

## **Memorandum of Understanding concerning consultation, cooperation and the exchange of information between ESMA and the UK Financial Conduct Authority**

The UK Financial Conduct Authority (“UK Authority”) and the European Securities and Markets Authority (“ESMA”) have reached this Memorandum of Understanding (“MoU”) regarding arrangements for the cooperation and exchange of supervisory information related to certain regulated entities whose cross-border activities subject them to regulation and supervision by both the UK Authority and ESMA.

In light of the evolving regulatory landscape and the potential for future changes to the Authorities’ regulatory mandates and/or legal authority, this MoU envisages the use of Annexes regarding particular Covered Entities and Cross-Border Regulated Entities. Consequently, without limiting the Authorities’ abilities to cooperate or share information outside the terms of the MoU, this MoU itself encompasses consultation, cooperation and the exchange of information relating only to those Covered Entities or Cross-Border Regulated Entities (as appropriate) described in the relevant Annex(es).

Article 33(1) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>1</sup> provides that ESMA may develop contacts and enter into administrative arrangements with regulatory supervisory authorities, international organisations and third-country administrations.

Section 354A of the Financial Services and Markets Act 2000 imposes a duty on the FCA to take such steps as it considers appropriate to co-operate with others who exercise functions similar to its own. This duty extends to authorities in the UK and overseas.

The UK Authority and ESMA express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates by providing mutual assistance and exchanging information.

The Annexes do not limit the Authorities’ ability to cooperate under this MoU, consistent with each Authority’s Laws and Regulations, with regard to the supervision of other Covered Entities providing cross-border services that may come under their respective jurisdictions in the future.

### **General principles and provisions governing cooperation under this MoU**

#### **Article 1. Definitions**

For the purpose of this Memorandum of Understanding:

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<sup>1</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, *OJ L 331, 15.12.2010, p. 84.*

- a) "Authority" means a signatory to this MoU or any successor thereof (together the "Authorities");
- b) "Branch" means a place of business of a Covered Entity which is not its head office, and which has no legal personality;
- c) "Covered Entity" means any Person (including its cross-border establishment(s)) whose activities are subject to the supervision, oversight, registration or extension of registration, certification, recognition or authorisation of one of the Authorities;
- d) "Cross-Border Regulated Entity" means a Covered Entity identified in or defined as such in the relevant Annex(es), subject to supervision: (a) by both Authorities through registration or extension of registration, or (b) by one Authority, where the Covered Entity of that Authority pertains to the same group of a separate Covered Entity subject to the supervision, oversight, registration or extension of registration, certification, recognition or authorisation by the other Authority;
- e) "Emergency Situation" means the occurrence or potential imminent occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, investors or the markets;
- f) "Home Authority" means an Authority responsible for the initial authorisation, registration or extension of registration of the Covered Entity operating a branch or providing services or performing activities in the jurisdiction of the host Authority;
- g) "Laws and Regulations" means, in relation to ESMA, the applicable European Union legislation within ESMA's remit as set out in Article 1(2) of ESMA Regulation and, in relation to the UK Authority, the applicable legislation within the UK Authority's remit as set out in the provisions of the laws applicable in the jurisdiction of the UK, the regulations promulgated thereunder, and other regulatory requirements that fall within the competence of the UK Authority;
- h) "Person" means a natural or legal person, or an unincorporated entity or association, including but not limited to partnerships and trusts;
- i) "Requested Authority" means the Authority to whom a request is made under this MoU;
- j) "Requesting Authority" means the Authority making a request under this MoU;
- k) "Secure Electronic Means" means electronic methods of communications that ensure that completeness, integrity and confidentiality of information are maintained during transmission; and
- l) "Third Authority" means an authority with whom an Authority may legally share non-public information received under this MoU, in accordance with Article 11 herein, in order to assist that Authority or the Third Authority in carrying out their functions. Third Authorities are set out in Appendix D of this MoU.

## **Article 2. Purpose and general principles**

1. This MoU is a statement of intent to consult, cooperate and exchange information in connection with the discharge of the responsibilities entrusted to the Authorities under the Laws and Regulations, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities.
2. This MoU does not create any legally binding obligations, confer any enforceable rights, or supersede domestic law. 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.
3. The Authorities will, within the framework of this MoU, 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 domestic law;
  - b) where a request for assistance is not falling within the scope of this MoU or is not made in accordance with the terms of this MoU;
  - c) where the information to be disclosed is not subject to guarantees of professional secrecy; or
  - d) on reasons of public interest.

Assistance will not be denied based on the fact that the type of conduct described in the request for assistance would not be a violation of the Laws and Regulations of the Requested Authority. 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.

4. 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 MoU should that be deemed necessary, for instance in the event of changes in the Laws and Regulations in force or applicable in each jurisdiction, and, in accordance with Article 12, may amend the MoU to include the addition of new types of Cross-Border Regulated Entity.
5. To facilitate cooperation under this MoU, the Authorities hereby designate contact points as set forth in Appendix A. Additional contact persons for each type of Covered Entity may also be specified in the Relevant Appendix A.

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

1. The Authorities will cooperate in relation to supervisory activities of Cross-Border Regulated Entities with regard to the areas covered by the Laws and Regulations, including, but not limited to:
  - a) general supervisory issues and enforcement, including with respect to regulatory, oversight or other supervisory programs;
  - b) issues relevant to the discharging of their responsibilities, including on operations, activities, and regulation of Cross-Border Regulated Entities; and
  - c) any other areas of mutual supervisory interest.
2. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:
  - a) the initial application for authorisation, registration or extension of registration, certification, recognition of a Covered Entity or Cross-Border Regulated Entity, or exemptions therefrom in the other jurisdiction;
  - b) the on-going oversight of a Cross-Border Regulated Entity and of its operation in the jurisdiction of one of the Authorities;
  - c) the assessment of the need to, and the subsequent taking of, supervisory or enforcement action against a Cross-Border Regulated Entity; or
  - d) regulatory approvals or supervisory or enforcement actions taken by an Authority that may impact the operations of a Cross-Border Regulated Entity.

Further detail about the scope of supervisory cooperation for each type of Cross-Border Regulated Entity can be found in the relevant Annex(es).

### **Article 4. Exchange of Information**

1. The Requested Authority intends to provide the Requesting Authority, upon written request, 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 discharge its responsibilities and assess compliance with its Laws and Regulations.
2. The information covered by this article includes, without limitation:
  - a) information and documents held in the files of the Requested Authority regarding the matters set forth in the request for assistance;

- b) findings from regulatory and/or supervisory reports prepared by the Requested Authority.

#### **Article 5. On-site visits**

1. In case of information to be obtained through on-site visits to a Cross-Border Regulated Entity's offices or Branches located within the territory of the other Authority's jurisdiction, including those performed in the framework of supervisory programmes, the Authorities should discuss and reach an understanding on the terms of such on-site visits, taking into full account each other's sovereignty, applicable domestic law and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities. The Authorities will act in accordance with the following procedure before conducting a cross-border on-site visit.
  - a) The Authorities will consult with a view to reaching an understanding on the terms and intended timeframe for and the scope of any on-site visit. The Requested Authority will decide whether the visiting officials will be accompanied by its officials during the visit.
  - b) When establishing the scope of any proposed visit, the Requesting Authority will give due and full consideration to the supervisory activities of the Requested Authority and any information that was made available or is capable of being made available by the Requested Authority.
  - c) The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from relevant directors, senior management, employees of the relevant entities or any other relevant person of a Cross-Border Regulated Entity.
2. In circumstances where the Authorities jointly perform an on-site visit, they will give each other an opportunity to consult and discuss the findings arising from the on-site visit.
3. In circumstances where only one Authority performs the on-site visit, the Authority which has conducted the on-site visit will share its findings and / or report on the on-site visit with the other Authority.

#### **Article 6. Requests for assistance**

1. To the extent possible, a request pursuant to Articles 4 and 5 should be made in writing, by post, or Secure Electronic Means and addressed to the relevant contact point identified in Appendix A. A request generally should specify the following:
  - a) necessary details allowing the Requested Authority to identify the type of information sought by the requesting Authority;

- b) the name of the Cross-Border Regulated Entities from which the information is available;
  - c) a concise description of the facts underlying the request and the purpose for which the information is sought, including the applicable provisions of the Laws and Regulations;
  - d) a confirmation that measures are in place to ensure that professional secrecy is protected, including the protection of business secrets shared by the requesting Authority with third parties; and
  - e) the desired time period for reply and, if necessary, the urgency thereof.
2. The Requested Authority will send the acknowledgement of receipt to the contact point identified in the request within ten (10) working days of receipt of the written request for assistance and include, if possible at that stage, an estimated date of response.
  3. The Authorities will make their best efforts to provide information or deal with requests for assistance under this MoU in a timely manner.
  4. In Emergency Situations as well as in urgent cases, the Authorities will endeavour to notify each other of the Emergency Situation or of the urgency and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations or for urgent cases, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible.

#### **Article 7. Unsolicited assistance**

Each Authority will make all reasonable efforts to provide the other Authority, in as much detail as possible, without prior request and in advance to the extent practicable, with any information likely to be of assistance to the other Authority for the purposes of carrying out its responsibilities under the Laws and Regulations, including information concerning:

- a) any pending major change in their regulatory or supervisory systems or any major change to the Laws and Regulations which is likely to have a significant impact on the operations, activities, or reputation of Covered Entities;
- b) any known material event that could have a significant effect on the operation of a Cross-Border Regulated Entity (such events include, among others, known changes in the operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity) or could otherwise adversely impact investor protection, financial stability or the integrity and orderly functioning of the markets in the jurisdiction of the other Authority; or

- c) enforcement or regulatory actions, including investigations or sanctions which could have, in its reasonable opinion, a material effect on a Cross-Border Regulated Entity, including the withdrawal, suspension or modification of relevant authorisation, registration or extension of registration, concerning or related to a Cross-Border Regulated Entity.

### **Article 8. Outsourcing/delegation**

Where a Cross-Border Regulated Entity outsources or delegates any of its functions (in particular, but not limited to, critical or important operational functions) to a Person located in the other jurisdiction, the home Authority of the relevant Cross-Border Regulated Entity may request assistance in accordance with this MoU from the Authority in which jurisdiction the outsourcee/delegatee is established. Such assistance should allow the home Authority to undertake its supervisory tasks, receive information on the supervisory regime of the requested authority and ensure all entities are effectively supervised.

### **Article 9. Personal data**

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 to the UK Authority and to ESMA.

### **Article 10. Permissible uses of information**

The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of discharging the responsibilities entrusted to it under the Laws and Regulations, including supervising Cross-Border Regulated Entities, enforcing and ensuring compliance with the Laws and Regulations (including conducting any investigation, a civil or administrative enforcement proceeding or assisting in a criminal prosecution), protecting investors, assessing and identifying systemic risk in the financial markets or the risk of disorderly markets.

### **Article 11. Confidentiality and onward sharing of information**

1. Except for disclosures in accordance with the MoU, including permissible use of information under the previous Articles, each Authority will keep confidential 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. Each Authority acknowledges that measures are in place in its jurisdiction to ensure that professional secrecy is ensured and confidential information is protected, including the protection of business secrets shared by the Authority with third parties.

The principal provisions on professional secrecy for each Authority are set out in Appendix E.

3. 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 MoU. 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.
4. In certain circumstances, and as required by law, it may be necessary for the Requesting Authority to share information received under this MoU with a Third Authority. In these circumstances and to the extent permitted by law:
  - a) the Requesting Authority will notify the Requested Authority about what information it intends to share, which Third Authority will receive it and why the Third Authority needs the information; and
  - b) prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Third Authority's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without the prior consent of the Requested Authority.
5. Except as provided in paragraph 3 of this Article, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU. 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.
6. 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 MoU, will not constitute a waiver of privilege or confidentiality of such information.

#### **Article 12. Amendments and termination of the MoU. Successor Authorities**

1. Amendments to this MoU, including the addition of new annexes or amendments to existing annexes, can be made by written agreement of both Authorities.
2. Amendments to the relevant contact point listed in Appendix A may be made by each Authority giving written notice to the other Authority.
3. An Authority may terminate its participation in this MoU at any time by giving at least 30 days prior written notice to the other Authority.
4. In the event that an Authority decides to terminate its participation in this MoU, cooperation and assistance in accordance with this MoU will continue until the expiration of 30 days after that Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance hereunder. If any Authority gives a termination notice, cooperation and assistance in accordance with this MoU will continue in respect to all requests for assistance that were made, or information provided, before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested.

5. In the event of the termination of an Authority's participation in this MoU, information obtained under this MoU will continue to be treated confidentially in the manner referred to under articles 10 and 11 (*Permissible uses of information and Confidentiality and onward sharing of information*).
6. Where the relevant functions of a signatory to this MoU 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 without the need for any further amendment to this MoU or for the successor to become a signatory to the MoU. This will not affect the right of the successor authority to terminate the MoU as provided hereunder if it wishes to do so.

### **Article 13. Entry into force**

This MoU enters into force as of the date on which the transition period referred to in Article 126 of the Withdrawal Agreement between the European Union and the UK<sup>2</sup> ends.

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<sup>2</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ C 384I , 12.11.2019, p. 1.

## Annex I

### Specific provisions regarding Credit Rating Agencies

ESMA is responsible for the registration and supervision of credit rating agencies established in the European Union in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies ("CRAR").<sup>3</sup>

The UK Authority is responsible for the registration and supervision of credit rating agencies established in the United Kingdom in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as amended by the Credit Rating Agencies (Amendment, etc.) (EU Exit) Regulations 2019.

#### Article 1. Definitions

For purposes of this MoU the following definitions apply:

1. "Credit Rating Agency" ("CRA") means:
  - a) In the United Kingdom, a legal person whose occupation includes the issuing of credit ratings on a professional basis, subject to registration or certification with and oversight by the UK Authority;
  - b) In the EU, a legal person whose occupation includes the issuing of credit ratings on a professional basis, subject to registration or certification with and oversight by ESMA.
2. "Cross-Border CRA" means a CRA identified in or defined as such in Appendix B of this MoU, subject to supervision: (i) by both Authorities through registration, or certification, or (ii) by one Authority, where the Covered Entity regulated by that Authority pertains to the same group of a separate Covered Entity subject to supervision by the other Authority.

#### Article 2. Cooperation in relation to registration and certification procedures

1. The Authorities intend to cooperate during the registration or certification in order to enable a full assessment of the Cross-Border CRA's application for registration or certification of the Cross-Border CRAs and in the case of withdrawal of a registration or certification thereof.
2. When a CRA applies for registration or certification with an Authority, and the Authority considers that the CRA could be a Cross-Border CRA, the Authority will accordingly notify the other Authority about the status of the CRA's registration or certification and will provide it with information regarding the CRA's cross-border operations.

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<sup>3</sup> Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1.

3. Following the initial sharing of information, the Authorities will consult with each other regarding whether or not they consider this CRA to be a Cross-Border CRA and if it is regarded as such, add it to the list of Cross-Border CRAs in Appendix B.
4. The Requested Authority, upon written request intends to provide where required to the Requesting Authority the following:
  - a) information held on file regarding (i) the organization and rating processes, and (ii) views from the notified Authority regarding the Cross-Border CRA's systems and controls, senior management and governance structures, management of conflicts of interest procedures and the rating process in general;
  - b) a statement regarding whether or not the Cross-Border CRA has been recognised, authorised or registered to conduct credit rating activities and is subject to supervision by the Authority and a meaningful description of the nature of such registration or certification and supervision;
  - c) information regarding any formal supervisory and enforcement action that has been taken regarding the Cross-Border CRA's compliance or lack of compliance with the relevant Laws and Regulations; and
  - d) the Laws and Regulations on which the registration or certification as well as the supervision are based.
5. The Authorities intend to cooperate in the registration or authorisation process and also in any other manner not specified above in order to facilitate a full assessment of the CRA's application for registration, authorisation or certification.

### **Article 3. Specific information**

For the purposes of on-going supervision of the Cross-Border CRA, taking into account both the relevance and significance of the relevant Cross-Border CRA, the Authorities intend to share and to discuss with each other regularly if appropriate, any significant information on such Cross-Border CRA which is likely to be relevant in the performance of ongoing supervision. Such information which the Authorities intend to exchange includes, where relevant, without limitation:

- a) information that would permit the Requesting Authority to verify that the Cross-Border CRA is able to comply and actually complies with obligations and requirements set out in the Laws and Regulations in the jurisdiction of the Requesting Authority;
- b) information relevant to the governance, the financial, organisational and operational conditions, or IT systems and internal controls of the Cross-Border CRA, including, for example, on:

- Relevant supervisory information prepared by an Authority, including, for example: findings, or information drawn from examination reports regarding a Cross-Border CRA.
- Information on the actions implemented by the Cross-Border CRA to remediate deficiencies and shortcomings in complying with the conditions of registration, certification, or of any laws or regulations applicable to it.
- Authorities' supervisory plans for CRAs if such plans exist.
- Information that may have a significant impact on the ongoing supervision of Cross-Borders CRAs.
- Information about approaches to the supervision of Cross-Border CRAs and notification of changes by the Authority of its approach to its supervision of the Cross-Border CRA.

**Article 4. Exchange of information on supervisory or enforcement actions against Cross-Border CRAs**

1. The Authorities intend to inform each other as soon as possible when an enforcement or supervisory action has been taken against a Cross-Border CRA together with a statement on whether this enforcement action is open to appeal.
2. The Authorities intend to inform each other as soon as possible when the following supervisory or enforcement actions have been taken with regard to a Cross-Border CRA:
  - a) suspension of authorisation to issue credit ratings;
  - b) referrals of matters for criminal prosecution;
  - c) imposition of financial penalties, pursuant to the legislation in force in each of the relevant jurisdictions;
  - d) suspension of an individual who sits on the CRA's management or supervisory board;
  - e) full or partial withdrawal of the CRA's registration, or certification;
  - f) temporary prohibition on the CRA's issuing of credit ratings that are used in the other Authority's jurisdiction for regulatory purposes;
  - g) suspension of the use, for regulatory purposes, of the credit ratings issued by the CRA; and
  - h) issuing by the Authority of a public notice of a Cross-Border CRA's breach of the relevant Laws and Regulations.

### **Article 5. Meetings**

To enhance the quality of cooperation and assistance, the Authorities may:

- a) Convene ad hoc meetings to discuss material issues of common concern and/ or coordinate actions, if deemed appropriate, for instance where specific conduct may constitute a breach in both jurisdictions, or to address supervisory problems concerning a Cross-Border CRA in the respective other jurisdiction(s), on the basis of a material supervisory concern.
- b) Agree to conduct regular meetings that concern Cross-Border CRAs relevant to their jurisdictions.

### **Article 6. Supervisory programmes**

To facilitate the ongoing supervision of Cross-Border CRAs and to better understand the supervisory regime applied by the other Authority, the Authorities may agree to establish supervisory programmes for specific Cross-Border CRAs. Such supervisory programmes may cover relevant tasks and activities, such as:

- a) pre-planned meetings between the Authorities;
- b) pre-planned cross-border on-site visits of the Cross-Border CRAs;
- c) pre-planned activities in relation to the various supervisory approvals and authorisations.

## **Annex II**

### **Specific provisions regarding Trade Repositories**

ESMA is responsible for the registration and supervision of trade repositories established in the European Union in accordance with 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") and Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation of 25 November 2015 ("SFTR").

The UK Authority is responsible for the registration and supervision of trade repositories established in the United Kingdom in accordance with 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, as amended by the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2019, The Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018, and The Central Counterparties (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 and Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation of 25 November 2015, as amended by the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019.

#### **Article 1. Definitions**

For purposes of this MoU the following definitions apply:

1. "Trade Repository" ("TR") means:
  - a) In the United Kingdom, a legal person, registered with and subject to oversight by the UK Authority that centrally collects and maintains the records of derivatives and securities financing transactions;
  - b) In the EU, a legal person registered with ESMA that centrally collects and maintains the records of derivatives and securities financing transactions.
2. "Cross-Border TR" means a TR identified in or defined as such in Appendix C of this MoU, subject to supervision: (i) by both Authorities through registration or recognition, or (ii) by one Authority, where the Covered Entity regulated by that Authority pertains to the same group of a separate Covered Entity subject to supervision by the other Authority.

#### **Article 2. Cooperation in relation to registration and recognition procedures**

1. The Authorities intend to cooperate during the registration or recognition of the Cross-Border TRs in order to enable a full assessment of the Cross-Border TR's application for registration or recognition and in the case of withdrawal of a registration or recognition thereof.

2. When a TR applies for registration or recognition with an Authority, and the Authority considers that the TR could be a Cross-Border TR, the Authority will accordingly notify the other Authority about the status of the TR's registration or recognition and will provide it with information regarding the TR's cross-border operations.
3. Following the initial sharing of information, the Authorities will consult with each other regarding whether or not they consider this TR to be a Cross-Border TR and if it is regarded as such, add it to the list of Cross-Border TRs in Appendix C.
4. The Requested Authority, upon written request, intends to provide where required to the Requesting Authority the following:
  - a) information and documents held on file regarding (i) the organization, data collection and record-keeping processes and (ii) views from the notified Authority regarding the Cross-Border TR's IT systems and internal controls, senior management and governance structures, and management of conflicts of interest procedures;
  - b) a statement regarding whether or not the Cross-Border TR has been registered or recognised for centrally collecting and maintaining the records of derivatives contracts or securities financing transactions and is subject to supervision by the Authority and a meaningful description of the nature of such registration or recognition and supervision;
  - c) information regarding any formal supervisory and enforcement action that has been taken regarding the Cross-Border TR's compliance or lack of compliance with the relevant Laws and Regulations; and
  - d) the Laws and Regulations on which the registration or recognition as well as the supervision are based.
5. The Authorities intend to cooperate in the registration or recognition process and also in any other manner not specified above in order to facilitate a full assessment of the TR's application for registration or recognition.

### **Article 3. Specific information**

For the purposes of on-going supervision of the Cross-Border TR, taking into account both the relevance and significance of the relevant Cross-Border TR, the Authorities intend to share and to discuss with each other regularly if appropriate, any significant information on such Cross-Border TR which is likely to be relevant in the performance of ongoing supervision. Such information which the Authorities intend to exchange includes, where relevant, without limitation:

- a) information that would permit the Requesting Authority to verify that the Cross-Border TR is able to comply and actually complies with obligations and requirements set out in the Laws and Regulations in the jurisdiction of the Requesting Authority;

- b) information relevant for monitoring and responding to the potential implications of the activities of an individual Cross-Border TR, for the financial stability of systemically relevant financial institutions, market confidence, investor protection and the orderly functioning and efficiency of the markets in which such relevant entities are active;
- c) information relevant to the governance, the financial, organisational and operational conditions, or IT systems and internal controls of the Cross-Border TR, including, for example, on:
  - Relevant supervisory information prepared by an Authority, including, for example: findings, or information drawn from examination reports regarding a Cross-Border TR.
  - Information on the actions implemented by the Cross-Border TR to remediate deficiencies and shortcomings in complying with the conditions of registration, recognition or of any laws or regulations applicable to it.
  - Authorities' supervisory plans for TRs if such plans exist.
  - Information that may have a significant impact on the ongoing supervision of Cross-Borders TRs.
  - Information about approaches to the supervision of Cross-Border TRs and notification of changes by the Authority of its approach to its supervision of the Cross-Border TR.

#### **Article 4. Exchange of information on supervisory or enforcement actions against Cross-Border TRs**

1. The Authorities intend to inform each other as soon as possible when an enforcement or supervisory action has been taken against a Cross-Border TR together with a statement on whether this enforcement action is open to appeal.
2. The Authorities intend to inform each other as soon as possible when the following supervisory or enforcement actions have been taken with regard to a Cross-Border TR:
  - a) referrals of matters for criminal prosecution;
  - b) imposition of financial penalties, pursuant to the legislation in force in each of the relevant jurisdictions;
  - c) requiring the trade repository to bring the infringement to an end;
  - d) full withdrawal of the TR's registration or recognition; and

- e) issuing by the Authority of a public notice of a Cross-Border TR's breach of the relevant Laws and Regulations.

#### **Article 5. Meetings**

To enhance the quality of cooperation and assistance, the Authorities may:

- a) Convene ad hoc meetings to discuss material issues of common concern and/or coordinate actions, if deemed appropriate, for instance where specific conduct may constitute a breach in both jurisdictions, or to address supervisory problems concerning a Cross-Border TR in the respective other jurisdiction(s), on the basis of a material supervisory concern.
- b) Agree to conduct regular meetings that concern Cross-Border TRs relevant to their jurisdictions.

#### **Article 6. Supervisory programmes**

To facilitate the ongoing supervision of Cross-Border TRs and to better understand the supervisory regime applied by the other Authority, the Authorities may agree to establish supervisory programmes for specific Cross-Border TRs. Such supervisory programmes may cover relevant tasks and activities, such as:

- a) pre-planned meetings between the Authorities;
- b) pre-planned cross-border on-site visits of the Cross-Border TRs;
- c) pre-planned activities in relation to the various supervisory approvals and authorisations.

## Annex III

### Specific provisions regarding Securitisation Repositories

ESMA is responsible for the registration and supervision of securitisation repositories established in the EU in accordance with Regulation (EU) 2017/2402<sup>4</sup> ('SECR').

The UK Authority is responsible for the registration and supervision of securitisation repositories established in the United Kingdom in accordance with Regulation (EU) No 2017/2042 laying down a general framework for securitisation, as amended by the Securitisation (Amendment) (EU Exit) Regulations.

#### Article 1. Definitions

For purposes of this MoU the following definitions apply:

3. "Securitisation Repository" ("SR") means:
  - a) In the United Kingdom, a legal person, registered with and subject to oversight by the UK Authority that centrally collects and maintains the records of securitisations;
  - b) In the European Union, a legal person registered with ESMA that centrally collects and maintains the records of securitisations.
4. "Cross-Border SR" means an SR identified in or defined as such in Appendix D of this MoU, subject to supervision: (i) by both Authorities through registration or extension of registration of a registered trade repository as an SR ("extension of registration"), or (ii) by one Authority, where the Covered Entity regulated by that Authority pertains to the same group of a separate Covered Entity subject to supervision by the other Authority.

#### Article 2. Cooperation in relation to registration and extension of registration procedures

6. The Authorities intend to cooperate during the registration or extension of registration of the Cross-Border SRs in order to enable a full assessment of the Cross-Border SR's application for registration or extension of registration and in the case of withdrawal of a registration or extension of registration thereof.

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<sup>4</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012, *OJ L 347, 28.12.2017, p. 35*

7. When an SR applies for registration or extension of registration with an Authority, and the Authority considers that the SR could be a Cross-Border SR, the Authority will accordingly notify the other Authority about the status of the SR's registration or extension of registration and will provide it with information regarding the SR's cross-border operations.
8. Following the initial sharing of information, the Authorities will consult with each other regarding whether or not they consider the SR to be a Cross-Border SR and, if it is regarded as such, add it to the list of Cross-Border SRs in Appendix (D).
9. The Requested Authority, upon written request, intends to provide where required to the Requesting Authority the following:
  - a) information and documents held on file regarding (i) the organisation, data collection and record-keeping processes and (ii) views from the notified Authority regarding the Cross-Border SR's IT systems and internal controls, senior management and governance structures, and management of conflicts of interest procedures;
  - b) a statement regarding whether or not the Cross-Border SR has been registered or registration has been extended for centrally collecting and maintaining the records of securitisations and is subject to supervision by the Authority and a meaningful description of the nature of such registration or extension of registration and supervision;
  - c) information regarding any formal supervisory and enforcement action that has been taken regarding the Cross-Border SR's compliance or lack of compliance with the relevant Laws and Regulations; and
  - d) the Laws and Regulations on which the registration or extension of registration as well as the supervision are based.
10. The Authorities intend to cooperate in the registration or extension of registration process and also in any other manner not specified above in order to facilitate a full assessment of the SR's application for registration or extension of registration.

### **Article 3. Specific information**

For the purposes of on-going supervision of the Cross-Border SR, taking into account both the relevance and significance of the relevant Cross-Border SR, the Authorities intend to share and to discuss with each other regularly if appropriate, any significant information on such Cross-Border SR which is likely to be relevant in the performance of ongoing supervision. Such information which the Authorities intend to exchange includes, where relevant, without limitation:

- a) information that would permit the Requesting Authority to verify that the Cross-Border SR is able to comply and actually complies with obligations and requirements set out in the Laws and Regulations in the jurisdiction of the Requesting Authority;

- b) information relevant for monitoring and responding to the potential implications of the activities of an individual Cross-Border SR, for the financial stability of systemically relevant financial institutions, market confidence, investor protection and the orderly functioning and efficiency of the markets in which such relevant entities are active;
- c) information relevant to the governance, the financial, organisational and operational conditions, or IT systems and internal controls of the Cross-Border SR, including, for example, on:
  - relevant supervisory information prepared by an Authority, including, for example: findings, or information drawn from examination reports regarding a Cross-Border SR;
  - information on the actions implemented by the Cross-Border SR to remediate deficiencies and shortcomings in complying with the conditions of registration, extension of registration or of any laws or regulations applicable to it;
  - Authorities' supervisory plans for SRs if such plans exist;
  - information that may have a significant impact on the ongoing supervision of Cross-Borders SRs;
  - information about approaches to the supervision of Cross-Border SRs and notification of changes by the Authority of its approach to its supervision of the Cross-Border SR.

#### **Article 4. Exchange of information on supervisory or enforcement actions against Cross-Border SRs**

3. The Authorities intend to inform each other as soon as possible when an enforcement or supervisory action has been taken against a Cross-Border SR together with a statement on whether this enforcement action is open to appeal.
4. The Authorities intend to inform each other as soon as possible when the following supervisory or enforcement actions have been taken with regard to a Cross-Border SR:
  - a) referrals of matters for criminal prosecution;
  - b) imposition of financial penalties pursuant to the legislation in force in each of the relevant jurisdictions;
  - c) requiring the SR to bring the infringement to an end;
  - d) full withdrawal of the SR's registration or extension of registration; and

- e) issuing by the Authority of a public notice of a Cross-Border SR's breach of the relevant Laws and Regulations.

#### **Article 5. Meetings**

To enhance the quality of cooperation and assistance, the Authorities may:

- a) convene ad hoc meetings to discuss material issues of common concern and/or coordinate actions, if deemed appropriate, for instance where specific conduct may constitute a breach in both jurisdictions, or to address supervisory problems concerning a Cross-Border SR in the respective other jurisdiction(s), on the basis of a material supervisory concern;
- b) agree to conduct regular meetings that concern Cross-Border SRs relevant to their jurisdictions.

#### **Article 6. Supervisory programmes**

To facilitate the ongoing supervision of Cross-Border SRs and to better understand the supervisory regime applied by the other Authority, the Authorities may agree to establish supervisory programmes for specific Cross-Border SRs. Such supervisory programmes may cover relevant tasks and activities, such as:

- a) pre-planned meetings between the Authorities;
- b) pre-planned cross-border on-site visits of the Cross-Border SRs;
- c) pre-planned activities in relation to the various supervisory approvals and authorisations.

## **Appendix A**

### **List of Contact Persons**

**Appendix B**

**Cross-Border CRAs**

Name of Cross-Border CRAs

**Appendix C**

**Cross-Border TRs**

Name of Cross-Border TRs

**Appendix D**

**Cross-Border SRs**

Name of Cross-Border SRs

## Appendix E

### Third Authorities

#### UK AUTHORITY

The UK Authority may legally share non-public information received under this MoU to any person to whom a disclosure is permitted in accordance with the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations, in order to assist the UK Authority or the Third Authority in carrying out their functions.

#### ESMA

ESMA may legally share non-public information received from the UK Authority with:

- competent authorities and the sectoral competent authorities, for the purposes of carrying out their duties (Article 27(1) CRAR);
- central banks, the European System of Central Banks, the European Central Bank, European Systemic Risk Board (“ESRB”) and other public authorities responsible for the overseeing payment and settlement systems, for the performance of their tasks (Article 27(2) CRAR);
- competent authorities and other relevant authorities, for the purposes of carrying out their duties (Article 84(1) EMIR);
- competent authorities for the purposes of carrying out their duties (Articles 29 and 30 SECR); and
- EBA, EIOPA, the ESRB, the European Parliament, the Council and the Commission for the purposes of the relevant sectoral legislation (Article 2(4) of Regulation (EU) 1095/2010, Article 26 CRAR and Article 36(1) SECR).

## Appendix F

### Relevant provisions on Professional secrecy

#### UK AUTHORITY

Section 348(1) of the Financial Services and Markets Act 2000 (FSMA) prevents the FCA from disclosing any 'confidential information' it receives except in certain circumstances as provided for under FSMA. Confidential information is defined in section 348 of FSMA broadly as any information which is not in the public domain, relating to the business or other affairs of any person, which was received by the FCA for the purposes of, or in the discharge of, its statutory functions (see section 348(2) of FSMA). Where the information has lawfully been made available to the public or is in the form of a collection or a summary so that it cannot be attributed to a particular firm or individual, that information is not confidential information (see section 348(4) of FSMA).

The restriction on the disclosure of confidential information under section 348 of FSMA does not apply where the person from whom the information was received (and, if different, the person to whom the information relates) has consented to the disclosure of the material.

Section 349 of FSMA allows HM Treasury to make regulations to permit the disclosure of confidential information in certain circumstances. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001 no. 2188) (the Disclosure Regulations) set out the circumstances in which disclosure may be made. Disclosure outside of the Gateway Regulations is a criminal offence.

#### ESMA

Article 32 CRAR

##### **Article 32**

##### **Professional secrecy**

1. The obligation of professional secrecy shall apply to ESMA, the competent authorities, and all persons who work or who have worked for ESMA, for the competent authorities or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.
2. All the information that, under this Regulation, is acquired by, or exchanged between, ESMA, the competent authorities, the sectoral competent authorities or other authorities and bodies referred to in Article 27(2), shall be considered confidential, except where ESMA or the competent authority or other authority or body concerned states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.

Article 83 EMIR

##### **Article 83**

##### **Professional secrecy**

1. The obligation of professional secrecy shall apply to all persons who work or have worked for the competent authorities designated in accordance with Article 22 and the authorities referred to in Article 81(3), for ESMA, or for auditors and experts instructed by the competent authorities or ESMA. No confidential information that those persons receive in the course of their duties shall be divulged to any person or authority, except in summary or aggregate form such that an individual CCP, trade repository or any other person cannot be identified, without prejudice to cases covered by criminal or tax law or to this Regulation.
2. Where a CCP has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties may be divulged in civil or commercial proceedings where necessary for carrying out the proceeding.
3. Without prejudice to cases covered by criminal or tax law, the competent authorities, ESMA, bodies or natural or legal persons other than competent authorities which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions, in the case of the competent authorities, within the scope of this Regulation or, in the case of other authorities, bodies or natural or legal persons, for the purpose for which such information was provided to them or in the context of administrative or judicial proceedings specifically relating to the exercise of those functions, or both. Where ESMA, the competent authority or another authority, body or person communicating information consents thereto, the authority receiving the information may use it for other non-commercial purposes.
4. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 1, 2 and 3. However, those conditions shall not prevent ESMA, the competent authorities or the relevant central banks from exchanging or transmitting confidential information in accordance with this Regulation and with other legislation applicable to investment firms, credit institutions, pension funds, UCITS, AIFMs, insurance and reinsurance intermediaries, insurance undertakings, regulated markets or market operators or otherwise with the consent of the competent authority or other authority or body or natural or legal person that communicated the information.
5. Paragraphs 1, 2 and 3 shall not prevent the competent authorities from exchanging or transmitting confidential information, in accordance with national law, that has not been received from a competent authority of another Member State.

#### Article 70 ESMA Regulation

##### **Article 70**

##### ***Obligation of professional secrecy***

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis

shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.

Article 16 of the Staff Regulations shall apply to them.

In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial market participants cannot be identified.

The obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of the acts referred to in Article 1(2), and in particular for legal procedures for the adoption of decisions.

2a. The Management Board, and the Board of Supervisors shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, relating to the tasks of the Authority, including officials and other persons authorised by the Management Board and the Board of Supervisors or appointed by the competent authorities for that purpose, are subject to the requirements of professional secrecy equivalent to those in the previous paragraphs.

The same requirements for professional secrecy shall also apply to observers who attend the meetings of the Management Board, and the Board of Supervisors who take part in the activities of the Authority.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial market participants.

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. The Authority shall apply Commission Decision (EU, Euratom) 2015/444.