

## **Enhanced Memorandum of Understanding**



**European Securities and Markets Authority**



**U.S. Commodity Futures Trading Commission**

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

In view of certain central counterparties ("CCPs") established in the United States ("U.S.") and registered with the Commodity Futures Trading Commission ("CFTC") as derivatives clearing organizations ("DCOs") having applied or that may apply to the European Securities and Markets Authority ("ESMA") for recognition as third-country 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* ("EMIR"), the CFTC and ESMA have reached this enhanced Memorandum of Understanding ("MoU") regarding arrangements for cooperation related to ESMA's assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs as defined in Article 1(c) below with the recognition conditions set out in Article 25 of EMIR and with the conditions in paragraphs 2 and 3 of Article 1 ("Equivalence Conditions") in the *European Commission Implementing Decision (EU) 2016/377 of 15 March 2016* ("Equivalence Decision"), except for agricultural commodity derivative contracts fulfilling the conditions set out in Article 2 of the Equivalence Decision ("Exemption Conditions") (collectively, "Recognition Conditions"), as well as ESMA's periodic reviews as set out in Article 25(5) of EMIR and ESMA's monitoring of regulatory and supervisory developments in third countries as set out in Article 25(6b) of EMIR, in light of the CFTC's and ESMA's relevant supervisory and monitoring responsibilities.

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

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

*Regulation (EU) No 2019/2099* ("EMIR 2.2") enhanced the EU framework for recognition and supervision of third-country CCPs and expanded the role and powers of ESMA. Under Article 25(2a) of EMIR and *Commission Delegated Regulation (EU) 2020/1303 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become*

*systemically important for the financial stability of the Union or of one or more of its Member States*, ESMA considers the systemic importance of a third-country CCP applying or having applied for recognition based upon specified criteria, elements and indicators. Based upon an assessment of the elements of the criteria and the indicators, ESMA determines whether the CCP is not or is not likely to become systemically important (a “Tier 1 CCP”) or is or is likely to become systemically important (a Tier 2 CCP) and this determination is reviewed periodically as per Article 25(5) of EMIR.

With regard to a Covered CCP as defined in Article 1(c) below, ESMA and the CFTC (each an “Authority” and, together, the “Authorities”), as set out in this enhanced MoU, affirm their willingness to enhance cooperation and information sharing to proportionately fulfil their respective supervisory and monitoring responsibilities. The Authorities further recognise the value of strong cooperation and sustained information sharing to promote effective and efficient cross-border supervision of such CCPs that engage in clearing activity in both the U.S. and the EU.

The Authorities are mindful to uphold fundamental principles of deference in their supervisory cooperation, including as set out in the G20 Leaders’ declaration at the September 2013 St. Petersburg Summit. The Authorities recognise that supervisory cooperation based on deference enhances coordinated oversight and encourages greater clarity, certainty and consistency in regulatory requirements and actions. This MoU also is intended to maximize utilization of staff resources, reduce unnecessary duplication and encourage consistency in supervisory practices.

Therefore, the primary purposes of this MoU are: 1) ensuring the fulfilment of the condition set out in Article 25(2)(c) of EMIR, *i.e.*, that cooperation arrangements have been established as regards the Covered CCPs; 2) providing ESMA with adequate tools to assess compliance and to monitor the ongoing compliance by the Covered CCPs with the Recognition Conditions, in light of ESMA’s relevant supervisory and monitoring responsibilities; and 3) enhancing cooperation and information sharing related to the Covered CCPs and related regulatory and supervisory developments in the U.S. and the EU.

This MoU is an arrangement between the CFTC and ESMA and not a collective arrangement with other EU authorities. As such, it will not impact any arrangements which may be agreed directly between other EU authorities and the CFTC.

## **Article 1**

### **Definitions**

For the purpose of this MoU:

- a) “Authority” means a signatory to this MoU or any successor thereto;
- b) “Books and Records” means documents, electronic media, and books and records within the possession, custody and control of, and other information about, a Covered CCP;

- c) “CCP” means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer and, for purposes of this MoU, a “Covered CCP” is a CCP identified in Appendix C as agreed between the Authorities;
- 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 EU or one of its Member States;
- e) “Governmental Entity” means:
  - i. If the Requesting Authority is the CFTC, the U.S. Department of the Treasury, the U.S. Board of Governors of the Federal Reserve System or the Securities and Exchange Commission; and
  - ii. If the Requesting Authority is ESMA:
    - (a) the competent authority of a Member State in the EU in which the Covered CCP provides or intends to provide clearing services and which has been selected by the Covered CCP;
    - (b) the competent authority of a Member State in the EU which is responsible for the supervision of a trading venue established in the EU that is served or to be served by the Covered CCP;
    - (c) the competent authority of a Member State in the EU supervising a CCP established in the EU with which interoperability arrangements with a Covered CCP have been established;
    - (d) with respect to notification provided by the CFTC to ESMA pursuant to Article 3(4)(e) of this MoU, the competent authority of a Member State in the EU where, pursuant to Article 25(5) of EMIR, a Covered CCP has extended the range of its activities and services in that Member State;
    - (e) the central bank(s) of issue of any of the EU currencies of the financial instruments cleared or to be cleared by the Covered CCP (“CBI”); or
    - (f) each of the members, except for the chair and the two independent members who are staff of ESMA, of the third-country CCP college described in Article 25c of EMIR in their legal capacity as members of the college and for purposes of their college responsibilities with regard to a Covered CCP.
- f) “Laws and Regulations” means, in relation to ESMA, applicable EU law, and in particular, the EU legal acts 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 CFTC, the Commodity Exchange Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations and other relevant requirements;*

- g) “On-site Visit” means any regulatory visit engaged in by ESMA consistent with the provisions in Article 5 of this MoU to the premises of a Covered CCP located in the U.S., 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 CCP;
- 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 EMIR for recognition of third-country CCPs, ESMA does not have direct supervision or enforcement powers over Tier 1 CCPs and fully relies on the supervision and enforcement capabilities of the CFTC, which supervises and enforces compliance with the CFTC’s Laws and Regulations. With regard to CFTC-registered DCOs not listed in Appendix C, cooperation between the Authorities is covered by the *Memorandum of Understanding Related to ESMA’s Assessment of Compliance and Monitoring of the Ongoing Compliance with Recognition Conditions by Derivatives Clearing Organizations Established in the United States (2 June 2016)*.
2. With respect to Covered CCPs, the Authorities affirm a commitment to cooperate in the context of one another’s regulatory regime and supervisory practices to the greatest extent appropriate and permitted by applicable Laws and Regulations. In the fulfilment of their responsibilities and objectives, the Authorities will rely upon the regulatory framework and supervision of the CFTC as the Authority with direct supervisory powers over the Covered CCPs, recognising that the CFTC remains accountable in the U.S. for the resilience of a Covered CCP under its supervision. Further, the Authorities understand that ESMA’s supervisory objectives as to a Covered CCP would focus on the clearing activity of EU market participants and activity of the Covered CCP that can have material adverse impact in the financial markets of the EU or one of its Member States. This MoU also recognises the role of the European Central Bank and other CBIs under EMIR.
3. This MoU does not cover cooperation with regards to CCPs established in the EU 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 EU of which ESMA is a member of the supervisory college.

4. This MoU is a statement of intent to consult, cooperate and exchange information in connection with ESMA's assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions, in light of ESMA's relevant supervisory and monitoring responsibilities, including monitoring of related regulatory and supervisory developments in the U.S. The cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other legal or regulatory requirements applicable to each Authority. The Authorities intend to cooperate through ongoing informal consultations, supplemented as needed by more formal cooperation.
5. This MoU does not create any legally binding obligations, confer any rights or supersede any domestic or EU laws. This MoU does not confer upon any Person the right or ability, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU.
6. 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.
7. 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 assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions. Following consultation, 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 CFTC or of European public interest for ESMA.
8. The Authorities represent that, as of the date upon which this MoU takes effect, no domestic or EU laws or regulations should prevent them from providing assistance to one another.
9. The Authorities will endeavour to reach an understanding on the interpretation and application of this MoU. Where the Authorities encounter material differences of views related to the interpretation of a provision of this MoU, they should endeavour to make good faith efforts, through cooperation, consultations and discussions, to resolve such differences in order to reach mutually acceptable resolution of the issues raised.
10. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information to the other Authority.

## **Article 3**

### **Scope of cooperation**

1. 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 or other developments concerning the Covered CCPs;
  - b) relevant Laws and Regulations, including proposals to materially change regulatory requirements applicable to Covered CCPs;
  - c) issues relevant to the operations, activities and services of the Covered CCPs;
  - d) coordination and planning of On-site Visits of Covered CCPs;
  - e) provision of information concerning Covered CCPs to ESMA, including, as applicable, on a recurrent, periodic basis as set out in relevant arrangements signed by duly authorised officials of the Authorities which are intended to complement this MoU regarding the scope of such information; and
  - f) any other areas of mutual interest, including discussions on adverse market events and supervisory stress tests.
  
2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CCP experiences, or is threatened by, a potential financial crisis or other Emergency Situation. An Authority should provide notification to the other Authority consistent with Article 3(4) below and should keep the other Authority appropriately informed throughout the Emergency Situation. The CFTC should lead in an Emergency Situation and should consult with and take account of the views of ESMA to the greatest extent possible. ESMA should coordinate with the relevant CBI(s) regarding an Emergency Situation of a Covered CCP and any emergency measures that the CBI may consider appropriate.
  
3. Cooperation will be most useful in circumstances where issues of regulatory concern may arise, including but not limited to:
  - a) the initial application of a Covered CCP for recognition in the EU pursuant to Article 25 of EMIR and the periodic review of its recognition pursuant to Article 25(5);
  - b) ESMA's supervisory objectives as to Covered CCPs, including ESMA's ongoing and prospective supervisory activities and practices (e.g., as to information requests, On-site Visits and stress tests), in coordination with and exercising appropriate reliance upon the CFTC;

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

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

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



The information to be provided by an Authority pursuant to this paragraph will refer to the Covered CCPs registered or recognised by that Authority. The determination of what constitutes “material event”, “adversely impact”, “material effect”, “material extension”, or “material changes” 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 CCPs are subject, provided that the Authority is authorized to collect such information. Such requests will be made pursuant to Article 4 of this MoU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens. Any request for information, except as otherwise stipulated pursuant to paragraph (1)(e) above, will be assessed on a case-by-case basis by the Requested Authority to determine whether the information can be provided (either in part or in whole) under the terms of this MoU and in accordance with applicable Laws and Regulations. The Requested Authority will consult with the Requesting Authority in responding to a request.

The information covered by this paragraph includes:

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

6. *Periodic Bilateral Discussions.* Representatives of the Authorities intend to discuss periodically, as appropriate, their respective functions and regulatory oversight programs and to identify and discuss issues of common interest relating to the supervision of Covered CCPs.

## **Article 4**

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

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

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

Information responsive to the request, as well as any subsequent communication between the Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

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

2. In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information between each other as deemed appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

## Article 5

### On-site Visits

1. *On-site Visits on a Periodic Basis.* The Authorities affirm a commitment to cooperate with respect to ESMA's assessment and monitoring of compliance with the Recognition Conditions, in light of ESMA's relevant supervisory and monitoring responsibilities, including with respect to periodic On-site Visits of Covered CCPs pursuant to this paragraph. In the exercise of its direct supervisory powers over Covered CCPs, the CFTC conducts examinations of each Covered CCP under relevant Laws and Regulations. ESMA may participate in an On-site Visit only where the CFTC confirms that it does not object and in accordance with the following procedure:
  - a) For a periodic On-site Visit of a Covered CCP that forms part of an upcoming CFTC examination of the Covered CCP ("Examination"), the CFTC will consider input from ESMA and establish the scope of and ESMA's participation in such an On-site Visit. Discussions between the Authorities will consider the supervisory activities of the CFTC and will consider any information that was made available or is capable of being made available by the CFTC.
  - b) In participating in an On-site Visit, ESMA officials may pose questions, raise issues or concerns, engage with leadership and staff of the Covered CCP as needed, and review On-site Visit and assessment results with CFTC officials.
  - c) Upon request by ESMA and agreement by the CFTC, ESMA will be provided access, in coordination with the CFTC, to public and non-public Books and Records relevant to the On-site Visit of the Covered CCP. In preparing any analysis resulting from the On-site Visit, ESMA will consult the CFTC as to any interpretations or conclusions it reaches in reviewing, interpreting, and analysing information obtained including the contents of such Books and Records.
  - d) The CFTC will provide ESMA with a copy of the final report resulting from the CFTC's Examination of the Covered CCP, and ESMA will provide the CFTC with a copy of any analysis based on ESMA's engagement in the On-site Visit of the Covered CCP. An Authority may not share with a Governmental Entity, or otherwise disclose to a third party, any final report or analysis of the other Authority without the prior written consent of the other Authority.
2. *On-site Visits on an Exceptional Basis.* Given that ESMA, in respect of Covered CCPs, relies fully on the supervision and enforcement capabilities of the CFTC, which supervises and enforces compliance with the CFTC's Laws and Regulations, On-site Visits other than those referred to in Article 5(1) will only be considered in exceptional circumstances and subject to the prior agreement of the CFTC. In such exceptional circumstances, the Authorities should discuss and reach understanding on the terms regarding any such On-site Visit by ESMA officials, in particular in determining the respective roles and responsibilities of the Authorities. ESMA will act in accordance with the following procedure before conducting any such On-site Visit:

- a) ESMA will consult the CFTC with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any such On-site Visit. The CFTC may, in its discretion, accompany or assist the visiting ESMA officials during the On-site Visit.
- b) When establishing the scope of any proposed such On-site Visit by ESMA officials, ESMA will consider the supervisory activities of the CFTC given ESMA's reliance on the supervision and enforcement capabilities of the CFTC in respect of Covered CCPs and will consider any information that was made available or is capable of being made available by the CFTC.
- c) The CFTC 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 CCP.

## **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 by a Covered CCP with the Laws and Regulations 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, other than in connection with any On-site Visit pursuant to Article 5 of this MoU. However, where non-public information is provided to the Requesting Authority pursuant to an information-sharing request pursuant to Article 4 of this MoU, or to an Authority in connection with any On-site Visit pursuant to Article 5 of this MoU, the restrictions in this MoU apply to the use of the information by that Requesting Authority.

## **Article 7**

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

1. Except as provided in paragraphs (2)-(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 and except as provided in Article 5(1)(d), it may become necessary for an Authority to share non-public information obtained from the other Authority under this MoU with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
  - a) The Authority will supply written notification to the other Authority fifteen business days in advance of onward sharing of the information by the Authority; and
  - b) Prior to the Authority sharing the non-public information with the Governmental Entity, the Authority will provide written adequate assurances to the other Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction; and
    - ii. The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the other Authority that provided the information under the MoU.
3. Except as provided in paragraph (2), an Authority must obtain the prior written consent of the other Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. The other 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 other 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 Authority receiving the information under the MoU might be allowed.
4. To the extent possible, each Authority intends to notify the other Authority of any legally enforceable demand for non-public information that has been furnished under this MoU. When complying with the demand, the 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.

## **Article 8**

### **Successor authorities**

1. Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of the MoU will apply to the successor authority or authorities performing those relevant functions, such successor authority or authorities will become a signatory or signatories to this MoU without the need for any further amendment to this MoU, and notice will be provided to the other Authority. This will not affect the right of any Authority to give written notice as provided in Article 11(2) that it no longer wishes to be a signatory to this MoU if it wishes to do so.

## **Article 9**

### **Amendments**

1. 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, including in consideration of changes in the regulatory status of, relief granted to, or supervisory treatment of one or more Covered CCPs or in the relevant regulatory regime in either jurisdiction.

## **Article 10**

### **Execution of the MoU**

1. This MoU will enter into force on the date that it is signed by ESMA and the CFTC.



## **Article 11**

### **Termination**

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

4. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in the manner described under Articles 6 and 7.
5. If this MoU is terminated without being substituted in a reasonable timeframe by an equivalent arrangement, pursuant to Article 25 of EMIR, ESMA will consider the withdrawal of recognition of the Covered CCPs.

**Signatures**

European Securities and Markets Authority    Steven Maijoor Chairman	U.S. Commodity Futures Trading Commission    Heath P. Tarbert Chairman & Chief Executive
--	---

Date signed: 6th January 2021

Date signed: December 18, 2020

## Appendix A

### Contact Persons

European Securities and Markets Authority	U.S. Commodity Futures Trading Commission
Name: Klaus Löber Telephone: +331.58.36.51.95 Email: Klaus.Loeber@esma.europa.eu tc-ccp@esma.europa.eu	Division of Clearing and Risk: Name: Clark Hutchison, Director Telephone: 1-202-418-6070 Email: c_hutchison@cftc.gov  Name: Eileen A. Donovan, Deputy Director, Clearing Policy Telephone: 1-202-418-5096 Email: edonovan@cftc.gov  Name: Julie A. Mohr, Deputy Director, Examinations Telephone: 1-312-596-0568 Email: jmohr@cftc.gov
Name: Froukelien Wendt Telephone: +331.58.36.51.10 Email: Froukelien.Wendt@esma.europa.eu	Office of International Affairs: Name: Suyash Paliwal, Director Telephone: 1-202-418-6076 Email: spaliwal@cftc.gov
Name: Nicoletta Giusto Telephone: +331.58.36.51.42 Email: Nicoletta.Giusto@esma.europa.eu	



## **Appendix B**

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

1. Pursuant to the terms and conditions of the MoU, ESMA may share, as set out in Article 7(2) of the MoU, non-public information obtained from the CFTC under the MoU with certain Governmental Entities. Where a CBI, as defined in Article 1(e)(ii)(e) of the MoU, seeks information on a Covered CCP not otherwise provided to ESMA in connection with Article 3(1)(e) of the MoU, the CBI may request such information through consultation with ESMA and submission of a written request by ESMA to the CFTC pursuant to Article 4(1) of the MoU. A request form is annexed to this Appendix B (Annex B.1).
2. The information that may be requested by a CBI includes:
  - a) information concerning financial instruments denominated in the EU currency of the CBI that are cleared or to be cleared by the Covered CCP; and
  - b) information in connection with the CBI addressing an Emergency Situation, as defined in Article 1(d) of the MoU, in coordination with ESMA as contemplated by Article 3(2) of the MoU.
3. Pursuant to Article 7(2)(b) of the MoU and prior to sharing any non-public information with a CBI, ESMA will provide the CFTC with adequate assurances by the CBI concerning the CBI's use and confidential treatment of the information. The necessary assurances are included in Annex B.1.
4. In a manner consistent with Article 3(5) of the MoU, requests will be made with the goal of minimizing administrative burdens. The CFTC will assess any request on a case-by-case basis to determine whether the information can be provided (either in part or in whole) under the terms of the MoU and in accordance with applicable Laws and Regulations as defined in relation to the CFTC in Article 1(f) of the MoU.

## Annex B.1

<b>ESMA Request Form</b>	
<p>This confidential request to the CFTC is being made pursuant to Article 4(1) and under the provisions of the <i>Enhanced Memorandum of Understanding Related to ESMA's Assessment of Compliance and Monitoring of the Ongoing Compliance with Recognition Conditions by Certain Derivatives Clearing Organizations Established in the United States (the "MoU")</i>.</p>	
Name of the CBI	
Legal basis for onward disclosure by ESMA to the CBI	
Information sought by the CBI	
Description of the matter that is the subject of the request and purpose for which the information is sought, including applicable laws and regulations	
Desired time period for reply and, where appropriate, the urgency thereof	
<p>Personal data: The CBI represents that it will protect any personal data transferred by the CFTC to ESMA and subsequently onward shared by ESMA to the CBI to the full extent of the safeguards provided under applicable European and national laws and regulations on the treatment of personal data.</p>	
<p>Permissible use: The CBI confirms that it will use any non-public information obtained from ESMA in connection with this request under the MoU solely for the purpose set forth in this form and in a manner consistent with applicable laws and regulations. Before using the non-public information for any other purpose, the CBI first must obtain the written consent of the CFTC for the intended use.</p>	
<p>Confidentiality: The CBI will keep confidential, to the extent permitted by law, this request, the contents of this request, and all non-public information obtained from ESMA in connection with this request under the MoU. To the extent possible, the CBI intends to notify the CFTC of any legally enforceable demand for the non-public information prior to</p>	

complying with the demand and intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.

Written Assurances under Article 7(2)(b) of the MoU: The CBI confirms that:

- i. The CBI requires the requested information for a purpose within the scope of the CBI's jurisdiction; and
- ii. The requested information will not be shared by the CBI with other parties without getting the prior written consent of the CFTC.

For ESMA

Signature:

Name:

Title:

Phone Number:

Email Address:

Date:

For the CBI

Signature:

Name:

Title:

Phone Number:

Email Address:

Date:

**Appendix C**  
**Covered CCPs**

*This appendix is confidential*