the SEC and of European public interest for ESMA.
7. Where a request for assistance under this MoU is denied, or where assistance is not available under the relevant applicable law, the Authorities will consult and discuss the reasons for the denial.
 8. The Authorities represent that, as of the date upon which this MoU takes effect, no domestic laws or regulations should prevent them from providing assistance to one another.
 9. The Authorities will endeavour to reach an understanding on the interpretation and application of this MoU. Where the Authorities encounter material differences of views related to the interpretation of a provision of this MoU, they should endeavour to make good faith efforts, through cooperation, consultations and discussions, to resolve such differences in order to reach mutually acceptable resolution of the issues raised.
 10. This MoU does not prejudice, limit or alter the terms and conditions of any bilateral or multilateral Memoranda of Understanding or other arrangements concerning cooperation in cross-border securities matters between or among either Authority existing at the date of the signing of this MoU. This MoU is an arrangement between the SEC and ESMA and not a collective arrangement with other EU authorities.
 11. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting, as soon as practicable, revised contact information to the other Authority.
 12. None of the provisions contained in this MoU should be construed as a limitation on ESMA's rights and obligations under applicable laws and regulations.

Article 3

Scope of cooperation

1. The Authorities recognise the importance of close communication concerning the Covered CCPs and intend to cooperate, as appropriate, consistent with the scope of ESMA's Covered Responsibilities, including with respect to:
 - a) general issues, including with respect to regulatory, supervisory or other developments concerning Covered CCPs;
 - b) relevant Laws and Regulations, including public proposals to materially change regulatory requirements applicable to Covered CCPs;

- c) issues relevant to the operations, activities and services of Covered CCPs;
 - d) coordination of supervisory activities, including planning of ESMA's On-site Visits of Covered CCPs as described in Article 5;
 - e) provision of assistance to ESMA concerning the implementation of its decisions regarding Covered CCPs to the extent possible or as appropriate;
 - f) provision of information concerning Covered CCPs to ESMA, including, as applicable, on a recurrent, periodic basis as set out in relevant arrangements signed by duly authorised officials of the Authorities which are intended to complement this MoU regarding the scope of such information;
 - g) any extension of Covered CCP's activities and services including but not limited to those that the Covered CCPs provide to clearing members and trading venues in each EU member state;
 - h) any significant changes to risk models and parameters of a Covered CCP;
 - i) changes in the client account structure of a Covered CCP;
 - j) changes in the use of the payment systems of a Covered CCP that substantially affect the EU; and
 - k) any other areas of mutual interest, including discussions on adverse market events.
2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CCP experiences, or is threatened by, a potential financial crisis or other Emergency Situation. Each Authority will endeavour to provide notification to the other Authority consistent with Article 3(4) below and to keep the other Authority appropriately informed throughout the Emergency Situation. The SEC will endeavour to lead in an Emergency Situation and cooperate with ESMA, as appropriate. ESMA will endeavour to coordinate with the relevant CBI(s) regarding an Emergency Situation of a Covered CCP and any emergency measures that the CBI may consider appropriate.
3. Cooperation will be most useful in circumstances where issues of regulatory concern may arise, including but not limited to:
- a) the initial application of a Covered CCP for recognition in the EU pursuant to Article 25 of EMIR, as well as the review of tiering as the case may be and the review of recognition pursuant to Article 25(5);
 - b) ESMA's assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions (in particular the requirements set out in Article 25(2)(b) and (e) of EMIR and the Equivalence Conditions);

- c) ESMA's monitoring and assessment of any relevant regulatory and supervisory developments with respect to the Covered CCPs;
- d) changes in a Covered CCP's internal rules, policies and procedures that could affect the way in which the Covered CCP complies with any Recognition Conditions;
- e) regulatory or supervisory actions or approvals taken by either Authority in relation to a Covered CCP, including changes to the relevant obligations and requirements to which the Covered CCPs are subject that may impact the Covered CCPs' continued compliance with the Recognition Conditions; or
- f) changes in the regulatory status of, relief granted to, or supervisory treatment of a Covered CCP that potentially could disrupt cross-border clearing arrangements.

4. The Authorities will seek to inform each other as soon as practicable of:

- a) any known material event that could adversely impact the financial or operational stability of a Covered CCP, including:
 - i. where the Covered CCP is deemed to be in breach of the conditions of any registration or recognition, or of any Laws and Regulations to which it is subject;
 - ii. in an Emergency Situation, general information on the nature of the Emergency Situation and on any action taken or likely to be taken as far as known to the Authority including, e.g., actual or prospective use of the Covered CCP's default protections or recovery plans, or measures taken or plans to address the default or potential default of a clearing member or clearing participant;
- b) enforcement or regulatory actions or sanctions, as appropriate, including the withdrawal, revocation, suspension or modification of any registration or recognition concerning or related to a Covered CCP and which may have a material effect on the Covered CCP;
- c) any permission or approval granted to a Covered CCP to provide clearing services to clearing members, trading venues or, when known to the CCP, clients established in the EU, including in respect of the U.S. branches of entities established in the EU;
- d) in respect of notification by ESMA to the SEC, any request by ESMA to a Covered CCP to observe a measure that ESMA has adopted to ensure compliance with the Recognition Conditions or to cease a practice that ESMA determines is contrary to the Recognition Conditions;

- e) any material extension of the range of activities and services that a Covered CCP provides with respect to current or new asset classes or current or new EU trading venues; and
- f) material changes to the Laws and Regulations to which the Covered CCPs are subject.

The information to be provided by an Authority pursuant to this paragraph will refer to the Covered CCPs registered or recognized by that Authority. The determination of what constitutes “material event,” “adversely impact,” “material effect,” “material extension,” “materially impair,” or “material changes” will be left to the reasonable discretion of the Authority providing the information.

5. Each Authority, upon written request, intends to provide the other Authority, consistent with the scope of this MoU, with assistance in endeavouring to obtain information not otherwise available to the Requesting Authority and, where needed, interpreting such information. Such requests will be made pursuant to Article 4 of this MoU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimising administrative burdens, which may include, when agreed by both Authorities, consolidating responses to such requests. Any request for information, except as otherwise stipulated pursuant to paragraph 1(f) above, will be assessed on a case-by-case basis by the Requested Authority, consistent with this MoU, to determine whether the information can be provided (either in part or in whole) under the terms of this MoU and in accordance with applicable Laws and Regulations. The Requested Authority will consult with the Requesting Authority in responding to a request.

The information covered by this paragraph includes but it is not limited to:

- a) information that would assist ESMA in assessing that a Covered CCP complies with the Recognition Conditions, both in the context of an initial recognition and, thereafter, on an ongoing basis;
- b) information that would assist the Requesting Authority in verifying that a Covered CCP complies with the relevant obligations and requirements of the Laws and Regulations of the Requesting Authority;
- c) information that would assist ESMA in verifying compliance with its request to a Covered CCP to observe a measure that ESMA has adopted to ensure compliance with the Recognition Conditions or to cease a practice that ESMA determines is contrary to the Recognition Conditions;
- d) information that would assist the Requesting Authority in understanding changes to the relevant obligations and requirements to which the Covered CCPs are subject under the Laws and Regulations of the Requested Authority;
- e) information relevant to the financial and operational condition of a Covered CCP, which might include periodic reports submitted directly by a Covered CCP to the Requested Authority;

- f) relevant regulatory information and filings that a Covered CCP is required to submit to the Requested Authority; and
 - g) regulatory or supervisory reports and assessments, findings or information contained therein, prepared by an Authority in respect of a Covered CCP.
6. Representatives of the Authorities intend to discuss periodically, as appropriate, their respective functions and regulatory oversight programmes and to identify and discuss issues of common interest relating to the supervision of Covered CCPs.

Article 4

Execution of requests for information

1. To the extent possible, a request for written information pursuant to Article 3(5) should be made in writing and addressed to the relevant contact person identified in Appendix A. A request generally should specify at least the following:
- a) the information sought by the Requesting Authority;
 - b) a concise description of the matter that is the subject of the request;
 - c) the purpose for which the information is sought, including applicable Laws and Regulations;
 - d) if known, to whom, if anyone, including any Governmental Entity onward disclosure of information is likely to be necessary and the reason for any such disclosure; and
 - e) the desired time period for reply and, where appropriate, the urgency thereof.

Any request submitted by ESMA to the SEC on behalf of a CBI will be submitted in a manner consistent with Appendix B.

Requests, responses, and any relevant communication between the Authorities, may be transmitted electronically by using secure communication means.

2. In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information between each other as deemed 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 as promptly as possible following each request.

Article 5

On-site Visits

1. ESMA does not intend to conduct any On-site Visits of Covered CCPs as part of its assessment of compliance and monitoring of the ongoing compliance by Covered CCPs with the Recognition Conditions, since under Article 25(6) of EMIR the European Commission has adopted the Equivalence Decision.
2. ESMA, in respect of Covered CCPs, relies, as appropriate, on the supervision and enforcement capabilities of the SEC, which supervises and enforces compliance of the Covered CCPs with the SEC's Laws and Regulations in a manner that has been determined, in the Equivalence Decision, to be an effective equivalent system for the recognition of third-country CCPs. On-site Visits by ESMA officials will only be considered in exceptional circumstances. The scope of the On-site Visit must be necessary for the follow-up of the Equivalence Decision. In such circumstances, ESMA will act in accordance with the following procedures before conducting any such On-site Visit:
 - a) ESMA will consult the SEC with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any such On-site Visit;
 - b) When establishing the scope of any such proposed On-site Visit by ESMA officials, ESMA will consider the supervisory activities of the SEC given ESMA's reliance, as appropriate, on the supervision and enforcement capabilities of the SEC in respect of Covered CCPs and will consider any information that was made available or is capable of being made available by the SEC; and
 - c) The SEC may, in its discretion, accompany the visiting ESMA officials during the On-site Visit and assist ESMA, as needed, in reviewing, interpreting and analysing the contents of public and non-public Books and Records, as appropriate. Such assistance will be rendered in a manner that is, and with timelines that are, proportionate and consistent with the goal of minimising administrative burdens for the SEC.
3. The SEC will endeavour to share with ESMA, upon request, any examination letters issued to Covered CCPs relevant for the performance of ESMA's Covered Responsibilities.

Article 6

Permissible uses of information

1. The Requesting Authority may use non-public information obtained from the Requested Authority under this MoU solely for the purpose of ensuring, monitoring or assessing compliance by a Covered CCP with the Laws and Regulations of the Requesting Authority.

2. Before using non-public information furnished by the Requested Authority under this MoU for any purpose other than that those stated in Article 6(1), the Requesting Authority must obtain the written consent of the Requested Authority for the intended use, which shall not be unreasonably withheld. If consent is denied by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
3. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered CCP.

Article 7

Confidentiality and onward sharing of information

1. Except for disclosures in accordance with this MoU, including permissible uses of information under Article 6, each Authority will keep confidential, to the extent permitted by law, non-public information shared with it by the other Authority under this MoU, including requests made under this MoU, the contents of such requests, responses and related communications or consultations between the Authorities, and any other matters arising under this MoU. The terms of this MoU are not confidential.
2. In certain circumstances, it may become necessary for a Requesting Authority to share non-public information obtained from the Requested Authority under this MoU with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
 - a) The Requesting Authority will supply written notification to the Requested Authority fifteen (15) business days in advance of sharing of the information by the Requesting Authority; and
 - b) Prior to the Requesting Authority sharing the non-public information with the Governmental Entity, the Requesting Authority will provide written adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
 - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction; and
 - ii. The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority.
3. Except as provided in Article 6 and Article 7(2) and (4), the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received from the Requested Authority under this MoU to any non-signatory to this MoU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained

in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is denied, the Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Authority receiving the information under the MoU might be allowed.

4. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for – or any required disclosure of – non-public information that has been furnished under this MoU. Prior to compliance with the demand or required disclosure, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
5. The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.
6. The Requesting Authority will establish and maintain such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any non-public information obtained from the Requested Authority. Such safeguards will include restricting access to non-public information from the Requested Authority to only those staff and contractors of the Requesting Authority who have a need to know the information in the performance of their official work duties except as authorized pursuant to this MoU.
7. The Requesting Authority will promptly notify the Requested Authority in the event of any breach of confidentiality that occurs with respect to non-public information obtained from the Requested Authority, including, where possible, identifying the recipient(s) of information and the measures taken to address the issue.
8. The Authorities acknowledge that nothing in this Article prevents an Authority from disclosing information it receives directly from a Covered CCP.

Article 8

Transfer of personal data

1. The Administrative Arrangement for the transfer of personal data (AA) between authorities in the European Economic Area (EEA) and non-EEA authorities sets forth certain safeguards for the transfer of personal data as defined therein. As signatories to the AA, the Authorities acknowledge that they will act consistent with the AA with respect to the transfer of personal data between them.

Article 9

Successor authorities

1. Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of the MoU will apply to the successor authority or authorities performing those relevant functions, such successor authority or authorities will become a signatory or signatories to this MoU without the need for any further amendment to this MoU, and notice will be provided to the other Authority. This will not affect the right of any Authority to give written notice as provided in Article 12(2) that it no longer wishes to be a signatory to this MoU if it wishes to do so.

Article 10

Amendments

1. The Authorities intend to periodically review the functioning and effectiveness of this MoU with a view to, among other purposes, expanding or altering the scope or operation of this MoU, as necessary. This MoU may be amended with the written consent of the Authorities.

Article 11

Taking effect of the MoU

1. This MoU will take effect on the date that it is signed by the Authorities.

Article 12

Termination

1. This MoU will remain operative until terminated.
2. If an Authority wishes to no longer be a signatory to this MoU, it will provide thirty (30) calendar days prior written notice to the other Authority.
3. If an Authority gives such notice, the parties will consult concerning the disposition of any pending requests. If an understanding cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MoU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance.
4. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in the manner described under Articles 6 and 7.

5. If this MoU is terminated without being substituted in a reasonable timeframe by an equivalent arrangement, pursuant to Article 25 of EMIR, ESMA will consider the withdrawal of recognition of the Covered CCPs.

Signed this 9 day of March, 2022

Verena Ross
Chair
European Securities and Markets
Authority

Gary Gensler
Chair
United States Securities and Exchange
Commission

Appendix A

Contact Persons

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Appendix B

Requests from a Central Bank of Issue for Information on a Covered CCP

1. Pursuant to undertakings contained in this MoU, ESMA may share, as set out in Article 7(2) of the MoU, non-public information obtained from the SEC under the MoU with certain Governmental Entities. Where a CBI, as defined in Article 1(j)(ii)(e) of the MoU, seeks information on a Covered CCP that is clearing or intends to clear financial instruments denominated in the EU currency of the CBI not otherwise provided to ESMA in connection with Article 3(1)(f) of the MoU, the CBI may request such information through consultation with ESMA and submission of a written request by ESMA to the SEC pursuant to Article 4(1) of the MoU.
2. The information that may be requested by a CBI includes:
 - a) information concerning financial instruments denominated in the EU currency of the CBI that are cleared or to be cleared by the Covered CCP; and
 - b) information in connection with the CBI addressing an Emergency Situation, as defined in Article 1(g) of the MoU, in coordination with ESMA as contemplated by Article 3(2) of the MoU.
3. Pursuant to Article 7(2)(b) of the MoU and prior to sharing any non-public information with a CBI, ESMA will provide the SEC with adequate assurances by the CBI concerning the CBI's use and confidential treatment of the information.
4. In a manner consistent with Article 3(5) of the MoU, requests will be made with the goal of minimising administrative burdens.