

# Multilateral Memorandum of Understanding on Cooperation for Information Sharing Regarding Participants in a Clearing or Settlement System

## Preamble

This Multilateral Memorandum of Understanding (MMoU) is agreed between, on the one hand, the Bank of England/Prudential Regulation Authority (the “UK Authority”), and any of the Authorities listed in Appendix A to this MMoU, on the other hand (each an “*EEA Authority*”, together the “*EEA Authorities*”).

The UK Authority, on the one hand, and the EEA Authorities, on the other hand, express, through this MMoU, their willingness to cooperate with each other concerning information regarding clearing members of central counterparties (CCPs) and participants of central securities depositories (CSDs) for the purposes of strengthening the effectiveness of CCP and CSD supervision.

This MMoU is not intended to facilitate cooperation and/or exchange of information among EEA Authorities themselves.

## Article 1. Definitions

“Authority” means a party to this MMoU or any successor thereof;

“Emergency Situation” means the occurrence or potential imminent occurrence of an event that could materially impair the financial or operational conditions of a CCP or of a CSD or of a clearing member or of a CSD Participant;

“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;

“Clearing member” means an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation;

“CSD” means a legal person that operates a securities settlement system and provides notary services or central maintenance services;

“CSD Participant” means any participant in a securities settlement system operated by a CSD, which is responsible for discharging the financial obligations arising from transfer orders within that securities settlement system;

“Onward Receiving Authorities”:

- i. If the Requesting Authority is the Bank of England/Prudential Regulation Authority, the onward receiving authority is the Financial Conduct Authority, and

- ii. If the Requesting Authority is an EEA Authority, the onward receiving authorities are any of the following:
  - (a) ESMA;
  - (b) The other EEA Authorities, or
  - (c) Central Banks or Prudential Regulators in the EEA other than the EEA Authorities.

“Laws and Regulations” means for the Requesting Authority the provisions of the laws applicable in the jurisdictions of the Authorities regarding CCP or CSD supervision, the regulations promulgated thereunder, and other regulatory requirements, that fall within the competence of the Authorities, including but not limited to the areas covered in Article 3(1) herein;

“Laws and Regulations” means for the Requested Authority the provisions of the laws applicable in the jurisdictions of the Authorities regarding member/participant supervision, the regulations promulgated thereunder, and other regulatory requirements, that fall within the competence of the Authorities, including but not limited to the areas covered in Article 3(1) herein;

“Participant in a clearing or settlement system” means a clearing member of a CCP and a CSD participant;

“Person” means a natural or legal person, or an unincorporated entity or association including but not limited to, partnerships and trusts;

“Prudential Regulator” means any national prudential authority in the jurisdiction of the relevant Authority whose competence is established under the relevant law;

“Requested Authority” means the Authority to whom a request is made under this MMoU;

“Requesting Authority” means the Authority making a request under this MMoU.

## **Article 2. General principles**

1. This MMoU is a statement of intent to consult, cooperate and exchange information in relation to Participants in a clearing or settlement system under the Laws and Regulations for the purposes of performing the supervisory tasks of the participating authorities regarding CCP and CSD supervision, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities.
2. This MMoU does not create any legally binding obligations, confer any enforceable rights, or supersede applicable legislation. This MMoU 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 MMoU.
3. This MMoU does not intend to limit an Authority to taking solely those measures described herein in fulfilment of its functions. In specific circumstances, where applicable Laws and Regulations provide, information may be obtained for supervisory purposes by an Authority directly from Participants in a clearing or settlement system subject to or

operating in its jurisdiction. In such a case, a copy of any such request is sent at the same time to the other Authority.

4. The Authorities should, within the framework of this MMoU, provide one another with the fullest cooperation permissible to better enable them to carry out the responsibilities entrusted to them under the Laws and Regulations. Following consultation, assistance may be denied:
  - a) where the cooperation would require an Authority to act in a manner that would violate the applicable legislation;
  - b) where a request for assistance is not falling within the scope of this MMoU or is not made in accordance with the terms of this MMoU, or
  - c) for reasons of public interest.

In case of denial, the Requested Authority will provide the reasons for not granting the assistance.

Where the Requested Authority presents objective grounds by reasons of which the request cannot be fulfilled in part or in whole, the Authorities will consult with a view to reaching an understanding on the assistance to be provided.

5. No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to the other Authority.
6. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MMoU should that be deemed necessary, for instance, in the event of changes in the Laws and Regulations in force or applied by either the UK Authority or the EEA Authorities or changes to banking secrecy or blocking laws or regulations referenced in the previous paragraph.
7. This MMoU can be supplemented with bilateral additions between an EEA Authority, on one hand, and the UK Authority, on the other hand.
8. To facilitate cooperation under this MMoU, the Authorities hereby designate contact points as set forth in Appendix B.
9. Each Authority will endeavour to notify the other Authority or Authorities if it proposes to take any enforcement, supervisory or regulatory action in relation to a Participant in a clearing or settlement system which might have a material effect on the performance of the duties of the Participant in a clearing or settlement system supervised by the above-mentioned Authority or Authorities. If it is not possible to notify the other Authority or Authorities before taking such action, notification shall be made as soon as practicable thereafter.
10. The Authorities will seek to inform each other as soon as practicable of any known material events relating to a Participant in a clearing or settlement system that could have a material adverse effect in the other jurisdiction.

### **Article 3. Scope of cooperation**

1. The Authorities recognise the importance of close communication concerning supervision of Persons in their capacity as Participants in clearing or settlement systems given the potential impact of issues concerning the Participants in clearing or settlement systems on the orderly operation of CCPs and CSDs and intend to cooperate regarding:
  - a) general issues, including with respect to regulatory, supervisory or other developments that may impact the operations of a Participant in a clearing or settlement system in the jurisdiction of the other Authority or Authorities;
  - b) issues relevant to the operations, activities, and supervision of Participants in clearing or settlement systems; and
  - c) any other areas of mutual supervisory interest that may impact the operations of a Participant in a clearing or settlement system in the jurisdiction of the other Authority or Authorities.
2. The Authorities recognise in particular the importance of close cooperation in the event that Participants in clearing or settlement systems experience, or are threatened by, an Emergency Situation.
3. Cooperation will be most useful in circumstances where issues of regulatory, supervisory or enforcement concern may arise, including but not limited to:
  - a) the initial application for admission as Participant in a clearing or settlement system;
  - b) the ongoing supervision and oversight of a Participant in a clearing or settlement system that may impact the operations of a Participant in a clearing or settlement system in the jurisdiction of the other Authority or Authorities, including, for example, compliance with statutory and regulatory requirements in either jurisdiction;
  - c) regulatory, supervisory or enforcement actions taken by one Authority that may impact the operations of a Participant in a clearing or settlement system in the jurisdiction of the other Authority or Authorities, and
  - d) the opening of insolvency proceedings against a Participant in a clearing or settlement system.
4. Each Authority (either on its own initiative or upon written request) intends to provide the other Authority with assistance in endeavouring to obtain information not otherwise available to the Requesting Authority relevant to the operations of a Participant in a clearing or settlement system in the jurisdiction of the other Authority or Authorities, subject to compliance with applicable laws and where that is necessary for the effective supervision of the CCP or CSD.
5. Information to be provided under the previous paragraph should include, but it is not limited to, information relevant to:
  - a) systemic risk issues;

- b) investor protection issues;
- c) the fitness or probity of a Participant in a clearing or settlement system;
- d) the ability of a Participant in a clearing or settlement system to comply with the relevant obligations of the system, including the ability of a Participant in a clearing or settlement system to meet its financial commitments.

#### **Article 4. Meetings of Authorities**

The Authorities intend to meet, as reasonably necessary, to discuss issues of common interest relating to the supervision of Participants in clearing or settlement systems. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

#### **Article 5. Requests for assistance**

1. Requests for the provision of information or other assistance by the designated contact point of the Requesting Authority (as designated in Appendix B) will, whenever possible, be made in writing and addressed to the relevant contact point of the Requested Authority (as designated in Appendix B).
2. To facilitate assistance, the Requesting Authority should specify in any written request:
  - a) a general description of the matter that is the subject of the request and the purpose for which the information or other assistance is sought, including the laws, regulations that relate to the subject matter of the request;
  - b) the information or other assistance sought by the Requesting Authority and why the information sought will be of assistance;
  - c) any information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in fulfilling the request;
  - d) an indication of any special precautions that should be taken in collecting the information, including the sensitivity of the information;
  - e) to whom, if anyone, onward disclosure of information is envisaged in accordance with Article 10(3)(a) of the MMoU; and
  - f) the desired time period for the reply and, where appropriate, the urgency thereof.
3. 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. During Emergency Situations, requests for information or other assistance may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

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

#### **Article 6. Cooperation and information exchange in relation to enforcement**

1. To the extent possible under the Laws and Regulations, the Authorities may request or exchange information under this MMoU for enforcement purposes where that is necessary for the effective supervision of a CCP or CSD.
2. If a request for assistance, as described in this MMoU, relates to actual or possible enforcement action, the request should clearly state that it is made for enforcement purposes. In such a case, the request should include as much detail as possible to allow the other Authority to consider it. The request should contain a description of the conduct or suspected conduct, as well as the facts underlying the investigation, the applicable legal framework, including the relevant provisions that may have been violated relating to the subject matter of the request, and the link between the specified rule or law and the regulatory functions of the requesting Authority.
3. In such circumstances, the Authorities should discuss and reach an understanding on the terms regarding the execution of a request for assistance for enforcement purposes, including whether staff from the Requesting Authority could be present during interviews which form part of an investigation or whether specific questions could be asked on its behalf by the Requested Authority.
4. The Authorities recognize that while information is not to be gathered under this MMoU primarily for enforcement purposes, subsequent to receiving information an Authority may wish to use the information for enforcement purposes. In such circumstances, the Requested Authority should be informed ahead of the use of the information for enforcement purposes.
5. A request for assistance may be denied by the Requested Authority where a criminal proceeding has already been initiated in the jurisdiction of the Requested Authority based upon the same facts and against the same Persons, or the same Persons have already been the subject of final punitive sanctions on the same charges by the competent authorities of the jurisdiction of the Requested Authority, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority.

#### **Article 7. Data Protection**

The Authorities acknowledge that the transfer of personal data will take place in accordance with the conditions laid down in the relevant data protection legislation applicable in the jurisdictions of the Authorities.

#### **Article 8. Permissible uses of information**

1. The Requesting Authority may use non-public information obtained under this MMoU solely for the purposes of ensuring, monitoring or assessing compliance with the laws and regulations applicable to Participants in clearing or settlement systems, conducting a civil or administrative or criminal enforcement proceeding, protecting investors or assessing and identifying systemic risks.
2. Before using non-public information obtained under this MMoU for any purpose other than those stated in the previous paragraph, the Requesting Authority must obtain the written consent of the Requested Authority. 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.

#### **Article 9. Confidentiality and onward sharing**

1. Except as provided for in this MMoU or pursuant to a legally enforceable demand, each Authority will keep confidential information shared under this MMoU, requests made under this MMoU, the contents of such requests, and any other matters arising under this MMoU. The terms of this MMoU are not confidential (bar the contact details in Appendix B).
2. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been furnished under this MMoU. Prior to compliance with a third party demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
3. In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MMoU with an Onward Receiving Authority. In these circumstances and to the extent permitted by law:
  - a) The Requesting Authority will indicate such disclosure as well as its scope and purpose in the request for assistance;
  - b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Onward Receiving Authority's use and confidential treatment of the information, including, as necessary, assurances that:
    - a. The Onward Receiving Authority has confirmed that it requires the information for the purpose of enabling it to fulfil its responsibilities and mandates; and
    - b. The information will not be shared by the Onward Receiving Authority with other parties without getting the prior written consent of the Requested Authority.

- c) If the Requesting Authority intends to share confidential information with an Onward Receiving Authority in accordance with paragraph (3) of this Article for any purpose other than that stated in the initial request for assistance, it must obtain the prior consent of the Requested Authority.
4. Except as provided in paragraphs (2) and (3) of this Article, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MMoU. 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 not obtained from the Requested Authority, the Authorities will 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.
5. The Authorities acknowledge that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MMoU, will not constitute a waiver of privilege or confidentiality of such information.

**Article 10. Entry into effect, amendments, additional Authorities and termination of the MMoU**

1. This MMoU shall take effect on the date following that on which European Union law ceases to apply in the UK or, if later, on the date of its signing by the Authorities.
2. Amendments to this MMoU, including the addition of new Appendices, can be made by written agreement of the parties. Amendments to the relevant contact point listed in Appendix B can be made by each Authority giving written notice to the other Authorities.
3. The Authorities agree that additional UK or EEA authorities competent for supervision of financial markets, Prudential Regulators or Central Banks may become Authorities under this MMoU by executing the Joinder Agreement included in Appendix C. With respect to such additional authorities, this MMoU will be effective as of the date of that Authority's signing of the joinder agreement under Appendix C.
4. If an Authority wishes to no longer be a party to this MMoU, it shall provide thirty (30) calendar days prior written notice to the other Authorities.
5. 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 MMoU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance.
6. In the event of termination of this MMoU, information obtained under this MMoU will continue to be treated in the manner described under Articles 9 and 10 and cooperation under this MMoU will continue among the other Authorities.
7. Where the relevant functions of a party to this MMoU are transferred or assigned to another authority or authorities, the terms of this MMoU will apply to the successor authority or authorities performing those relevant functions without the need for any

further amendment to this MMoU or for the successor to become a party to the MMoU. This will not affect the right of the successor authority to terminate the MMoU as provided hereunder if it wishes to do so.

Signed in two original copies each in the English language and signed by the Authorities' duly authorised representatives.