

Memorandum of Cooperation



European Securities and Markets Authority

and



Financial Services Agency of Japan

Memorandum of Cooperation between the European Securities and Markets Authority and Financial Services Agency of Japan Related to CCPs Established in Japan

The supervision of the Covered CCPs is based upon close cooperation and the Authorities' mutual respect for each jurisdiction's regulatory regime and each Authority's supervisory practices.

The Authorities by signing this Memorandum of Cooperation (hereinafter referred to as "MoC") affirm their willingness to cooperate and exchange information to proportionately fulfil their respective supervisory and regulatory responsibilities with respect to the CCPs established in Japan that have applied or that may apply to the European Securities and Markets Authority (ESMA) for recognition as third-country CCPs or that are already recognised by ESMA as third-country CCPs (Covered CCPs), pursuant to Article 25 of Regulation (EU) No 648/2012 (EMIR)¹.

Whilst ESMA has direct supervision and enforcement powers over the Covered CCPs under Articles 25f, 25i to 25m and 25p of EMIR, ESMA decides, in fulfilling its regulatory mandate, to establish a framework for cooperation with the Financial Services Agency of Japan (JFSA) as the relevant primary authority accountable for the resilience of the Covered CCPs in its jurisdiction. ESMA's oversight of such CCPs generally would 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.

Article 25(2)(c) of EMIR requires the establishment of cooperation arrangements as one of the conditions for ESMA to recognise Covered CCPs established in Japan to provide clearing services to clearing members or trading venues established in the European Union.

Under Article 25(6) of EMIR, the European Commission has adopted the Commission Implementing Decision 2014/752/EU² (Equivalence Decision) determining that i) the legal and supervisory arrangements of Japan ensure that Covered CCPs comply on an ongoing basis with legally binding requirements which are equivalent to the requirements of EMIR (provided that the Covered CCPs fulfil the Equivalence Conditions, where relevant), ii) Covered CCPs are subject to effective supervision and enforcement in Japan on an ongoing basis, and iii) the legal framework of Japan provides for an effective equivalent system for the recognition of CCPs.

Article 25(7) of EMIR specifies the minimum scope of the cooperation arrangements. Further, Article 25(7) of EMIR requires ESMA to inform the European Commission confidentially and without delay of any failure by any third-country competent authority to apply any of the provisions of the cooperation arrangement, and the European Commission may decide to review its implementing act adopted for that third country pursuant to Article 25(6) of EMIR. Moreover, in accordance with Article 25p(1)(d) of EMIR, ESMA has to withdraw a recognition decision adopted under Article 25 of EMIR, where ESMA is unable to exercise effectively its responsibilities over the third-country CCP concerned, due to the

¹ 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. 1–59

² Commission Implementing Decision 2014/752/EU of 30 October 2014 on the equivalence of the regulatory framework of Japan for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories; OJ L 311, 31.10.2014, p. 55–57

failure of the third-country competent authority of that CCP to provide ESMA with all relevant information or cooperate with ESMA in accordance with Article 25(7) of EMIR.

Furthermore, Article 25(6b) of EMIR requires ESMA to monitor regulatory and supervisory developments of third countries in respect of which the European Commission has adopted equivalence decisions pursuant to Article 25(6) of EMIR.

Regulation (EU) No 2019/2099 (EMIR 2.2)³ enhanced the EU framework for recognition and supervision of third-country CCPs and expanded ESMA's role and powers. In this regard and for the purposes of the recognition, ESMA determines the systemic importance of a third-country CCP applying or having applied for recognition, or that is already recognised, in accordance with the criteria set out in 25(2a) of EMIR, as further specified by Commission Delegated Regulation (EU) 2020/1303⁴. Based on the assessment of these criteria ESMA determines whether the third-country CCP: i) is not or is not likely to become systemically important (Tier 1 CCP); or ii) is or is likely to become systemically important (Tier 2 CCP), subject to periodic reviews as per Article 25(5) of EMIR.

Therefore, the purpose of this MoC is: 1) ensuring the fulfilment of the condition set out in Article 25(2)(c) and as further specified in Article 25(7) of EMIR, i.e., that cooperation arrangements have been established as regards the Covered CCPs, including as regards information sharing related to the Covered CCPs and to regulatory and supervisory developments in Japan; and 2) providing ESMA with adequate tools to assess compliance and to monitor the ongoing compliance by the Covered CCPs with the Recognition Conditions. This MoC also recognises the role of the European Central Bank and other central banks of issue ("CBI") under EMIR.

This MoC is an arrangement between JFSA and ESMA and not a collective arrangement with other European Union authorities. As such, it will not impact any arrangements which may be created directly between other European Union authorities on the one hand and JFSA on the other.

³ 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. 1–44

⁴ 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; OJ L 305, 21.9.2020, p. 7–12

Item 1

Definitions

For the purpose of this MoC:

- a) “Authority” means a signatory to this MoC or any successor thereto;
- b) “Books and Records” means documents, electronic media, 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;
- d) “Covered CCP” means a CCP established in Japan and which has been licensed or approved as “Financial Instruments Clearing Organization” under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948) and authorised by JFSA that has applied or that may apply to ESMA for recognition as a third-country CCP pursuant to Article 25 of EMIR or a CCP established in Japan and authorised by JFSA that is already recognised by ESMA as a third-country CCP, pursuant to Article 25 of EMIR;
- e) “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;
- f) “Governmental Entity” means:
 - i. If the Requesting Authority is JFSA, the Ministry of Finance, and the Bank of Japan; and
 - ii. If the Requesting Authority is ESMA:
 - (a) the competent authority of a Member State in the European Union in which the Covered CCP provides or intends to provide clearing services and which has been selected by the Covered CCP;
 - (b) the competent authorities responsible for the supervision of the clearing members of the Covered CCP that are established in the three Member States, of the European Union, which make or are anticipated by the Covered CCP to make the largest contributions to the default fund of the Covered CCP referred to in Article 42 of EMIR on an aggregate basis over a one-year period;
 - (c) the competent authorities responsible for the supervision of trading venues located in the European Union, served or to be served by the Covered CCP;

- (d) the competent authorities supervising CCPs established in the European Union with which the Covered CCP has established interoperability arrangements;
 - (e) the relevant members of the European System of Central Banks (ESCB) of the Member States, of the European Union, in which the Covered CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs established in the European Union with which the Covered CCP has established interoperability arrangements;
 - (f) 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; and
 - (g) 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.
- 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/EC⁵, and, in relation to JFSA, any laws, regulations, and regulatory requirements relating and applicable respectively to JFSA in force in Japan;
 - h) "On-site Visits" means any regulatory visit by ESMA to the premises of a Covered CCP located in Japan, including inspection of Books and Records;
 - i) "Person" includes a natural person, unincorporated association, partnership, trust, investment company or corporation and may be a Covered CCP;
 - j) "Recognition Conditions" means the conditions set out in Article 25(2) of EMIR, and, where relevant, the conditions set out in Article X of the European Commission Implementing Decision 2014/752/EU ('Equivalence Decision');
 - k) "Requested Authority" means the Authority to whom a request is made under this MoC; and
 - l) "Requesting Authority" means the Authority making a request under this MoC.

⁵ 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. 84–119

Item 2

General matters

1. With respect to Covered CCPs, the Authorities affirm 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 its responsibilities and objectives, ESMA will rely as appropriate upon the regulatory framework and supervision of JFSA, recognising that JFSA remains accountable in Japan for the resilience of the Covered CCPs under its supervision. This MoC addresses the requirements established in Article 25(2)(c) of EMIR, which requires the establishment of cooperation arrangements as a precondition for recognition by ESMA of the Covered 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 applicable Laws and Regulations.
2. This MoC 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 MoC does not cover, in particular, cooperation in respect of CCPs established in the European Union for which ESMA is a member of the supervisory college.
3. This MoC 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, and the corresponding supervisory and enforcement powers of ESMA, as well as with ESMA's monitoring of related regulatory and supervisory developments in Japan. The cooperation and information sharing arrangements under this MoC should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other legal or regulatory requirements applicable to each Authority.
4. This MoC does not create any legally binding obligations, confer any rights or supersede any domestic or EU laws. This MoC 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 MoC.
5. This MoC is not intended to limit or condition the discretion of an Authority in anyway in the discharge of its regulatory or supervisory responsibilities or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoC does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoC does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.
6. The Authorities should, within the framework of this MoC, 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, and the corresponding supervisory and

enforcement powers of ESMA, as well as to ESMA's monitoring of related regulatory and supervisory developments in Japan. 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;
 - b) where a request for assistance has not been made in line with this MoC; or
 - c) on the grounds of national public interest for JFSA or of European public interest for ESMA.
7. The Authorities represent that as of the date of this MoC no domestic or EU laws or regulations should prevent them from providing assistance to one another unless the request falls under any of the situation described in Item 2(6).
 8. The Authorities will endeavour to reach common ground on the interpretation and application of this MoC. Where the Authorities encounter material differences of views related to the interpretation of matters in this MoC, 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.
 9. To facilitate communication and cooperation under this MoC, the Authorities hereby designate contact persons as set forth in Appendix A. Any modifications to the details of contact persons should be communicated without undue delay to the other Authority.

Item 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, enforcement or other developments concerning the Covered CCPs and Japan;
 - b) issues relevant to the operations, activities and services of the Covered CCPs;
 - c) the coordination of supervisory activities and, as appropriate, providing assistance in the implementation of enforcement decisions; and
 - d) any other areas of mutual interest.
2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CCP, particularly one whose failure likely would be systemically important to an Authority, experiences, or is threatened by, a potential financial crisis or other

Emergency Situation. An Authority should provide notification to the other Authority consistent with Item 3(4) below and should keep the other Authority appropriately informed throughout the Emergency Situation. JFSA 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(s) may consider appropriate.

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 of a Covered CCP for recognition in the European Union pursuant to Article 25 of EMIR and the periodic reviews of its recognition pursuant to Article 25(5) of EMIR;
 - b) ESMA's assessment of compliance and monitoring of the ongoing compliance by a Covered CCP with the Recognition Conditions;
 - c) the tiering determination of a Covered CCP by ESMA pursuant to Article 25(2a) of EMIR;
 - d) 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;
 - e) regulatory, supervisory or enforcement actions or approvals taken by JFSA 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; and
 - f) 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 should seek to inform each other as soon as possible 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 authorisation or recognition, or of any laws or regulations to which it is subject; and
 - 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 authorisation or recognition concerning or related to a Covered CCP and which may have a material effect on the Covered CCP;
- c) 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 European Union, including in respect of branches of entities established in the European Union;
- d) in respect of notification by ESMA to JFSA, 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 European Union trading venues;
- f) significant changes to risk models and parameters of a Covered CCP;
- g) changes in the client account structure of a Covered CCP;
- h) changes in the use of payment systems of a Covered CCP that substantially affect the European Union; and
- i) material changes to the laws or regulations to which the Covered CCPs are subject.

The information to be provided by an Authority based on this paragraph will refer to the Covered CCPs authorised 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 obtaining 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 or regulations to which the Covered CCPs are subject, provided that the Authority is authorised to collect such information. Such requests should be made in line with Item 4 of this MoC, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimising administrative burdens.

The information covered by this paragraph includes without limitation:

- a) information that would assist ESMA in assessing that a Covered CCP complies with the Recognition Conditions, both in the context of an initial recognition and periodic reviews of 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 or enforcement of 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, or findings or information contained therein, prepared by an Authority in respect of a Covered CCP.

Item 4

Execution of requests for information

1. To the extent possible, a request for written information as stipulated in Item 3(5) should be made in writing (which may be transmitted electronically) and addressed to the relevant contact persons 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.

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.

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

- 2. In Emergency Situations, the Authorities should 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.

Item 5

On-site Visits

- 1. ESMA does not intend to conduct any On-site Visits of the Covered CCPs as part of its assessment of compliance and monitoring of the ongoing compliance by Covered CCPs with the Recognition Conditions, since under Article 25(6) of EMIR the European Commission has adopted the Equivalence Decision.
- 2. Given that ESMA, in respect of Covered CCPs, relies as appropriate on the supervision and enforcement capabilities of JFSA, which supervises and enforces compliance with JFSA's Laws and Regulations, On-site Visits by ESMA officers will only be considered in exceptional circumstances and subject to the prior consent of the JFSA.
- 3. In such exceptional circumstances, the Authorities should discuss and reach common ground on the terms regarding an On-site Visit by ESMA officers, in particular in determining the respective roles and responsibilities of the Authorities. ESMA will follow the procedure below before conducting an On-site Visit:
 - a) ESMA will consult JFSA with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any On-site Visit. JFSA may, in its discretion, accompany or assist the visiting ESMA officials during the On-site Visit.
 - b) when establishing the scope of any proposed On-site Visit by ESMA officials, ESMA will consider the supervisory activities of JFSA given ESMA's reliance as

appropriate on the supervision and enforcement capabilities of JFSA in respect of the Covered CCPs and will consider any information that was made available or is capable of being made available by JFSA.

- c) JFSA 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.

Item 6

Permissible Uses of information

1. The Requesting Authority may use non-public information obtained under this MoC solely for the purpose of ensuring, monitoring or assessing compliance by a Covered CCP with the Laws and Regulations of the Requesting Authority.
2. The Authorities recognise that while information is not to be gathered under the auspices of this MoC primarily for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement of the Laws and Regulations applicable to the Covered CCP. In such a case the Requesting Authority will inform in advance the Requested Authority and allow such an Authority with the possibility to make representations with reference to the proposed use of the information. In cases where a Requesting Authority seeks to use non-public information obtained in line with this MoC for enforcement purposes, including in conducting investigations or taking enforcement actions, a request for consent for use for enforcement purposes 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. Nothing in this MoC, however, will impede the Requesting Authority's ability to enforce its Laws and Regulations or to assist in civil, administrative and criminal proceedings.
3. Before using non-public information furnished under this MoC for any purpose other than that stated in Item 6(1) and 6(2), 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. For the avoidance of doubt, regarding confidentiality and onward sharing of information the Authorities will act in manner consistent with Item 7 of this MoC.
4. Information received under this MoC will not be used for criminal proceedings carried out by a court or a judge. In case information received by the Requesting Authority under this MoC could constitute evidence or be used in criminal proceedings carried

out by a court or a judge, the relevant authority will make a request for mutual legal assistance in criminal matters in accordance with the domestic or EU laws and applicable international agreements.

5. If an Authority (Receiving Authority) receives, via a party that is not a signatory to this MoC, 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 line with this MoC.
6. The restrictions in this Item do not apply to an Authority's use of information it obtains directly from a Covered CCP.

Item 7

Confidentiality and onward sharing of information

1. Except as provided in Item 7(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 MoC, requests made under this MoC, the contents of such requests, and any other matters arising under this MoC. Matters set out in this MoC are not confidential.
2. As required by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MoC with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
 - a) the Requesting Authority intends to notify the Requested Authority; and
 - b) prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
 - i. the Governmental Entity has confirmed that it requires the information for 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 Requested Authority.
3. Except as provided in Item 7(2) or if disclosure is otherwise required by law, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoC to any non-signatory to this MoC. 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 intends to notify the Requested Authority of any legally enforceable demand for non-public information that has been furnished under this MoC. 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, in line with this MoC, will not constitute a waiver of privilege or confidentiality of such information.
6. The Authorities acknowledge that nothing in this Item prevents an Authority from disclosing information it receives directly from a Covered CCP.

Item 8

Personal Data

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 consistently with the AA with respect to the transfer of personal data between them.

Item 9

Successor authorities

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, matters set out in this MoC 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 MoC without the need for any further modifications to this MoC, 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 Item 12(2) that it no longer wishes to be a signatory to this MoC if it wishes to do so.

Item 10

Modifications

The Authorities intend to periodically review the functioning and effectiveness of cooperation arrangements between the Authorities 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 or supervisory regime in either jurisdiction.

This MoC may be modified with the written consent of all signatories.

Item 11

Commencement of this MoC

1. This MoC will commence on the date that it is signed by the Authorities.
2. Once signed, this MoC will replace the Memorandum of Cooperation Related to CCPs established in Japan signed by the Authorities on 18 February 2015.

Item 12

Discontinuation

1. This MoC will remain operative for an unlimited period of time.
2. If an Authority wishes to no longer be a signatory to this MoC, it should provide thirty (30) calendar days prior written notice to the other Authority.
3. If an Authority gives such notice, the signatories will consult concerning the disposition of any pending requests. If a decision cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under this MoC before the end 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 discontinuation of this MoC, information obtained under this MoC will continue to be treated in the manner described under Item 6 and 7.
5. If this MoC discontinues 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.

Appendix A

Contact Persons

European Securities and Markets Authority	Financial Services Agency of Japan
Name: Mr. Klaus Löber, Chair of the CCP Supervisory Committee Telephone: +33 1 58365195 Email: Klaus.Loerber@esma.europa.eu	Name: Mr. MOCHIZUKI Kazunari, Director of International Affairs Office Telephone: +81 3 3506 6035 Email: kazunari.mochizuki@fsa.go.jp
Name: Ms. Nicoletta Giusto, Independent Member of the CCP Supervisory Committee Telephone: +33 1 58365142 Email: Nicoletta.Giusto@esma.europa.eu	Name: Mr.OI Hidetoshi, Deputy Director of International Affairs Office Telephone: +81 3 3581 9544 Email: hidetoshi.oi@fsa.go.jp
Name: Ms. Froukelien Wendt, Independent Member of the CCP Supervisory Committee Telephone: +33 1 58365110 Email: Froukelien.Wendt@esma.europa.eu	

Appendix B

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

1. In line with this MoC, ESMA may share, as set out in Item 7(2) of this MoC, non-public information obtained from JFSA under this MoC with certain Governmental Entities. Where a CBI, as defined in Item 1(f)(ii)(f) of this MoC, seeks information on a Covered CCP not otherwise provided to ESMA, the CBI may request such information through consultation with ESMA and submission of a written request by ESMA to JFSA in line with Item 4(1) of this MoC.
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 Item 1(e) of this MoC, in coordination with ESMA as contemplated by Item 3(2) of this MoC.
3. Following Item 7(2)(b) of this MoC and prior to sharing any non-public information with a CBI, ESMA will provide JFSA with adequate assurances by the CBI concerning the CBI's use and confidential treatment of the information.
4. In a manner consistent with Item 3(5) of this MoC, requests will be made with the goal of minimising administrative burdens. JFSA will assess any request on a case-by-case basis to determine whether the information can be provided (either in part or in whole) in line with this MoC and in accordance with applicable Laws and Regulations as defined in relation to JFSA in Item 1(g) of this MoC.