

2023

**Memorandum of Understanding
concerning
cooperation and the exchange of information
related to the supervision of Eurex Clearing AG**

GERMANY

**Bundesanstalt für
Finanzdienstleistungsaufsicht**

Deutsche Bundesbank

UNITED KINGDOM

Bank of England

MEMORANDUM OF UNDERSTANDING

Recitals

- A. As the competent authority in accordance with 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 and the Act on a Single Financial Supervisory Authority (Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht) and other special laws the Bundesanstalt für Finanzdienstleistungsaufsicht ('BaFin') has a statutory responsibility to supervise central counterparties ('CCPs') in the Federal Republic of Germany ('Germany'). As an independent superior federal authority within the purview of the Federal Ministry of Finance, BaFin forms a part of the direct federal administration. With adequate structural arrangements in place, which avoid conflicts of interest between the functions entrusted to it as supervisory authority on the one hand and as resolution authority on the other hand, BaFin acts as well as resolution authority for the German CCPs. In exercising its sovereign functions, BaFin closely cooperates with Deutsche Bundesbank in carrying out the supervision of CCPs with Deutsche Bundesbank's Regional Offices acting on behalf of BaFin. BaFin is responsible for all sovereign measures including administrative acts and administrative fines. The Bundesbank has been assigned most of the operational tasks in banking supervision. In the ongoing monitoring process, the Bundesbank's responsibilities notably include evaluating the documents, reports, annual accounts and auditors' reports submitted by the institutions as well as carrying out regular audits of banking operations. It holds both routine and ad hoc prudential discussions with the institutions.

The respective exchange supervisory authority of the German federal state (Land) in which an exchange is domiciled, e.g. the Hessisches Ministerium für Wirtschaft, Energie, Verkehr und Wohnen – Börsenaufsichtsbehörde – (Hessian Ministry of Economics, Energy, Transportation and Housing – Exchange Supervisory Authority –) for exchanges domiciled in the State of Hesse (Land Hessen), is responsible for the supervision of that exchange and the orderly clearing of exchange transactions under the Exchange Act (Börsengesetz). Regulatory and supervisory cooperation of BaFin, Deutsche Bundesbank and the respective exchange supervisory authority is governed by the Securities Trading Act ("Wertpapierhandelsgesetz") and the Banking Act ("Gesetz über das Kreditwesen"). Moreover, Deutsche Bundesbank's Central Office is also in its role as relevant member of the European System of Central Banks responsible for the oversight of the CCPs (clearings systems). BaFin and Deutsche Bundesbank are individually referred to as a "German Authority", and together referred to as the "German Authorities".

Moreover, The European Securities and Markets Authority ('ESMA') fulfils, in accordance with Regulation (EU) No 648/2012 ('EMIR'), in relation to CCPs established in the European Union ('EU CCPs') a coordination role between competent authorities of EU CCPs and across EU CCP colleges with a view to building a common supervisory culture and consistent supervisory practices, ensuring uniform procedures and consistent approaches, and strengthening consistency in supervisory outcomes,

especially with regard to supervisory areas which have a cross-border dimension or a possible cross-border impact.

- B. The Bank of England ('the Bank') has an objective to protect and enhance the stability of the UK financial system as set out in section 2A of the Bank of England Act 1998. The Bank has particular responsibilities to supervise certain market infrastructure (recognised payment systems, securities settlement systems and central counterparties). In particular, the Bank has responsibility for recognising and, where needed, supervising non-UK central counterparties ('incoming CCPs') intending to provide clearing services to clearing members or trading venues established in the UK under the on-shored European Market Infrastructure Regulation ('UK EMIR').¹
- C. In the recognition process for incoming CCPs, the Bank is required to 'tier' the incoming CCPs based on the degree to which the CCP poses, or is likely to pose, risk to UK financial stability. As set out in the published Statement of Policy on tiering ('the SoP'),² the Bank commits to the principle of deference where possible for the supervision and regulation of incoming CCPs as it believes deference reduces the risk of regulatory duplication and preserves the benefits of cross-border clearing activities.
- D. The Bank's tiering approach builds on the principle of deference, and enables the Bank to designate an incoming CCP that is considered potentially systemically important or likely to become systemically important to the UK financial stability as 'Tier 1' and be primarily supervised and regulated by its home authority. This is provided that a relationship of trust, based on an appropriate framework for cooperation and information sharing exists or will be established between the home regulatory and supervisory authorities and the Bank, and that the Bank, through the informed reliance assessment, is satisfied with the extent to which the Bank is able to place reliance on the home authority's regulation and supervision, including that of other relevant authorities responsible for the regulation of CCPs domiciled in Germany.
- E. To that end, the German Authorities responsible for the supervision of CCPs in Germany and the Bank wish to enter into this Memorandum of Understanding ('MoU') to provide a formal basis for, and set out the details of, cooperation and exchange of information with respect to the supervision of Eurex Clearing AG as an incoming CCP that is considered potentially systemic to the UK.
- F. This MoU and the implementation of cooperation and exchange of information noted in the MoU will feed into the Bank's consideration of whether the recognition requirements for incoming CCPs that are considered potentially systemic to the UK as specified under the UK EMIR Article 25, and further supplemented by the published SoP, are satisfied. This MoU is intended to facilitate the cooperation and exchange of information when and for as long as Eurex Clearing AG is recognised as a Tier 1 CCP

¹ See in particular Article 25 of Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of retained EU law, and in particular as amended by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2020. Unless otherwise stated, any references to EU or EU-derived legislation refer to the version of the legislation which forms part of retained EU law.

² See ['The Bank of England's approach to tiering of incoming central counterparties under EMIR Article 25'](#), published on 30th June 2022.

according to UK EMIR Article 25. A change in tiering status of Eurex Clearing AG could lead to changes in this MoU.

- G. It is the mutual understanding of the German Authorities and the Bank that the cooperation arrangements for supervision specified under this MoU recognise the primacy of the German Authorities and their mandate in the supervision of Eurex Clearing AG; they are also based on mutual respect for each jurisdiction's current regulatory regime and each authority's supervisory practices, and are in line with the G-20 St Petersburg Declaration on regulatory and supervisory deference. The German Authorities and the Bank will implement the cooperation arrangements specified under this MoU with good faith, and will be guided by the 2020 IOSCO Good Practices on processes for deference.
- H. It is the mutual understanding of the German Authorities and the Bank that the Bank's informed reliance assessment also takes into account the regulatory regime implemented in relation to Eurex Clearing AG, which includes a relationship of trust and mutual respect with other relevant authorities responsible for the regulation of CCPs domiciled in Germany.
- I. It is the mutual understanding of the German Authorities and the Bank that the context of this MoU is for the Bank to be satisfied that the cooperation and information sharing (including notifications) on Eurex Clearing AG is robust and meets the Bank's expectation under Level 2 informed reliance assessment. Hence, the Bank's expectation is that the information flow would be predominantly from German Authorities to the Bank. With regard to the information flow from the Bank to the German Authorities, the Bank confirms that this is subject to domestic laws and regulations and is considered by the Framework Arrangement for Regulatory, Supervisory and Oversight Cooperation on Eurex Clearing AG (Global College Agreement) and the Multilateral Memorandum of Understanding on Cooperation for Information Sharing Regarding Participants in a Clearing or Settlement System.

Article One: Definitions

For the purpose of this MoU:

1. **“Authority”** means a signatory to this MoU or any successor thereto.
2. **“Requesting Authority”** means the Authority making a request under this MoU.
3. **“Requested Authority”** means the Authority to which a request is made under this MoU.
4. **“Applicable Laws and Requirements”** means
 - a. For the German Authorities, Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (EMIR), Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (CCP RRR), Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Capital

- requirements Regulation (CRR)) and Commission Delegated Regulations associated to these Regulations as parts of the European Union law, the Act on a Single Financial Supervisory Authority (“Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht”), the Act on the Deutsche Bundesbank (“Gesetz über die Deutsche Bundesbank”), the German Banking Act (“Gesetz über das Kreditwesen”), the German Securities Trading Act (“Wertpapierhandelsgesetz”), the German Stock Exchange Act (“Börsengesetz”), related ordinances as parts of the German law, and other applicable legal or regulatory requirements in Germany.
- b. For the Bank, the UK Financial Services and Markets Act 2000 (“FSMA”), 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 as applicable in the UK (“UK EMIR”) and associated Level 2 binding technical standards, the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013, the Bank rules, and other applicable legal or regulatory requirements in the United Kingdom.
5. **“Emergency Situation”** means the occurrence of an event that could materially impair the financial or operational condition of Eurex Clearing AG, including a crisis scenario leading to the potential recovery or resolution of that CCP.
 6. **“Governmental Entity”** means;
 - a. The Prudential Regulation Authority, in respect of its supervisory responsibility for banks, building societies, designated investment firms and insurers pursuant to sections 2A and 2AB of the Financial Services and Markets Act 2000;
 - b. The Financial Conduct Authority, in respect of its supervisory responsibility for other market participants and markets pursuant to section 1A of the Financial Services and Markets Act 2000;
 - c. The Bundesministerium der Finanzen (Federal Ministry of Finance) pursuant to the German Banking Act (“Gesetz über das Kreditwesen”) and to the CCP RRR;
 - d. Börsenaufsichtsbehörde (Exchange Supervisory Authority (“ESA”)) of one of the Bundesländer (German federal states) that has statutory responsibility under the German Stock Exchange Act (“Börsengesetz”) over Eurex Clearing AG;
 - e. The European Securities and Markets Authority and its respective bodies established under EMIR and CCP RRR, such as the CCP supervisory committee and the college, and their members, in respect of their responsibilities for Eurex Clearing AG under these Regulations.

Article Two: General Provisions

7. The MoU is a statement of intent to consult, cooperate, and exchange information in connection with each of the Authorities’ functions related to Eurex Clearing AG. The coordination, cooperation and information sharing arrangements, and any other practices under this MoU, will be interpreted and implemented in a manner and to the extent that is permitted by, and consistent with, the laws and requirements that govern each Authority.
8. As of the date of this MoU and subject to its terms, with respect to coordination and cooperation, no domestic laws or regulations, including those set by other relevant authorities with regulatory responsibility for Eurex Clearing AG, would prevent an

Authority from providing assistance to the other Authority.

9. This MoU does not create any legally binding obligations, confer any rights, modify or supersede Applicable Laws and Requirements or fetter the discretion of the Authorities. 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.
10. This MoU does not limit or condition the discretion of an Authority in any way in the discharge of its regulatory and supervisory responsibilities, or prejudice the individual responsibilities or autonomy of any Authority.
11. This MoU is intended to supersede the Memorandum of Understanding (MOU) on Cooperation for the Supervision of Eurex Clearing AG between the Financial Services Authority and Bundesanstalt für Finanzdienstleistungsaufsicht and Deutsche Bundesbank of 20 February 2007. The Bank is the Financial Services Authority's legal successor with regard to the supervision of Eurex Clearing AG and, therefore, with regard to that MoU.
12. This MoU does not supersede or modify the following existing arrangements on Eurex Clearing AG or CCPs domiciled in the UK where the Bank is the primary authority accountable for regulation and supervision, which the German Authorities are a signatory of:
 - a. Framework Arrangement for Regulatory, Supervisory and Oversight Cooperation on Eurex Clearing AG (Global Collateral Agreement);
 - b. Multilateral Memorandum of Understanding on Cooperation for Information Sharing Regarding Participants in a Clearing or Settlement System;
 - c. Multilateral Arrangement for Regulatory, Supervisory and Oversight Cooperation of ICE Clear Europe;
 - d. Multilateral Arrangement for Regulatory, Supervisory and Oversight Cooperation of LCH Ltd.
13. The Authorities acknowledge that they may be party to other MoUs and, where relevant, will clarify in requests which MoU the request relates to. This MoU does not affect any arrangements under other MoUs unless specifically noted otherwise.
14. Cooperation in accordance with this MoU will become effective on the date this MoU is signed by the Authorities.
15. The Authorities agree to this MoU being made publicly available. The signatures and contact details will not be made public.
16. 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 in this MoU, they should endeavour to make good faith efforts, through cooperation, consultations, and discussions, to resolve such differences in order to reach a mutually acceptable resolution. To efficiently resolve material differences that may arise, the Authorities intend to apply clear processes for engagement, including:
 - a. An Authority that disagrees with a matter related to the interpretation of this MoU should provide the other Authority with a reasoned notice explaining its concerns;
 - b. The Authority receiving the notice should respond in a timely manner and provide an opportunity for discussion; and
 - c. The Authorities should engage in good faith efforts to resolve differences in an

amicable and equitable manner among the appropriate senior staff members.

17. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the German Authorities and the Bank with a view, inter alia, to expanding or altering the scope or operation of the arrangements should that be judged necessary. The Bank will take into consideration any reviews of the terms and effectiveness of the cooperation arrangements in order to judge the appropriateness of the tiering outcome of Eurex Clearing AG. This MoU may be amended with the written consent of the Authorities, including in consideration of changes in the regulatory status of, relief granted to, or supervisory treatment of Eurex Clearing AG or in the relevant regulatory regime in either jurisdiction.
18. Cooperation in accordance with this MoU will continue until the expiration of 90 calendar days after either Authority gives written notice to the other Authority of its intention to terminate the MoU. If an Authority gives notice of termination, the Authorities will consult with each other 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 involving a terminating Authority that were made under this MoU before the expiration of the 90-day period until all such requests are fulfilled, or the Requesting Authority withdraws such request(s) for assistance. In the event of the termination of this MoU, information obtained under this MoU will continue to be treated in the manner described under Article Four.
19. It is the mutual understanding of the Authorities that any amendments to this MoU or the way in which the MoU is practised, or the termination of this MoU, may affect the tiering outcome and/or the recognition status of Eurex Clearing AG.

Article Three: Supervisory coordination, cooperation and exchange of information

General

20. It is the mutual understanding of the Authorities that deference to the home regulatory and supervisory authorities for Eurex Clearing AG in the context of UK EMIR is a dynamic decision, sustained by proportionate cooperation arrangements and sufficient information sharing with the German Authorities.
21. To that end, for the Bank to be able to place reliance on the home regulatory and supervisory authorities for Eurex Clearing AG, and gain sufficient assurance that the home regime is delivering equivalent outcomes that meet the Bank's statutory objective for safeguarding the UK's financial stability, the German Authorities and the Bank will proactively engage, cooperate, consult, and share information in general, and intends to meet the elements specified under Article Three on a continuous basis.
22. It is also the mutual understanding of the Authorities that further assistance including supervisory coordination, cooperation, and exchange of information, may be requested on ad-hoc basis when necessity arises.
23. Requests for ad-hoc assistance or provision of information that are not specified under Article Three will be made in writing to the nominated contact points (including by email), or made orally and, unless otherwise agreed, confirmed in writing. In an Emergency Situation, requests for information may be made in any form, including orally, provided that such communication is confirmed in writing as promptly as possible following the request.

24. To facilitate assistance, the Requesting Authority should specify in any written request the information or other assistance requested and the desired time within which the information sought should be provided. The Requested Authority may request further clarification ahead of responding to the request.
25. Each request for assistance will be assessed on a case-by-case basis by the Requested Authority, to determine whether assistance can be provided (either in part or in whole) under the terms of this MoU. In any case where the request cannot be fulfilled in part or as a whole, the Requested Authority will consider whether there may be other assistance that can be given by itself or by any other authority in its jurisdiction and, wherever possible, will endeavour to provide this.
26. The Authorities will provide a list of nominated contact points to which information or requests for information or assistance under this MoU should be directed. This is detailed in Appendix 1 and should be reviewed annually.

Supervisory coordination and cooperation

27. Each Authority understands that cooperation in relation to Eurex Clearing AG includes practices as set out below:
 - a. Quarterly trilateral engagement – On a quarterly basis, staff at both the senior management and working levels of each Authority will meet to discuss supervision of Eurex Clearing AG. The Authorities will meet in person for one of the quarterly trilateral engagements when possible.
 - b. Multilateral engagement – the German Authorities will invite the Bank to participate in multilateral fora discussing issues related to the supervision of Eurex Clearing AG. These multilateral fora include supervisory colleges, crisis management groups, and interoperability roundtables, where applicable.
 - c. Supervisory reviews – Based on the work plans the German Authorities share in quarterly trilateral engagement, the Bank will request involvement in a supervisory review that it would like to participate in at least annually, under the leadership of the German Authorities. The supervisory review may be an on-site review, desk-based review such as model reviews, or any other review undertaken by the German Authorities that is relevant to the supervision of Eurex Clearing AG. All authorities which participate in a specific supervisory review will liaise to agree the details of the Bank's participation in that review.

Information sharing

28. Each Authority understands that the information on Eurex Clearing AG the German Authorities proactively provide to the Bank on periodic bases is as set out below.
29. Other than monthly data items, which will be shared in a mutually agreeable data format, all information below will be shared orally, or in written form where appropriate, proportionate, and mutually agreeable.
30. Monthly and annual items should be shared with the nominated contact points of this MoU; quarterly items should be shared ahead of or during quarterly meetings. The authorities may also otherwise mutually agree meetings on an ad-hoc basis, or other agreeable platforms for sharing of relevant information, so long as it does not contravene with the principle that the items below will be shared on a proactive basis.

Monthly item

- a. Data reports on Eurex Clearing AG – On a monthly basis, data reports covering all relevant services of Eurex Clearing AG relevant to UK financial stability will be provided. In particular, the data reports will focus on clearing services provided by Eurex Clearing AG to UK market participants, and include data on margin, collateral, and other key indicators, as agreed between staff of the Authorities.

Quarterly items

- a. Key business development – Summary of significant changes in the business of Eurex Clearing AG, which may include, but is not limited to: changes to risk models and parameters, extensions of services, changes in client account structures, changes in use of payment systems, changes to corporate governance and significant regulatory developments that are relevant to Eurex Clearing AG, irrespective of whether these regulations are set by the German Authorities.
- b. Supervisory priorities and work plans – Supervisory priorities and views of key risks, current and forward work plans and progress, which could include but not exhaustively, any associated scope documents or reports on the examination of the Eurex Clearing AG and relevant firm engagement letters.
- c. Decisions on key matters – Summary of non-time-critical decisions on key matters in relation to Eurex Clearing AG, which may include, but not limited to: extension of clearing services, model changes, qualifying shareholding changes, changes in outsourcing arrangements, regulatory status, risk management and control processes, and operational methodology and protocols.
- d. Supervisory reviews – Summary of non-time-critical supervisory reviews on key areas in relation to Eurex Clearing AG, which may include but are not limited to: assessment of compliance with requirements on initial margin and adequacy of default fund size, business continuity plans, reports on the on-site examination, corporate governance, and fit and proper assessment of senior management.
- e. Remedial actions or plans – Summary of any applicable request to Eurex Clearing AG for remedial actions or plans resulting from supervisory findings, and periodic updates on the measures subsequently adopted by Eurex Clearing AG.

(Biennial items)

- a. Where applicable, a review of Eurex Clearing AG's self-assessment against the Principles of Financial Market Infrastructures (PFMIs)³ – This includes the self-assessment by Eurex Clearing AG, any associated review reports, supervisory views, and responses to the questions in connection with self-assessments will be provided orally, or in written materials where appropriate and proportionate.

Notification

31. Each authority understands that the German Authorities inform the Bank promptly and as soon as appropriate in accordance with the applicable laws, or where practicable in advance, of:
 - a. Any known material event that could adversely impact the financial or operational stability of Eurex Clearing AG, including where that CCP is deemed to be in breach of the conditions of any license, registration, authorisation or recognition, or of any Laws and Regulations to which it is subject;

³ CPSS-IOSCO Principles for Financial Market Infrastructures (April 2012).

- b. Any material extension of activities and services, including permission or approval granted to Eurex Clearing AG to provide clearing services to Clearing Members, Clearing Participants, trading venues or, when known to the Eurex Clearing AG, clients established in the UK, including in respect of branches of entities established in the UK;
 - c. Any material event of which the German Authorities are aware that could adversely impact the financial or operational resilience of Eurex Clearing AG, including such events as a default or potential default of a Clearing Member or Clearing Participant; a major disruption in the functioning of Eurex Clearing AG resulting from, for example, force majeure, a severe operational or market event, or a business continuity event; market or settlement bank difficulties that might adversely impact Eurex Clearing AG; any action taken or likely to be taken within a resolution procedure or the implementation of a recovery plan by Eurex Clearing AG; or any known material change in the ownership, operating environment including regulatory changes and developments, operations, financial resources, governance, risk management, or systems and controls of Eurex Clearing AG;
 - d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of authorisation, recognition, registration, exemption therefrom, or other relief concerning Eurex Clearing AG; and
 - e. The status of efforts of which the German Authorities are aware to address any material event that could adversely impact the financial or operational condition of Eurex Clearing AG, a Clearing Member, or a Clearing Participant.
32. The determination of what constitutes “significant impact”, “significantly affect”, “material event”, “adversely impact”, “major disruption”, “difficulties”, “material adverse effect”, “adverse material change”, “significant regulatory actions”, or “where the context so permits” for purposes of Paragraph 31 will be left to the reasonable discretion of the German Authorities which determine to notify the Bank.
33. Paragraphs 31 to 32 do not preclude the Authorities from entering into any further arrangements relating to notification regarding specific financial or operational issues related to Eurex Clearing AG.

Emergency situations

34. The Authorities recognise in particular the importance of close cooperation, robust consultation, and information sharing in the event that Eurex Clearing AG experiences, or its resilience is threatened by, a potential financial sector stress or other Emergency Situation relating to Eurex Clearing AG, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the UK.
35. The Bank recognises that as the home authorities, the German Authorities will lead in an Emergency Situation. In fulfilling this role, the German Authorities should keep the Bank appropriately informed throughout the Emergency Situation, and consult with and take account of the views of the Bank, to the extent possible, in seeking potential solutions.
36. In Emergency Situations, the Authorities shall endeavour to notify each other of the Emergency Situation and communicate relevant 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.
37. In particular, notification by the German Authorities to the Bank should occur to the greatest extent possible and without undue delay after the German Authorities become

aware of the Emergency Situation relating to Eurex Clearing AG, and should cover:

- a. General information on the nature of the Emergency Situation, action taken or likely to be taken by Eurex Clearing AG as far as known to the German Authorities, including actual or prospective use of Eurex Clearing AG's default protections or recovery plans;
 - b. In the event of a major Clearing Member's default, implications of the default, as well as recovery or resolution actions for Eurex Clearing AG and its non-defaulting Clearing Members;
 - c. Details of settlement in and/or use of failure-to-settle procedures;
 - d. Implications of operational disruptions for the continuity of services provided Eurex Clearing AG; and
 - e. If Eurex Clearing AG is in financial distress, exposures to Eurex Clearing AG of Clearing Members and interoperable financial market infrastructures in the Bank's jurisdiction where applicable.
38. 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 such notification.

Enforcement

39. It is the mutual understanding of the Authorities that the Bank, in respect of CCPs tiered as Tier 1, relies on the enforcement capabilities of the German Authorities, which enforce compliance with Laws and Regulations in so far as they relate to the German Authorities.
40. The German Authorities understand that the Bank may take enforcement action against Eurex Clearing AG only where there has been a breach of Applicable Laws and Regulations by Eurex Clearing AG in relation to recognition requirements for the Covered CCPs specified under the UK EMIR Article 25, and further supplemented by the published SoP. The procedures for requests for assistance for the purpose of actual or possible enforcement action are set out below.
41. The Bank will endeavour to notify the German Authorities if it proposes to take any regulatory or supervisory action in relation to Eurex Clearing AG.
42. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be set out in the request:
- a. The information or other assistance requested (identity of persons, specific questions to be asked etc.);
 - b. If information is provided by the Bank for confirmation or verification, the information and the kind of confirmation or verification sought;
 - c. The purpose for which the information or other assistance is sought;
 - d. A description of the conduct or suspected conduct which gives rise to the request;
 - e. Details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - f. The link between the specified rule or law and the regulatory functions of the Bank;
 - g. The relevance of the requested assistance to the specified rule or law;
 - h. Whether it is desired that, to the extent permitted by the applicable laws, regulations and requirements applying to the Bank, any persons from the UK should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning; and

- i. Any other matters specified by the Bank and by the applicable laws, regulations and requirements in relation to the Bank.
43. If a request for assistance, as described in this MoU relates to actual or possible enforcement action, the German Authorities in determining whether to fulfil the request in whole or in part, subject to the German Authority's applicable laws, regulations and requirements and overall policy take into account whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the German Authorities has already been appropriately dealt with in relation to the alleged breach, in respect of the subject matter of the request.
 44. If, following a request from the Bank, the German Authorities conduct an interview with any person, they may permit a representative of the Bank to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the German Authorities.
 45. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the applicable laws, regulations and requirements of the jurisdiction of the German Authorities. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the applicable laws, regulations and requirements of the jurisdiction of the Bank, the Authorities will consult to determine the most appropriate way to proceed.

Article Four: Permissible uses of information, confidentiality and onward sharing of information

Permissible uses of information

46. Except as provided in Paragraphs 47 to 48 immediately below, or pursuant to a legally enforceable demand, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU.
47. As required by law or authorised by law, it may become necessary for the Bank or the German Authorities to share non-public information obtained under this MoU with a Governmental Entity. In such circumstances and to the extent permitted by law:
 - a. The Authority which wishes to share such information intends to notify the other Authorities in advance of such sharing, unless the Authorities agree otherwise in respect of any such notification in relation to specified information to be onward shared with the relevant Governmental Entity.
 - b. Prior to sharing the non-public information, the sharing Authority will provide adequate assurances to the other Authorities 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 the purpose enabling it to fulfil its responsibilities and mandates as described in Article 1; and
 - ii. The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the other Authority.
48. Except as provided in Paragraph 47 immediately above, or if disclosure is otherwise required by law, each Authority must obtain the prior consent of the Authority the

information originates from before disclosing non-public information received under this MoU to any non-signatory to this MoU. The Authority the information originates from 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 by that Authority, 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 Bank might be allowed.

49. To the extent possible, the Authorities should notify each other of any legally enforceable demand for non-public information that has been furnished under this MoU. When complying with the demand, the Bank intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
50. 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.
51. The Authorities acknowledge that nothing in this Article prevents an Authority from disclosing information it receives directly from Eurex Clearing AG.

Signed

Jon Cunliffe
Deputy Governor of the Bank of England
for Financial Stability
For the Bank of England

Date: 20 July 2023

Dr Thorsten Pöttsch
Chief Executive Director of
Securities Supervision
For the Bundesanstalt für
Finanzdienstleistungsaufsicht

Date: 19 July 2023

Karlheinz Walch
Director General Banking and Financial
Supervision
For the Deutsche Bundesbank

Date: 20 July 2023

Alexander Schulz
Head of Division Policy and Standards
For the Deutsche Bundesbank

Date: 20 July 2023
