



**BANK OF ENGLAND**



European Securities and  
Markets Authority

**Memorandum of Understanding between ESMA and the Bank of England to set out arrangements for cooperation on the monitoring and supervision of CCPs established in the UK**

Central counterparties (“CCPs”) established in the United Kingdom of Great Britain and Northern Ireland (‘the UK’) have applied to the European Securities and Markets Authority (“ESMA”) for recognition as CCPs, 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<sup>1</sup>, as amended and supplemented, (“EMIR”), (“Covered CCPs”).

The Bank of England (“the Bank”) 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 CCPs with those recognition conditions set out in Articles 25(2), 25(2b) and 25b of EMIR with which the Covered CCPs are required to comply to maintain recognition (the “Recognition Conditions”) and in accordance with the Bank’s financial stability objective set out in section 2A of the Bank of England Act 1998 and its role as supervisor of financial market infrastructure.

Under Article 25(6) of EMIR, the European Commission (the Commission”) has adopted the Commission Implementing Decision (EU) 2020/1308<sup>2</sup> determining that, as of the date of its entry into force and for a limited period of time, i.e. until 30 June 2022, the framework which will be applicable to CCPs in the UK after the end of the transition period is considered equivalent, in accordance with EMIR.

Article 25(7) of EMIR requires ESMA to establish cooperation arrangements with relevant third country authorities whose legal and supervisory framework has been recognised as equivalent to that of EMIR, whereas Article 25(2)(c) of EMIR prescribes such cooperation arrangements as a precondition for ESMA to recognise CCPs established in the UK to provide clearing services to clearing members or trading venues established in the European Union.

Moreover, Article 25(6b) of EMIR requires ESMA to monitor regulatory and supervisory developments of such third countries.

This MoU between the Bank and ESMA provides for the cooperation arrangements required as a condition of recognition by ESMA for a third-country CCP under Article 25(7) of EMIR and to provide the Bank and ESMA with adequate tools to monitor the regulatory and supervisory developments in the EU and in the UK and the on-going compliance of CCPs established in the UK with the Recognition Conditions.

This MoU covers the expectations of the Commission expressed in Recitals 13, 14, 15 and 16 of Decision (EU) 2020/1308 related to exchange of information and cooperation.

This MoU is an arrangement between the Bank 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 Bank. However, the Bank enters this arrangement with an expectation that other European Union national authorities with responsibility for regulation and

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<sup>1</sup> 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)

<sup>2</sup> COMMISSION IMPLEMENTING DECISION (EU) 2020/1308 of 21 September 2020, OJ L 306, 21.9.2020, p. 1–5, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020D1308>

supervision of CCPs that wish to gain recognition in the UK will sign reciprocal versions of this MoU, as well as any supplementary arrangements as appropriate.

The supervision of CCPs is based upon close cooperation and the Authorities' mutual respect for each jurisdiction's regulatory regime and each Authority's supervisory practices. The Bank, as the relevant primary authority accountable for the resilience of CCPs domiciled in the UK, has primary oversight with respect to such CCPs while ESMA's oversight of such CCPs generally would in accordance with EMIR focus on the potential risks related to their interlinkages to the EU financial system, and the risks that this could pose to the financial system of the EU or one of its Member states. Consequently, ESMA's oversight is most relevant in relation to CCPs that have been designated as Tier 2 by ESMA, for which ESMA has greater supervisory and enforcement powers, and for which cooperation with the Bank as envisaged by the MoU is particularly relevant.

Whilst ESMA has direct supervision and/or enforcement powers over the Covered CCPs under Articles 25b, 25f to 25m, 25p and 25q of EMIR, ESMA agrees, in fulfilling its regulatory mandate, to establish a framework for cooperation with the Bank in their regulation and supervision of CCPs that is based on appropriate supervisory and regulatory deference to the Bank. This includes, where appropriate and in line with the applicable Laws and Regulations, making a finding of comparable compliance for Tier 2 UK CCPs.

The Bank, in line with this MoU, will provide ESMA with adequate information to monitor the on-going compliance by the Covered CCPs with the Recognition Conditions. The Bank also will:

- provide ESMA with information on relevant regulatory and supervisory developments in the UK;
- facilitate where necessary the establishment of a system by which regular data reporting provided by the CCP to the Bank can be provided by the CCP to ESMA; and
- provide ESMA with information of the Bank's assessment of any material risk posed, directly or indirectly, by the Covered CCPs to the European Union or any of its Member States including to their financial stability.

The Bank and ESMA have established cooperation arrangements that are in line with the G-20 St Petersburg declaration, which commits regulators to defer to one another when justified by the quality of the relevant regulatory and enforcement regimes. The Bank and ESMA will also be guided by the 2020 IOSCO Good Practices on processes for deference which aims to mitigate the risks of unintended, regulatory-driven market fragmentation and strengthen international cooperation.

## 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 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) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP, including developments in financial markets which may have an adverse effect on market liquidity and the stability of the financial system in the Union or one of its Member States;
- e) "ESCB" means the European System of Central Banks;
- f) "Governmental Entity" means:
  - i. If the Requesting Authority is the Bank, 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, 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(3) of EMIR, namely:
    - (a) the competent authority of a Member State in which the Covered CCP provides or intends to provide clearing services and which has been selected by the CCP;
    - (b) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States of the European Union which make or are anticipated by the CCP to make the largest contributions to the default fund of the CCP referred to in Article 42 of EMIR on an aggregate basis over a one-year period, including, where relevant, the European Central Bank Single Supervisory Mechanism, in accordance with Council Regulation (EU) No 1024/2013<sup>3</sup>;

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<sup>3</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63)

- (c) the competent authorities responsible for the supervision of trading venues located in the European Union, served or to be served by the CCP;
- (d) the competent authorities supervising CCPs established in the European Union with which interoperability arrangements have been established;
- (e) the relevant members of the ESCB of the Member States in which the 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 have been established;
- (f) the central banks of issue of all the European Union currencies of the financial instruments cleared or to be cleared by the Covered CCP;

and each of the members of the third-country CCP college described in Article 25c of EMIR.

- g) “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<sup>4</sup> and, in relation to the Bank, the Bank of England Act 1998, the Financial Services and Markets Act 2000, the Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 and the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018, as amended and supplemented, and any rules, acts, technical standards or guidance supplemental thereto including any of the same issued as a result of comparable compliance decisions;
- h) “Tier 1 Covered CCP” means a Covered CCP designated as being Tier 1 in accordance with Article 25(2a) of EMIR.
- i) “Tier 2 Covered CCP” means a Covered CCP designated as being Tier 2 in accordance with Article 25(2a) of EMIR.
- j) “General Investigations” means supervisory reviews conducted by ESMA of a Tier 2 Covered CCP, as described in Article 25g of EMIR. Such a review may focus on one issue at a Covered CCP or may be a thematic review. Such a review may be desktop based following a request for information and may also be accompanied by an on-site inspection.
- k) “On-site Inspection” means any supervisory visit by ESMA to the premises of a Tier 2 Covered CCP, including inspection of Books and Records, as described in Article 25h of EMIR;

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<sup>4</sup> 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 (OJ L 331, 15.12.2010, p. 84)

- l) "Person" includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered CCP;
- m) "Requested Authority" means the Authority to whom a request is made under this MoU; and
- n) "Requesting Authority" means the Authority making a request under this MoU.
- o) "Recognition Conditions" means the recognition conditions set out in Articles 25(2), 25(2b) and 25b of EMIR with which the Covered CCPs are required to comply to maintain recognition.

## **Article 2**

### **General provisions**

1. This MoU addresses the requirements established in Article 25(7) of EMIR, which requires the establishment of cooperation arrangements as a precondition for recognition by ESMA of third-country CCPs to provide clearing services to clearing members or trading venues established in the EU and intends to set forth practical arrangements and mechanisms to facilitate the exercise by ESMA of certain of its powers and duties under EMIR in line with the laws applicable to ESMA. The MoU also assists the Bank in the furtherance of its financial stability objective, as set out in section 2A of the Bank of England Act 1998.
2. This MoU does not cover cooperation with regards to CCPs established in the European Union because ESMA does not have direct supervisory powers in respect of such CCPs. For the avoidance of doubt, this MoU does not cover, in particular, cooperation in respect of CCPs established in the European Union and the supervisory colleges of which ESMA is a member.
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 CCPs including information on significant changes to their risk models and parameters, extension of their activities and services, changes in their client account structure and in their use of payment systems (where such significant changes to their risk models and parameters, extensions to activities and services, or changes in client account structure and in use of payment systems substantially affect the EU), the information necessary for ESMA to assess any material risk posed, directly or indirectly, by the Covered CCPs to the European Union or any of its Member States including to their financial stability and the information for ESMA to monitor regulatory and supervisory developments in the UK. 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 statutory requirements, Laws and Regulations 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. Subject to the provisions of paragraph 7 immediately below, the Authorities should, within the framework of this MoU, and in order to maintain effective supervision of the Covered CCPs, provide each other with the fullest cooperation appropriate under their statutory objectives and Laws and Regulations in relation to ESMA's monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions and the corresponding supervisory and enforcement powers.
7. The Authorities will use best endeavours to reach an understanding on the interpretation and application of this MoU. Where the Authorities encounter material differences of views related to supervision of a Covered CCP or 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. 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 supervision of a Covered CCP, or interpretation of this MoU, should provide the other Authority with a reasoned notice explaining its concern;
  - 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 staff members. Where necessary, the Authorities should escalate to senior staff members. Senior staff members at the Bank are the Deputy Governor for Financial Stability and the Executive Director for Financial Market Infrastructure. Senior staff members at ESMA are the Chair and independent members of the CCP Supervisory Committee defined in Article 24a of EMIR.

If the Authorities, after engaging in good faith in the steps outlined in this paragraph 7 above, still cannot come to an agreement then ESMA recognises that the Bank as the authority with ultimate responsibility for the resilience of the Covered CCP shall take the supervisory or regulatory decision and any other action it considers appropriate. Examples where this might be necessary include areas in which there are conflicting rules or regulations. The Bank recognises that ESMA, while respecting the Bank's ultimate responsibility for the resilience of the Covered CCP, may also take actions it considers appropriate, in line with its statutory responsibilities.

8. The provisions of paragraphs 6 and 7 immediately above are subject to the right of either Authority, at any time following notification, to deny cooperation:
  - a) Where the cooperation would require an Authority to act in a manner that would violate its Laws and Regulations, or other legal or regulatory requirements applicable to it, or its statutory objectives.
  - b) On the grounds of national public interest for the Bank and of European public interest for ESMA.

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 in accordance with the terms of this MoU.

9. The Bank and ESMA are committed to the maintenance of robust standards for the regulation and supervision of CCPs. This includes aspiring to maintain a level of resilience, on an outcomes-basis, at least as great as provided for by the relevant regimes on the date of the entry into force of this MoU.
10. In order to seek to reduce potential disruption in cross-border clearing arrangements, the Authorities should endeavour to consult with one another before proposing or adopting measures that could result in a change in the regulatory status (such as withdrawing a CCP's recognition, or reclassifying a Tier 1 CCP as Tier 2), supervisory treatment, regulatory outcomes or comparable compliance of a Covered CCP. The Authorities should endeavour to cooperate to manage adjustments as necessary and appropriate.
11. In the event of a change in regulatory status, supervisory treatment, regulatory outcomes or comparable compliance of a Covered CCP, ESMA will provide an appropriate adaptation period to minimise potential market disruption and threats to the financial stability of the UK, the EU and any of its Member States in compliance with the applicable Laws and Regulations:
  - a) Where a Tier 1 CCP has been reclassified as a Tier 2 CCP, ESMA will set an appropriate adaptation period of up to two years (18 months, extendable by 6 months), under Article 25(5), subparagraph three of EMIR.
  - b) Where ESMA decides to withdraw recognition, ESMA will set an appropriate adaptation period of up to two years that minimises potential market disruption, under Article 25p(1) of EMIR.

ESMA will consult the Bank before setting an appropriate adaptation period.

12. 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. Given the comprehensiveness of the supervisory regime and regulatory framework for CCPs that both jurisdictions have, ESMA should endeavour to rely upon the regulatory framework of the UK and the supervision by the Bank of the Covered CCPs, to the greatest extent appropriate and permitted by applicable Laws and Regulations. This will also apply to ESMA when considering requests from UK CCPs to grant comparable compliance where the relevant conditions are met.  
In particular, in its supervision of Covered CCPs, ESMA will endeavour, to the extent permitted by the applicable laws, to avoid the duplication of functions and processes that are part of the Bank's supervisory regime. This includes, where relevant and in accordance with the applicable laws, ESMA promptly inviting and reviewing applications for comparable compliance from Tier 2 CCPs to avoid such duplication of functions and processes.
2. The supervision of CCPs is based upon close cooperation and the Authorities' mutual respect for each jurisdiction's regulatory regime and each Authority's supervisory practices. The Bank, as the relevant primary authority accountable for the resilience of CCPs domiciled in the UK, has primary oversight with respect to such CCPs while ESMA's oversight of such CCPs generally would in accordance with EMIR focus on the potential risks related to their interlinkages to the EU financial system, and the risks that this could pose to the financial system of the EU or one of its Member States. Consequently, ESMA's oversight is most relevant in relation to CCPs that have been designated as Tier 2 by ESMA, for which ESMA has greater supervisory and enforcement powers, and for which cooperation with the Bank as envisaged by the MoU is particularly relevant.
3. ESMA agrees, in fulfilling its regulatory mandate, to establish a framework for cooperation with the Bank in its regulation and supervision of CCPs that is based on appropriate supervisory and regulatory deference to the Bank. This includes, where appropriate and in line with the applicable Laws and Regulations, making comparable compliance for Tier 2 UK CCPs.
4. In line with Recital 48 of Regulation 2019/2099<sup>5</sup>, where ESMA has granted comparable compliance to a Covered CCP, the conduct of that CCP should not be considered an infringement of EMIR to the extent that it complies with the relevant comparable requirements. The Authorities recognise the importance of close communication concerning the Covered CCPs and intend to cooperate regarding:
  - a) general issues, including with respect to regulatory, supervisory, enforcement or other developments concerning the Covered CCPs;
  - b) issues relevant to the operations, activities and services of the Covered CCPs;

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<sup>5</sup> 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)



- c) the coordination of supervisory activities including On-site Inspections and General Investigations; and enforcement decisions, where appropriate, and;
  - d) any other areas of mutual regulatory and supervisory interest.
5. Cooperation will be most useful in circumstances where issues of regulatory, supervisory and enforcement concern may arise, including but not limited to:
- a) the initial application of a Covered CCP for recognition in the European Union pursuant to Article 25 of EMIR;
  - b) the on-going monitoring, the review or the withdrawal of the recognition of the Covered CCPs in the European Union pursuant to Article 25, 25a, 25b, and 25p of EMIR and in line with Article 2 (11) of this MoU;
  - c) any change to relevant tiering and comparable compliance decisions made by ESMA and supervisory treatment of a Covered CCP;
  - d) the clearing activities of the Covered CCPs with respect to financial instruments denominated in European Union currencies, European Union trading venues, clearing participants established in the European Union and clearing members which are part of a group subject to consolidated supervision in the European Union; to interoperability arrangements with other European Union CCPs; to own resources; to default funds composition and calibration; to margins, liquid resources and collateral portfolios including haircut calibrations and to stress tests;
  - e) changes to a Covered CCP's activity or internal rules, policies and procedures, that could affect the way in which the Covered CCP complies with any Recognition Condition, or the risks the Covered CCP poses to the European Union or any of its Member States either directly or indirectly; or
  - f) regulatory, supervisory or enforcement actions, outcomes, or approvals taken by the Bank or ESMA including in accordance with Articles 25, 25a, 25b of EMIR, including ESMA stress tests, and Articles 25f to 25m, 25p and 25q of EMIR 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. This should include the publication of any reports. Cooperation between the Authorities where ESMA carries out stress tests involving Covered Tier 2 CCPs should include appropriate dialogue between the Bank and ESMA during the process and ESMA consulting the Bank on its findings before findings are communicated to Covered Tier 2 CCPs and made public.
6. Cooperation between the Authorities regarding enforcement activities means exchanging information and dialogue, to the extent consistent with applicable law and statutory objectives and with due regard to the requirements of the investigation officer appointed by ESMA in accordance with Article 25i(1) of EMIR to perform his or her functions

independently from ESMA and not be involved or have been directly or indirectly involved in the recognition or supervision process of the CCP concerned.

7. *Notification.* The Authorities shall seek to inform each other as soon as appropriate in accordance with the applicable laws of:
- a) any known material event that could adversely impact the financial or operational stability of a Covered CCP, including where the Covered 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;
  - b) any enforcement decision or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any license, registration, authorisation or recognition, or decisions or regulatory actions or sanctions related to stress testing, concerning or related to a Covered CCP and which may have a material effect on the Covered CCP. In particular, for Covered Tier 2 CCPs, ESMA will notify the Bank before the start of a General Investigation and before the notification of the conclusions of the ESMA Board of Supervisors pursuant to such General Investigation of the concerned CCP. The Bank will notify ESMA of any investigation at the earliest point at which the Bank determines that there is any risk or likely risk posed to EU clearing members or the financial system of the EU or one of its Member States. The Bank will also notify ESMA before the publication of an enforcement measure on a Tier 2 CCP.
  - c) in respect of notification by ESMA to the Bank, any proposed permission or proposal to grant approval to a Covered CCP to provide clearing services to clearing members, trading venues or, when known to the CCP, clients established in the European Union, including in respect of branches of entities established in the European Union;
  - d) in respect of notification by ESMA to the Bank, any proposed 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;
  - e) in respect of notification by the Bank to ESMA, any material changes introduced in the legal, regulatory and supervisory arrangements or framework affecting Covered CCPs;
  - f) in respect of notification by the Bank to ESMA, any developments with regard to the Covered CCPs 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 CCP provides with respect to current or new asset classes or current or new European Union trading venues; and
  - h) changes to applicable provisions of 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. 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.

8. In an *Emergency Situation*, notification by the Bank to ESMA should occur to the greatest extent possible and without undue delay after becoming aware of the Emergency Situation relating to the Covered CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the Union or one of its Member States and should include where practicable the procedures and contingency plans to address such situations.
9. The Authorities recognise in particular the importance of close cooperation, robust consultation, and information sharing in the event that a Covered CCP experiences, or is threatened by, a potential financial crisis or other Emergency Situation. The Bank should lead in an Emergency Situation. The Bank should provide notification to ESMA, and keep ESMA appropriately informed throughout the Emergency Situation, and consult with and take account of the views of the other Authority to the extent possible.
10. *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 CCPs 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, and with any timelines that are, consistent with the goal of minimising administrative burdens for both the Requested Authority and the relevant Covered CCP.

The information covered by this paragraph includes without limitation:

- a) information that would assist ESMA and the Bank in effectively monitoring the regulatory and supervisory developments to the CCP regime in the UK or EU respectively;
- 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 assessing compliance of a Covered CCP with the Recognition Conditions including EMIR compliance directly or through comparable compliance or with a request 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 from reports on a Covered CCP's financial and operational condition required by Laws and Regulations (which might include periodic reports submitted directly by a Covered CCP to the Requested Authority);
- f) information from relevant regulatory filings that a Covered CCP is required to submit to the Requested Authority; and
- g) information from regulatory, supervisory or investigation reports and assessments prepared by an Authority in respect of a Covered CCP.

The information to be provided by an Authority pursuant to this paragraph will refer to the Covered CCPs except for paragraph a).

11. *Periodic meetings between Authorities.* Representatives of the Authorities intend to meet periodically, and at a minimum every 6 months, to update and discuss their respective functions and regulatory oversight programs and to identify and discuss issues of common interest relating to the supervision of Covered CCPs, including: contingency planning and crisis management, systemic risk concerns, default procedures, the adequacy of supervisory coordination and existing cooperation arrangements, and the possible improvement of cooperation and coordination between the Authorities.

Any periodic meetings may be conducted by conference call or on a face-to-face basis, as appropriate. The frequency of these meetings and the agenda for any meeting will be agreed by the Authorities in advance of any meeting.

## **Article 4**

### **Execution of requests for information**

1. To the extent possible, a request for written information pursuant to Article 3(10) 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 or may be made 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**

### **General Investigations and On-site Inspections**

1. Pursuant to EMIR, ESMA, in respect of Tier 1 Covered CCPs, relies on the supervision and enforcement capabilities of the Bank, which supervises and enforces compliance with Laws and Regulations in so far as they relate to the Bank. ESMA will not conduct any general investigation or on-site inspection of Tier 1 Covered CCPs as part of its monitoring of the ongoing compliance by Covered CCPs with the Recognition Conditions and its assessment of any material risk posed, directly or indirectly, by the Covered CCPs to the European Union or any of its Member States including to their financial stability, since under Article 25(6) of EMIR the European Commission has determined that the legal and supervisory arrangements of the jurisdiction of the Bank ensure that Covered CCPs comply with legally binding requirements which are equivalent to the requirements of EMIR, that Covered CCPs are subject to effective supervision and enforcement in the UK on an ongoing basis, and that the legal framework of the UK provides for an effective equivalent system for the recognition of CCPs authorised under the legal regime of third countries. Where appropriate and where ESMA has a genuine interest, the Bank may invite ESMA to participate in reviews of Tier 1 CCPs, in line with the Bank's commitment to international cooperation in its supervision of financial market infrastructure.
2. The Authorities will cooperate in the scoping of any ESMA's General Investigation or On-Site Inspection of Tier 2 CCPs and will consult and work collaboratively in conducting any General Investigation or On-Site Inspection.
3. In accordance with the applicable law, ESMA will endeavour to undertake its General Investigations and On-Site Inspections of Tier 2 CCPs as part of the Bank's supervisory programme, including via joining the Bank's planned supervisory reviews and supervisory visits. For the purpose of supervising the compliance with EMIR, ESMA will conduct independent General Investigations and / or independently planned On-Site Inspections in line with its objective in its oversight of Tier 2 CCPs, in order to address potential risks such CCPs could pose to the financial system of the EU or one of its Member States due to their interlinkages thereto, upon consulting the Bank to establish whether such General Investigations and On-Site Inspections are already covered by relevant measures in the Bank's planned supervisory programme. ESMA will coordinate accordingly with the Bank.
4. On-site Inspections by ESMA officers conducted separately from planned Bank supervisory visits will only be considered in limited cases in line with the immediately preceding paragraph 3. In case ESMA intends to perform an On-Site Inspection (including without prior notice to the Covered CCP), it will notify the Bank thereof beforehand. The provisions of Article 7 of this MoU shall apply to non-public information shared under this MoU in relation

to any On-Site Inspection of a Covered CCP conducted without prior notice to the Covered CCP.

The Authorities should discuss and reach understanding on the terms regarding General Investigations and 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, insofar as permitted by the applicable laws, before conducting a General Investigation or an On-site Inspection:

- a) ESMA will consult the Bank with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any General Investigation or On-site Inspection. The Bank may accompany or assist the visiting ESMA officials during the General Investigation or On-site Inspection.
  - b) When establishing the scope of any proposed General Investigation or On-site Inspection by ESMA officials, ESMA will consider the supervisory activities of the Bank given ESMA's reliance on the supervision and enforcement capabilities of the Bank in respect of Covered CCPs and will consider any information that was made available or is capable of being made available by the Bank.
  - c) The Bank will assist ESMA in reviewing, interpreting and analysing the contents of public and non-public Books and Records and obtaining relevant information from directors and senior management of a Covered CCP 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 Bank.
5. General Investigations and/or On-Site Inspections conducted by the investigation officer pursuant to Article 25i(2), second subparagraph, of EMIR will be conducted only for enforcement purposes and on the basis of serious indications of the possible existence of acts liable to constitute infringements identified during supervisory investigations and/or on-site inspections conducted in accordance with paragraphs 3 and 4 immediately above. Where appropriate and with due regard to the requirements of the investigation officer appointed by ESMA in accordance with Article 25i(1) of EMIR to perform his or her functions independently from ESMA and not be involved or have been directly or indirectly involved in the recognition or supervision process of the CCP concerned, the investigation officer will seek the assistance of the Bank on such On-site Inspections and General Investigations, in accordance with the relevant articles of this MoU.

## **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 paragraph 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 CCP 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 CCP. Before requesting information from a Covered CCP or related third parties to whom those CCPs have outsourced operational functions or activities, ESMA should endeavour to consult the Bank whenever appropriate and legally possible.

## **Article 7**

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

1. Except as provided in paragraph 2 to 3 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. 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 at least 5 working days in advance of sharing such information, unless the Requesting Authority and the Requested Authority agree otherwise in respect of any such notification in relation to specified information which is proposed by ESMA to be shared on a regular basis with the same Governmental Entity.
  - 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 immediately above 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 CCP.

## **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**

Cooperation in accordance with this MoU will become effective upon 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.



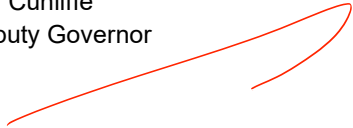
## **Article 11**

### **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 to take effect in accordance with EMIR.
2. If an Authority wishes to no longer be a signatory to this MoU, it shall provide ninety (90) calendar days prior written notice to the other Authority. If both parties agree to the termination, this period could be shortened.
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 90-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 in accordance with Article 25p of EMIR.

**Signatures**

Date: 23 September 2020

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