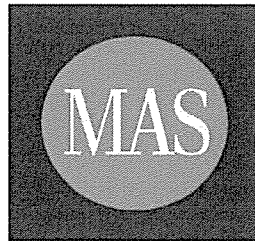


## **Memorandum of Understanding**



## **European Securities and Markets Authority**



## **Monetary Authority of Singapore**

## **Memorandum of Understanding related to ESMA's Monitoring of the Ongoing Compliance with Recognition Conditions by Central Counterparties established in Singapore**

In view of central counterparties ("CCPs") established in Singapore and authorised by the Monetary Authority of Singapore ("MAS") as Approved Clearing Houses having applied to the European Securities and Markets Authority ("ESMA") for recognition 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 "Covered CCPs"), MAS and ESMA have reached this Memorandum of Understanding ("MoU") regarding arrangements for cooperation related to ESMA's monitoring of the ongoing compliance by the Covered CCPs with the recognition conditions set out in Article 25(2) of EMIR (the "Recognition Conditions").

Under Article 25(6) of EMIR, the European Commission has adopted Commission Decision 2014/753/EU determining that the legal and supervisory arrangements of Singapore ensure that the Covered CCPs comply with legally binding requirements which are equivalent to the requirements of EMIR, that the Covered CCPs are subject to effective supervision and enforcement in Singapore on an ongoing basis, and that the legal framework of Singapore provides for an effective equivalent system for the recognition of CCPs authorised under third country legal regimes.

Article 25(2)(c) of EMIR requires the establishment of cooperation arrangements as a precondition for ESMA to recognise CCPs established in Singapore to provide clearing services to clearing members or trading venues established in the European Union (the "Union").

Therefore, the purpose of this MoU is two-fold, namely to: 1) ensure 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; and 2) provide ESMA with adequate tools to monitor the ongoing compliance by the Covered CCPs with the Recognition Conditions.

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

### **Article 1**

#### **Definitions**

For the purpose of this MoU:

- a) "Approved Clearing House" has the same meaning as in section 2 of the Singapore Securities and Futures Act (Cap. 289);

- b) "Authority" means a signatory to this MoU or any successor thereto;
- c) "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;
- d) "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;
- e) "Disclosing Authority" means the Authority providing any information under this MoU; and
- f) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP;
- g) "ESCB" means the European System of Central Banks;
- h) "Governmental Entity" means:
  - i. If the Receiving Authority is MAS, the Singapore Prime Minister's Office and the Singapore Ministry of Finance;
  - ii. If the Receiving Authority is ESMA, the authorities identified in Article 25(3) of EMIR, namely;
    - (a) the competent authority of a Union Member State 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 Union Member States 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 on an aggregate basis over a one-year period;
    - (c) the competent authorities responsible for the supervision of trading venues located in the Union, served or to be served by the Covered CCP;
    - (d) the competent authorities supervising CCPs established in the Union with which interoperability arrangements have been established;
    - (e) the relevant members of the ESCB of the Union Member States 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 Union) with which interoperability arrangements have been established; or

- (f) the central banks of issue of the most relevant Union currencies of the financial instruments cleared or to be cleared.
- i) “Laws and Regulations” means, in relation to ESMA, applicable Union legislation within ESMA’s scope of action as set out in Article 1(2) of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC and, in relation to MAS, the Securities and Futures Act (Cap. 289) and the Monetary Authority of Singapore Act (Cap. 186), and the regulations and other regulatory requirements issued or which may from time to time be issued pursuant to those laws in Singapore;
- j) “On-site Inspection” means any regulatory visit by ESMA to the premises of a Covered CCP located in Singapore, including inspection of Books and Records;
- k) “Person” includes a natural person, unincorporated association, partnership, trust investment company or corporation; and
- l) “Receiving Authority” means the Authority receiving any information 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 the Covered CCPs and relies fully on the supervision and enforcement capabilities of MAS which supervises and enforces compliance with MAS’ Laws and Regulations.
2. This MoU does not cover cooperation with regards to CCPs established in the Union because ESMA does not have direct supervisory powers in respect of such CCPs. For the avoidance of doubt, this MoU does not cover, in particular, cooperation in respect of CCPs, established in the Union, of the supervisory college of which ESMA is a member.
3. This MoU is a statement of intent to consult, cooperate and exchange information in connection with ESMA’s monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions. The cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other legal or regulatory requirements applicable to each Authority.
4. This MoU does not create any legally binding obligations, confer any rights or supersede any domestic laws. This MoU does not confer upon any Person or the Covered CCP the right or ability, directly or indirectly, to obtain, suppress or

exclude any information or to challenge the execution of a request for assistance under this MoU.

5. This MoU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoU does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.
6. The Authorities should, within the framework of this MoU, provide each other with the fullest cooperation permissible under the laws and other legal or regulatory requirements applicable to the Authorities in relation to ESMA's 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 any laws and other legal or regulatory requirements applicable to MAS or ESMA;
  - b) Where a request for assistance has not been made in accordance with the terms of this MoU; or
  - c) On the grounds of national public interest for MAS or of national or Union public interest for ESMA.
7. No national or Union laws or regulations should prevent the Authorities from providing assistance to one another under this MoU.
8. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact persons the details of which are set out in the Appendix. Any amendments to the details of contact persons shall be communicated without undue delay to the other Authority.

### **Article 3**

#### **Scope of cooperation**

1. The Authorities recognise the importance of close communication concerning the Covered CCPs and intend to cooperate regarding:
  - a) general issues, including with respect to regulatory, supervisory or other developments concerning the Covered CCPs;

- b) issues relevant to the operations, activities and services of the Covered CCPs; and
  - c) 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.
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 Union pursuant to Article 25 of EMIR;
  - b) 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;
  - c) supervisory actions or regulatory approvals taken by MAS or ESMA in relation to a Covered CCP, that may impact the Covered CCPs' continued compliance with the Recognition Conditions; or
  - d) 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.
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 where the Covered CCP is deemed to be in breach of the conditions of any license, registration, authorisation or recognition, or of any Laws and Regulations to which it is subject;
  - b) any enforcement or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any license, registration, authorisation or recognition concerning or related to a Covered CCP and which may have a material effect on the Covered CCP;
  - c) in respect of notification by ESMA to MAS, any permission or approval granted to a Covered CCP to provide clearing services to clearing members, trading venues or, when known to the Covered CCP, clients established in the Union, including in respect of branches of entities established in the Union;

- d) in respect of notification by ESMA to MAS, any request to a Covered CCP to observe a measure that ESMA has adopted to ensure compliance with the Recognition Conditions, or to cease a practice that ESMA determines is contrary to the Recognition Conditions;
- e) 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 Union trading venues; and
- f) any 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. The determination of what constitutes “material extension”, “material changes”, “material event”, “adversely impact” or “material effect” will be left to the reasonable discretion of the Authority providing the information.

5. *Exchange of Written Information.* Each Authority, upon written request, and to the extent permitted under applicable laws, intends to provide the other Authority with assistance in endeavouring to obtain information not otherwise available to the Receiving Authority and, where needed and to the extent practicable, interpreting such information so as to enable the Receiving Authority to assess compliance with the Laws and Regulations to which the Covered CCPs are subject, provided that the Authority is authorised 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 minimising administrative burdens.

The information covered by this paragraph includes:

- a) information that would assist the Receiving Authority in verifying that a Covered CCP complies with the relevant obligations and requirements of the Laws and Regulations of the Receiving Authority;
- b) 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;
- c) information that would assist the Receiving Authority in understanding changes to the relevant obligations and requirements to which the Covered CCPs are subject under the Laws and Regulations of the Disclosing Authority;
- d) 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 Disclosing Authority;

- e) relevant regulatory information and filings that a Covered CCP is required to submit to the Disclosing Authority; and
- f) regulatory reports and assessments, or findings or information contained therein, prepared by an Authority in respect of a Covered CCP.

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

## **Article 4**

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

1. To the extent possible, a request for written information pursuant to Article 3(5) should be made in writing (which may be transmitted electronically) and addressed to the relevant contact person identified in the Appendix. A request generally should specify at least the following:
  - a) the information sought by the Receiving 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 relevant Laws and Regulations of the Receiving Authority applicable to the activity; and
  - d) the desired time period for reply and, where appropriate, the urgency thereof.
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 to the contact person identified in the Appendix in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

## **Article 5**

### **On-site Inspections**

1. ESMA does not intend to conduct any On-site Inspection of the Covered CCPs as part of its monitoring of the ongoing compliance by Covered CCPs with the Recognition Conditions, since under Article 25(6) of EMIR the European Commission has adopted Commission Decision 2014/753/EU determining that



the legal and supervisory arrangements of Singapore ensure that Covered CCPs comply with legally binding requirements which are equivalent to the requirements of EMIR, that Covered CCPs are subject to effective supervision and enforcement in Singapore on an ongoing basis, and that the legal framework of Singapore provides for an effective equivalent system for the recognition of CCPs authorised under third country legal regimes.

2. Given that ESMA, in respect of Covered CCPs, relies fully on the supervision and enforcement capabilities of MAS, which supervises and enforces compliance with MAS' Laws and Regulations, On-site Inspections by ESMA officers will only be considered in exceptional circumstances and subject to the prior agreement of MAS.
3. In such exceptional circumstances, the Authorities should discuss and reach understanding on the terms regarding an On-site Inspection by ESMA officers, taking into full account of each other's sovereignty, legal framework and statutory obligations, in particular in determining the respective roles and responsibilities of the Authorities. ESMA will act in accordance with the following procedure before conducting an On-site Inspection:
  - a) ESMA will consult MAS with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any On-site Inspection. MAS may, in its discretion, accompany or assist the visiting ESMA officials during the On-site Inspection.
  - b) When establishing the scope of any proposed On-site Inspection by ESMA officials, ESMA will give due and full consideration to the supervisory activities of MAS given ESMA's reliance on the supervision and enforcement capabilities of MAS in respect of Covered CCPs and will consider any information that was made available or is capable of being made available by MAS.
  - c) MAS 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 Receiving Authority will use non-public information obtained under this MoU solely for the purpose of ensuring ongoing compliance by the Covered CCPs with the Recognition Conditions and within the limits of this MoU.
2. Before using non-public information furnished under this MoU for any purpose other than that stated in Article 6(1), the Receiving Authority must obtain the written consent of the Disclosing Authority for the intended use. If consent is

denied by the Disclosing 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 Receiving Authority might be allowed.

3. If an Authority (“First Authority”) receives, via a party that is not a signatory to this MoU, non-public information originally provided by the other Authority (“Second Authority”) that is related to the First Authority’s supervision and oversight of a Covered CCP and that the First Authority is aware was obtained by the third party from the Second Authority on a confidential basis, the First Authority shall inform the Second Authority and 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. However, where non-public information is provided to the Receiving Authority pursuant to an information-sharing request pursuant to Article 3(5) of this MoU, the restrictions in this MoU apply to the use of the information by that Receiving Authority.

## **Article 7**

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

1. Except as provided in Article 7(2)-(4), 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, it may become necessary for a Receiving Authority to share non-public information obtained under this MoU with a Governmental Entity in its jurisdiction. In such circumstances:
  - a. The Receiving Authority intends to notify the Disclosing Authority; and
  - b. Prior to the Receiving Authority sharing the non-public information, the Receiving Authority will provide adequate assurances to the Disclosing 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 Disclosing Authority.

3. Except as provided in Article 7(2), the Receiving Authority must obtain the prior consent of the Disclosing Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. The Disclosing 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 Disclosing Authority, the Receiving and Disclosing 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 Receiving Authority might be allowed
4. To the extent possible, the Receiving Authority should notify the Disclosing Authority of any legally enforceable demand for non-public information that has been furnished under this MoU. Prior to complying with the demand, the Receiving 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 this 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.

**Article 10**

**Execution of the MoU**

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

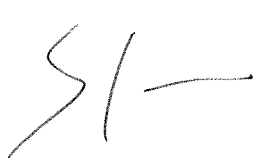
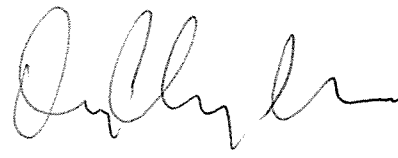
**Article 11**

**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 agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under this MoU before the expiration of the 30-day period until all requests are fulfilled or the Receiving 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**

Date: 10/2/2015

<p><b>European Securities and Markets Authority</b></p>  <p>Steven Maijoor Chairman</p>	<p><b>Monetary Authority of Singapore</b></p>  <p>Ong Chong Tee Deputy Managing Director (Financial Supervision)</p>
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## Appendix

### Contact Persons

European Securities and Markets Authority	Monetary Authority of Singapore
Name: Fabrizio Planta Telephone: + 33 1 5836 4270 Email: fabrizio.planta@esma.europa.eu	Name: Phua Wee Ling Telephone: + 65 6229 9915 Email: wlphua@mas.gov.sg