

## **Memorandum of Understanding Related to ESMA's Monitoring of the Ongoing Compliance with Recognition Conditions by CSDs established in the United Kingdom of Great Britain and Northern Ireland**

In view of central securities depositories ("CSDs") established in the United Kingdom of Great Britain and Northern Ireland (the "UK") having applied to the European Securities and Markets Authority ("ESMA") for recognition as CSDs, pursuant to Article 25 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 ("CSDR", and such CSDs, the "Covered CSDs"), the Bank of England (the "Local Authority") and ESMA have reached this Memorandum of Understanding ("MoU") regarding arrangements for cooperation related to ESMA's monitoring of the on-going compliance by the Covered CSDs with the recognition conditions set out in Article 25 of CSDR (the "Recognition Conditions").

Under Article 25(9) of CSDR, the European Commission has adopted the Commission Implementing Decision (EU) 2020/1766 determining, for a limited period of time, that the regulatory framework applicable to central securities depositories of the UK is equivalent in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council, determining that the legal and supervisory arrangements of the UK ensure that Covered CSDs comply with legally binding requirements which are in effect equivalent to the requirements of CSDR, that Covered CSDs are subject to effective supervision, oversight and enforcement in the UK on an on-going basis, and that the legal framework of the UK provides for an effective equivalent system for the recognition of CSDs authorised under the legal regimes of third countries.

Article 25(4)(c) of CSDR requires the establishment of cooperation arrangements as a precondition for ESMA to recognise CSDs established in the UK to provide the core services referred to in points (1) and (2) of Section A of the Annex to CSDR in relation to financial instruments constituted under the law of a Member State referred to in the second subparagraph of Article 49(1) of CSDR, or to set up a branch in a Member State.

Therefore, the purpose of this MoU is two-fold, namely to 1) ensure the fulfilment of the condition set out in Article 25(4)(c) of CSDR, *i.e.*, that cooperation arrangements have been established as regards the Covered CSDs; and 2) provide ESMA with adequate tools to monitor the on-going compliance by the Covered CSDs with the Recognition Conditions and to assess any material risk posed, directly or indirectly, by the Covered CSDs to the European Union or any of its Member States including to their financial stability. This MoU is an arrangement between the Local Authority and ESMA and not a collective arrangement with other European Union authorities. As such, it will not impact any arrangements which may be agreed directly between other European Union authorities and the Local Authority.

## 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 CSD;
- c) “CSD” means a legal person referred to in point (1) of Article 2(1) of CSDR;
- d) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered CSD;
- e) “Governmental Entity” means:
  - i. If the Requesting Authority is Bank of England, the Prudential Regulation Authority, in respect of its supervisory responsibility for banks and insurers pursuant to sections 2A and 2AB of the Financial Services and Markets Act 2000, and 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; and
  - ii. If the Requesting Authority is ESMA, the authorities identified in Article 25(5) of CSDR, namely:
    - (a) the competent authority of a Member State in which the Covered CSD provides or intends to provide CSD services, as referred to in Article 25(5)(a) of CSDR;
    - (b) the relevant authorities referred to in Article 25(5)(b) of CSDR.
- f) “Laws and Regulations” means, in relation to ESMA, applicable European Union legislation within ESMA’s scope of action as set out in Article 1(2) 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC and, in relation to the Local Authority, FSMA 2000, the Uncertificated Securities Regulations 2001, the Central Securities Depositories Regulations 2017 and the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018;
- g) “On-site Inspection” means any regulatory visit by ESMA to the premises of a Covered CSD, including inspection of Books and Records;
- h) “Person” includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered CSD;
- i) “Requested Authority” means the Authority to whom a request is made under this MoU; and

- j) “Requesting Authority” means the Authority making a request under this MoU.

## **Article 2**

### **General provisions**

1. Pursuant to the regime under CSDR for recognition of third-country CSDs, ESMA does not have direct supervision or enforcement powers over the Covered CSDs and relies on the supervision and enforcement capabilities of the Local Authority, which supervises and enforces compliance with the Local Authority’s Laws and Regulations.
2. This MoU does not cover cooperation with regards to CSDs established in the European Union because ESMA does not have direct supervisory powers in respect of such CSDs. For the avoidance of doubt, this MoU does not cover, in particular, cooperation in respect of CSDs established in the European Union.
3. This MoU is a statement of intent to consult, cooperate and exchange information in connection with ESMA’s immediate access on an on-going basis to all information requested by ESMA regarding the Covered CSDs, including the information necessary for ESMA to assess any material risk posed, directly or indirectly, by the Covered CSDs to the European Union or any of its Member States, including to their financial stability. 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.
4. This MoU does not create any legally binding obligations, confer any rights or supersede any 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 is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoU does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.
6. The Authorities should, within the framework of this MoU, provide each other with the fullest cooperation permissible under their Laws and Regulations in relation to ESMA’s monitoring of the ongoing compliance by the Covered CSDs with the Recognition Conditions. Following notification, cooperation may be denied:
  - a) Where the cooperation would require an Authority to act in a manner that would violate its Laws and Regulations; or
  - b) On the grounds of national public interest for the Local Authority and of European public interest for ESMA.

7. 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.
8. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact persons the details of which are as set out in the Appendix. Any amendments to the details of contact persons shall be communicated without undue delay to the other Authority.

### **Article 3**

#### **Scope of cooperation**

1. The Authorities recognise the importance of close communication concerning the Covered CSDs and intend to cooperate regarding:
  - a) general issues, including with respect to regulatory, supervisory or other developments concerning the Covered CSDs;
  - b) issues relevant to the operations, activities and services of the Covered CSDs;
  - c) the coordination of supervisory activities including, where appropriate, on-site inspections; and
  - d) any other areas of mutual interest.
2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CSD, particularly one whose failure would likely be systemically important to either Authority, experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
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 CSD for recognition in the European Union pursuant to Article 25 of CSDR;
  - b) the on-going monitoring of the review or the withdrawal of the recognition of the Covered CSD in the European Union pursuant to Article 25 of CSDR;
  - c) changes to a Covered CSD's activity or internal rules, policies and procedures that could affect the way in which the Covered CSD complies with any Recognition Conditions or the risks the Covered CSD poses to the European Union or any of its Member States either directly or indirectly; or
  - d) regulatory or supervisory actions or approvals taken by the Local Authority or ESMA in relation to a Covered CSD, including changes to the relevant obligations and

requirements to which the Covered CSDs are subject that may impact the Covered CSDs' continued compliance with the Recognition Conditions.

4. *Notification.* The Authorities shall 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 CSD, including where the Covered CSD 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;
  - b) enforcement or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any license, registration, authorisation or recognition concerning or related to a Covered CSD and which may have a material effect on the Covered CSD;
  - c) in respect of notification by ESMA to the Local Authority, any permission or approval granted to a Covered CSD to provide the core services referred to in points (1) and (2) of Section A of the Annex to CSDR in relation to financial instruments constituted under the law of a Member State referred to in the second subparagraph of Article 49(1) of CSDR, or to set up a branch in a Member State;
  - d) in respect of notification by ESMA to the Local Authority, any request to a Covered CSD 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) in respect of notification by the Local Authority to ESMA, any material changes introduced in the legal, regulatory and supervisory arrangements affecting the Covered CSDs;
  - f) in respect of notification by the Local Authority to ESMA, any developments with regard to the Covered CSDs that could adversely impact the financial stability in the European Union or any of its Member States;
  - g) any material extension of the range of activities and services that a Covered CSD provides in relation to financial instruments constituted under the law of a Member State, including any core and ancillary services listed in, or permitted under the Annex to CSDR or in accordance with the Central Securities Depositories Regulations 2017 and the Central Securities Depositories (Amendment) (EU Exit) Regulations 2018; and
  - h) material changes to the Laws and Regulations to which the Covered CSDs are subject.

The information to be provided by an Authority pursuant to this paragraph will refer to the Covered CSDs. The determination of what constitutes "material extension", "material changes", "material event", "adversely impact" or "material effect" will be left to the reasonable discretion of the Authority providing the information.

5. *Exchange of Written Information.* Each Authority, upon written request, intends to provide the other Authority with assistance in endeavouring to obtain information not otherwise available to the Requesting Authority and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with the Laws and Regulations to which the Covered CSDs are subject, provided that the Requested Authority is authorised to collect such information. Such requests shall 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.

The information covered by this paragraph includes without limitation:

- a) information that would assist the Requesting Authority in verifying that a Covered CSD complies with the relevant obligations and requirements of the Laws and Regulations of the Requesting Authority;
- b) information that would assist ESMA in verifying compliance of a Covered CSD with a measure that ESMA has adopted to ensure compliance with the Recognition Conditions or with a request to cease a practice that ESMA determines is contrary to the Recognition Conditions;
- c) information that would assist the Requesting Authority in understanding changes to the relevant obligations and requirements to which the Covered CSDs are subject under the Laws and Regulations of the Requested Authority;
- d) information relevant to the financial and operational condition of a Covered CSD, which might include periodic reports submitted directly by a Covered CSD to the Requested Authority;
- e) relevant regulatory information and filings that a Covered CSD is required to submit to the Requested Authority;
- f) regulatory reports and assessments, or findings or information contained therein, prepared by an Authority in respect of a Covered CSD; and
- g) information requested by ESMA under Article 25(7) of CSDR regarding the periodic reporting on the Covered CSDs' activities in the host Member State, and the communication of the identity of the issuers and participants in the securities settlement system operated by a Covered CSD or any other relevant information concerning the Covered CSD's activities in the host Member State.

The information to be provided by an Authority pursuant to this paragraph will refer to the Covered CSDs.

## **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 (which may be transmitted electronically) and addressed to the relevant contact person identified in the Appendix. 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 and the purpose for which the information is sought, including the Laws and Regulations applicable to the activity;
  - c) to whom, if anyone, including any Governmental Entity, onward disclosure of information is likely to be necessary and the reason for such disclosure; and
  - d) the desired time period for reply and, where appropriate, the urgency thereof.
2. In Emergency Situations, the Authorities shall 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 such notification.

## **Article 5**

### **On-site Inspections**

1. ESMA does not intend to conduct any On-site Inspection of the Covered CSDs as part of its monitoring of the ongoing compliance by Covered CSDs with the Recognition Conditions, and its assessment of any material risk posed, directly or indirectly, by the Covered CSDs to the European Union or any of its member States including to their financial stability, since under Article 25(9) of CSDR, the European Commission has determined that the legal and supervisory arrangements of the jurisdiction of the Local Authority ensure that Covered CSDs comply with legally binding requirements which are in effect equivalent to the requirements of CSDR, that Covered CSDs are subject to effective supervision, oversight and enforcement in the UK on an on-going basis, and that the legal framework of the UK provides for an effective equivalent system for the recognition of CSDs authorised under the legal regime of third countries.
2. Given that ESMA, in respect of Covered CSDs, relies on the supervision and enforcement capabilities of the Local Authority, which supervise and enforce compliance with the Local Authority' Laws and Regulations, On-site Inspections by ESMA officers will only be



considered in exceptional circumstances and subject to the prior agreement of the Local Authority.

3. In such exceptional circumstances, the Authorities should discuss and reach understanding on the terms regarding an On-site Inspection by ESMA officers, in particular in determining the respective roles and responsibilities of the Authorities. ESMA will act in accordance with the following procedure before conducting an On-site Inspection:
  - a) ESMA will consult the Local Authority with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any On-site Inspection. The Local Authority may, in their discretion, accompany or assist the visiting ESMA officials during the On-site Inspection.
  - b) When establishing the scope of any proposed On-site Inspection by ESMA officials, ESMA will consider the supervisory activities of the Local Authority given ESMA's reliance on the supervision and enforcement capabilities of the Local Authority in respect of Covered CSDs and will consider any information that was made available or is capable of being made available by the Local Authority.
  - c) The Local Authority will assist ESMA in reviewing, interpreting and analysing the contents of public and non-public Books and Records and obtaining information from directors and senior management of a Covered CSD.

## **Article 6**

### **Permissible uses of information**

1. The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of ensuring, monitoring or assessing compliance with the Laws and Regulations of the jurisdiction of the Requesting Authority.
2. Before using non-public information furnished under this MoU for any purpose other than that stated in Article 6(1), the Requesting Authority must obtain the written consent of the Requested Authority for the intended use. 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. If an Authority ("Receiving Authority") receives, via a party that is not a signatory to this MoU, non-public information originally provided by the other Authority ("Disclosing Authority") that is related to the Disclosing Authority's supervision and oversight of a Covered CSD and that the Receiving Authority is aware was obtained by the third party from the Disclosing Authority on a confidential basis, the Receiving Authority will use and treat the information in accordance with the terms of this MoU.
4. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered CSD.



## **Article 7**

### **Confidentiality and onward sharing of information**

1. Except as provided in paragraph 2 to 3, 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. The terms of this MoU are not confidential.
2. As required by law or authorised by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MoU with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
  - a) The Requesting Authority intends to notify the Requested Authority; and
  - b) Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide 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 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 Requested Authority.
3. Except as provided in paragraph 2, or if disclosure is otherwise required by law, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received 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 by the Requested Authority, the Requesting and Requested 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 Requesting Authority might be allowed.
4. To the extent possible, the Requesting Authority should notify the Requested Authority of any legally enforceable demand for non-public information that has been furnished under this MoU. When complying with the demand, 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 Authorities acknowledge that nothing in this Article 7 prevents an Authority from disclosing information it receives directly from a Covered CSD.

## **Article 8**

### **Successor authorities**

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of the MoU shall apply to the successor authority or authorities performing those relevant functions, such successor authority or authorities shall 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 11(2) that it no longer wishes to be a signatory to this MoU if it wishes to do so.

## **Article 9**

### **Amendments**

The Authorities intend to periodically review the functioning and effectiveness of cooperation arrangements between the Authorities. This MoU may be amended with the written consent of all signatories.

## **Article 10**

### **Taking effect of the MoU**

This MoU shall take effect on the date following that of the end of the transition period provided in Article 126 of the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

## **Article 11**



### **Termination**

1. Subject to its termination pursuant to paragraph 2 or with the written consent of all signatories, from the date specified in article 10, this MoU will continue taking effect for an unlimited period of time subject to the existence of a Commission Implementing Decision (EU) as per Article 25(9) of CSDR.

2. If an Authority wishes to no longer be a signatory to this MoU, it shall 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 agreement 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 CSDR, ESMA will consider the withdrawal of recognition of the Covered CSDs.

## Signatures

Date: 9 December 2020

<p>European Securities and Markets Authority</p>  <p>Steven Maijoor Chairman</p>	<p>Bank of England</p>  <p>Jon Cunliffe Deputy Governor</p>
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