

**Memorandum of Understanding  
between the United States Securities and Exchange Commission  
and the European Central Bank  
concerning consultation, cooperation and the exchange of information  
related to the supervision and oversight of certain  
cross-border over-the-counter derivatives entities  
in connection with the use of substituted compliance by such entities**

This Memorandum of Understanding is made BETWEEN

The European Central Bank (ECB), with its headquarters at Sonnemannstraße 20, 60314 Frankfurt am Main, GERMANY,

AND

The United States Securities and Exchange Commission (SEC), with its headquarters at 100 F Street NE, 20549 Washington DC, UNITED STATES,

(hereinafter jointly the ‘Authorities’ and each of them, individually, the ‘Authority’)

WHEREAS:

The SEC and the ECB, as prudential supervisory authority, are entering into this Memorandum of Understanding (MOU), regarding consultation, cooperation and the exchange of information in the supervision and oversight of certain over-the-counter (OTC) derivatives entities that operate on a cross-border basis in the United States and the European Union (EU) (hereinafter ‘Covered Firms’, as defined in Article I(4) of this MOU). Through this MOU, the Authorities express their willingness to cooperate with each other on the basis of mutual trust and understanding for the purpose of performing their supervisory tasks in respect of cross-border credit institutions that fall within their respective supervisory responsibilities. In particular, the Authorities express their mutual intent to cooperate with each other to support the facilitation, where applicable, of the ability of certain entities in Member States of the EU (hereinafter ‘Member States’) participating in the Single Supervisory Mechanism (hereinafter ‘SSM Participating Member States’) to comply with particular U.S. requirements through substituted compliance with certain provisions under EU and SSM Participating Member States’ law and supervision and enforcement by the SEC of its laws and regulations, including as contemplated under substituted compliance. This MOU is intended to advance the Authorities’ interest in performing their respective duties in fulfillment of their respective regulatory mandates.

Council Regulation (EU) No 1024/2013<sup>1</sup> (hereinafter ‘the SSM Regulation’) confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions. This MOU is intended to cover the supervisory tasks conferred on the ECB by Article 4, read in conjunction with Article 6(4), of the SSM Regulation. Cooperation under this MOU is without prejudice to the National Competent Authorities (as defined in Article I(13) of this MOU) tasks and responsibilities under European Union and national laws<sup>2</sup>. Article 6 of the SSM Regulation sets out the criteria for the identification of significant supervised entities<sup>3</sup>.

In accordance with Article 3(1) of the SSM Regulation, the ECB cooperates closely with the national authorities of EU Member States responsible for securities and capital markets supervision (National Market Authorities, as defined in Article I(14) of this MOU) on issues of joint interest and with a view to ensuring the proper supervision of credit institutions also operating in the securities and derivatives sectors, including, when relevant, in connection with their respective tasks related to the application of the substituted compliance framework.

The ECB enters into this Memorandum of Understanding having regard to Article 55 of the Directive 2013/36/EU of the European Parliament and of the Council<sup>4</sup> (as amended or superseded from time to time, hereinafter ‘the Capital Requirements Directive’ or ‘CRD’) and Article 8 of the SSM Regulation.

Pursuant to Rule 3a71-6 under the Securities Exchange Act of 1934 (hereinafter the ‘Exchange Act’), the SEC may, conditionally or unconditionally, issue an order with respect to a foreign financial regulatory system of an SSM Participating Member State determining that a Covered Firm may comply with specified EU and/or SSM Participating Member State requirements in order to satisfy specified U.S. requirements. Before the SEC may issue such an order, the SEC must determine that such specified requirements applicable to a Covered Firm or its activities are comparable to specified U.S. requirements, after taking into account factors such as the scope and objectives of such requirements and the effectiveness of the supervisory compliance programme administered, and enforcement authority exercised by the competent National Market Authority in the SSM Participating Member State, as well as the ECB as the competent prudential supervisory authority.

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<sup>1</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

<sup>2</sup> The Single Supervisory Mechanism (SSM) is the legislative and institutional framework that grants the ECB supervisory authority pursuant to Article 2(9) of the SSM Regulation and is the system of financial supervision composed of the ECB and the National Competent Authorities of participating Member States.

<sup>3</sup> The methodology for the assessment of the criteria is set out in Regulation (EU) No 468/2014 of the European Central Bank of 16 April establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and National Competent Authorities and with national designated authorities (OJ L 141, 14.5.2014, p. 1) (hereinafter ‘the SSM Framework Regulation’), including in Articles 39 to 72. A current list of significant credit institutions and less significant credit institutions is published on the ECB’s website: <https://www.bankingsupervision.europa.eu/banking/list/who/html/index.en.html>.

<sup>4</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Further, prior to making a determination permitting substituted compliance with respect to such requirements, the SEC must have entered into a memorandum of understanding or other arrangement with the relevant foreign financial regulatory authority or authorities that addresses supervisory and enforcement cooperation and other matters arising under the substituted compliance determination. The ECB is the prudential supervisory authority for all significant credit institutions established in participating Member States under Article 6 of the SSM Regulation. The purpose of this MOU is to: (i) address the requirement for a memorandum of understanding or other arrangement with the ECB; and (ii) provide the Authorities with the necessary tools to monitor and enforce on-going compliance by Covered Firms with any substituted compliance order and with the applicable laws and regulations.

THE AUTHORITIES HAVE REACHED THE FOLLOWING UNDERSTANDING:

**Article I: Definitions**

For the purposes of this MOU:

1. ‘Authority’ or “Authorities” has the meaning set forth in the Preamble.
2. ‘Books and Records’ means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a Covered Firm with respect to Covered Activities, and which may include personal data.
3. ‘Covered Activities’ means all services, activities, and conduct of a Covered Firm related to security-based swaps and/or security-based swap agreements (as those terms are defined by the Exchange Act) that are part of the U.S. business of the Covered Firm and are governed by Laws and Regulations.
4. ‘Covered Firm’ means an SEC Security-Based Swap Entity that is also an EU Firm.
5. ‘ECB-Applicable Requirements’ means the laws and regulations to be applied by the ECB as part of its responsibilities as prudential supervisory authority and includes the SSM Regulation, SSM Framework Regulation, Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>5</sup> (hereinafter ‘the Capital Requirements Regulation’ or ‘CRR’), Regulation (EU) 2019/2033 of the European Parliament and of the Council<sup>6</sup> (hereinafter ‘the Investment Firms Regulation’), Regulation (EU) No 806/2014 of the European Parliament and of the Council (the ‘Single Resolution Mechanism Regulation’) and related EU delegated and implementing regulations and other related legal or regulatory requirements applicable in one or more SSM Participating Member States; Directive (EU)

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<sup>5</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

<sup>6</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and EU No 806/2014 (OJ L 314, 5.12.2019, p. 1).

2019/2034 of the European Parliament and of the Council<sup>7</sup> (hereinafter ‘the Investment Firms Directive’); the Capital Requirements Directive (as amended or superseded from time to time) and the Directive 2014/59/EU of the European Parliament and of the Council (hereinafter ‘the Bank Recovery and Resolution Directive’), in each case as implemented in the SSM Participating Member States’ legal or regulatory frameworks and including other related legal or regulatory requirements applicable in one or more SSM Participating Member States; and any other provisions of Union law insofar as they are of a prudential nature, and therefore fall under the supervisory competence of the ECB.

6. ‘Emergency Situation’ means the occurrence of an event that could materially impair the financial or operational condition of a Covered Firm.
7. ‘Enforcement Programme’ refers to the ECB’s investigation and enforcement of possible violations of ECB-Applicable Requirements by Covered Firms and their employees in the context of Covered Activities. The Enforcement Programme includes, but is not limited to: (i) the ECB-Applicable Requirements; (ii) the ECB’s powers, resources and capacity to conduct investigations, apply enforcement measures, administrative penalties or sanctions (or, if applicable, require NCAs to open the relevant proceedings) for violations of ECB-Applicable Requirements or breaches of ECB regulations or decisions; (iii) internal policies and procedures pursuant to which the ECB conducts its investigations and enforcement actions; and (iv) any ECB staff that conduct the investigations and enforcement actions.
8. ‘EU Firm’ means a credit institution or investment firm that (a) is a significant credit institution as defined under the SSM Regulation; (b) is not a ‘U.S. Person’, as that term is defined in Rule 3a71-3(a)(4) under the Exchange Act; and (c) that has applied to be, or is, authorised under EU law to provide investment services or perform investment activities in the SSM Participating Member State; and (d) is supervised directly by the ECB.
9. ‘Firm Information’ means the following information controlled by the ECB: (i) supervisory information related to Covered Activities of a Covered Firm including (a) any significant deficiencies or material weaknesses in controls related to the Covered Activities of Covered Firms; (b) areas related to the Covered Firm’s Covered Activities identified as higher risk by the Covered Firm’s supervisors; and (c) any relevant requests to the Covered Firm for remediation based on significant findings related to the Covered Activities as well as proposed and completed remediation by the Covered Firm for such issues; (ii) information about any event that could materially impact the sound management and coverage by the Covered Firm of risks related to its Covered Activities, including any known infringement or violation of the requirements for continued authorisation of a Covered Firm as an EU Firm, where that failure could have an adverse effect on the Covered Activities of the Covered Firm in the jurisdiction of either Authority, as well as any known material change in the ownership of, operating environment of, operations related to, financial resources dedicated to, direct or indirect management of, or systems and controls impacting, the Covered

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<sup>7</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).

Activities of a Covered Firm; (iii) information relating to administrative sanctions concerning the Covered Activities of a Covered Firm and/or any individual involved in the Covered Activities of a Covered Firm; (iv) information relating to significant regulatory actions by any other authority, including the modification or withdrawal of authorisation, concerning the Covered Activities of a Covered Firm and/or any individual involved in the Covered Activities of a Covered Firm; or (v) or any other information defined as ‘Firm Information’ in a substituted compliance memorandum of understanding between the SEC and a NMA, which the SEC and/or the NMA identifies and the ECB confirms (a) is in the sole remit of the ECB or otherwise cannot be shared by the NMA without the consent of the ECB; and (b) is relevant to the supervision of Covered Activities of Covered Firms.

10. ‘Governmental Entity’ means:

- a. the U.S. Commodity Futures Trading Commission (unless and until it receives a positive equivalence assessment of professional secrecy and confidentiality in accordance with the CRD, only to the extent necessary for the SEC to fully comply with the information sharing and legal proceedings contemplated by U.S. Laws and Regulations), the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Financial Stability Oversight Council (unless and until it receives a positive equivalence assessment of professional secrecy and confidentiality in accordance with the CRD, only to the extent necessary for the SEC to fully comply with the information sharing and legal proceedings contemplated by U.S. Laws and Regulations) if the Requesting Authority is the SEC.
- b. the European Banking Authority, the Single Resolution Board, and the NMAs of the relevant Member State, if the Requesting Authority is the ECB.

11. ‘Laws and Regulations’ means the U.S. Laws and Regulations applicable to the SEC and the ECB-Applicable Requirements applicable to the ECB.

12. ‘Local Authority’ means the Authority in whose jurisdiction a Covered Firm that is the subject of an On-Site Inspection is located.

13. ‘National Competent Authority’ or ‘NCA’ means the competent supervisory authority of an SSM Participating Member State, as defined in Article 2(2) of the SSM Regulation.

14. ‘National Market Authority’ or ‘NMA’ means the national authority of a Member State responsible for securities and capital markets supervision that form part of the European System of Financial Supervision, under the meaning of Article 67 of Directive 2014/65/EU of the European Parliament and of the Council<sup>8</sup>.

15. ‘On-Site Inspection’ means a regulatory inspection or examination to the premises of a Covered Firm (as described in Article V) for the purposes of ongoing supervision and

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<sup>8</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

oversight of its Covered Activities, including the inspection of Books and Records. In the case of an On-Site Inspection of a Covered Firm that is an EU Firm, the definition of On-Site Inspection will only include such regulatory inspections or examinations where ECB assistance may be necessary to ensure the SEC's effective oversight of such Covered Firm's Covered Activities.

16. 'Person' means a natural person or an entity, including but not limited to, an unincorporated association, a partnership, a trust, an investment company, or a corporation. This definition includes Covered Firms.
17. 'Regulatory Change Information' means information about any material publicly available draft, proposed, or final change in the ECB's legal acts and instruments that may have a material impact on the Covered Firm with respect to its Covered Activities.
18. 'Requested Authority' means the Authority to which a request was made or which provided information pursuant to this MOU.
19. 'Requesting Authority' means the Authority that made a request or received information pursuant to this MOU.
20. 'SEC Security-Based Swap Entity' means either (i) a security-based swap dealer; or (ii) a major security-based swap participant, in each case that is, or has applied to be, registered as such with the SEC under the Exchange Act.
21. 'Substituted Compliance Order' means an order, whether conditional or unconditional, of the SEC determining that compliance with specified requirements of the laws of the EU and an SSM Participating Member State by an SEC Security-Based Swap Entity, or class thereof, may satisfy corresponding requirements of the Exchange Act, and rules and regulations thereunder, identified in such order that would otherwise apply to such SEC Security-Based Swap Entity, or class thereof.
22. 'Supervisory Examination Programme' refers to the ECB's supervisory examination programme which outlines the planned supervision and examination of its regulated entities including the Covered Firms' compliance with the ECB-Applicable Requirements. The Supervisory Examination Programme includes: (i) the ECB-Applicable Requirements; (ii) internal policies and procedures that govern the ECB's oversight and examinations of Covered Firms supervised by the ECB; (iii) the ECB staff that conducts and coordinates the supervision and examinations of Covered Firms and related supervisory resources; and (iv) the supervisory activities and examinations conducted by the ECB staff.
23. 'U.S. Laws and Regulations' means the Securities Act of 1933, the Exchange Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, SEC rules and regulations, and other relevant requirements in the United States, in each case as applicable to the activity and conduct of SEC Security-Based Swap Entities in security-based swaps and/or security-based swap agreements (as those terms are defined by the Exchange Act).

24. 'Visiting Authority' means the Authority conducting an On-Site Visit.

## **Article II: General Provisions**

25. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision, enforcement, and oversight of Covered Firms and their Covered Activities in a manner that is permitted by, and consistent with, the laws and requirements that govern each Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing consultations and exchanges of information related to Covered Firms with respect to their Covered Activities, supplemented by formal cooperation. The provisions of this MOU are intended to support informal and ongoing consultations and request-based cooperation, and to facilitate the written exchange of non-public information in accordance with the applicable laws. A primary goal of this MOU is to foster cooperation and the exchange of information between the Authorities to benefit the supervision and oversight of the Covered Firms.
26. With respect to cooperation pursuant to this MOU, at the date this MOU is executed, no bank secrecy, blocking laws, or other regulations or legal barriers, should prevent an Authority from providing assistance to the other Authority pursuant to this MOU, or otherwise adversely affect or hinder the operation of this MOU<sup>9</sup>.
27. This MOU does not create any legally binding obligations, confer any rights or supersede domestic laws or other laws applicable to the Authorities, nor should it be construed as an agreement to limit the protection and safeguards provided by the laws applicable to the Authorities or Covered Firms. 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 exchange of information under this MOU.
28. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the Laws and Regulations in relation to the supervision and oversight of Covered Firms and the operation of the Substituted Compliance Order. Following consultation, cooperation may be denied:
- a. Where the cooperation would require an Authority to act in a manner that would violate domestic laws or other laws applicable to it;
  - b. Where a request for assistance is not made in accordance with the terms of this MOU;
  - c. Where the provision of information or assistance would be disproportionate or significantly disrupt the functioning of the Authority receiving the request; or

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<sup>9</sup> With regard to the ECB, the legal requirement that the information to be provided by the ECB is subject to professional secrecy requirements at least equivalent to those of the CRD, as established by Article 55 of the CRD, is considered fulfilled. Article 55 also requires that exchanges of information under this MOU must be for the purpose of performing the respective supervisory tasks of the Authorities. Consequently, the exchange of information between the Authorities may occur in accordance with the provisions of this MOU.

- d. On the basis of any legally required consideration of public interest.
- 29. This MOU complements, but does not supersede or alter the terms and conditions of any existing cooperation arrangements to which the Authorities are signatories.
- 30. To facilitate communication and cooperation under this MOU, the Authorities hereby designate contact persons as set forth in the list in Annex A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authority.
- 31. Nothing in this MOU will be construed to limit an Authority in the discharge of its regulatory or supervisory responsibilities, as applicable, pursuant to applicable laws and regulations, including with respect to an Authority's ability to enforce a Substituted Compliance Order.
- 32. Cooperation under this MOU will be provided insofar as reasonable, appropriate, and permissible without prejudice to the proper performance of the Authority's tasks and is without prejudice to the tasks and responsibilities of the NCAs under EU and national laws.<sup>10</sup>

### **Article III: Scope of Consultation, Cooperation, and Exchange of Information**

#### **General**

- 33. The Authorities recognise the importance of close communication and cooperation concerning Covered Firms in respect of their Covered Activities and intend to consult regularly, as appropriate, regarding:
  - a. General supervisory and oversight issues or other related developments; including material events and market developments;
  - b. Issues relevant to the operations, activities, and regulation of Covered Firms in relation to their Covered Activities;
  - c. The operation of a Substituted Compliance Order and this MOU, including:
    - i. the ongoing comparability of Laws and Regulations;

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<sup>10</sup> For the purposes of this MOU, the Authorities acknowledge that: (i) staff from the NCAs and where appropriate the National Central Banks (NCBs) acting in an official capacity as a member of an SSM supervisory team or an SSM on-site inspection team; (ii) staff from the NCAs and where appropriate NCBs performing activities related to the application and execution of ECB supervisory tasks within the SSM; or (iii) staff from the NCBs and NCAs acting in an official capacity as a member of the ECB Governing Council or the SSM Supervisory Board on matters relating to prudential banking supervision, will be treated as staff members of the ECB and will be subject to the confidentiality provisions of this MOU to the extent that they are involved in the supervisory tasks of the ECB under the SSM Regulation relevant to the oversight of the Covered Activities of Covered Firms. Otherwise, NCAs will be treated pursuant to Paragraph 53 of this MOU and NCBs will otherwise be treated as third-party entities under this MOU.

- ii. the operation of the Enforcement Programme and Supervisory Examination Programme for Covered Firms and general supervisory, enforcement or other developments concerning Covered Firms; and
  - iii. the ongoing compliance of Covered Firms with the terms of a Substituted Compliance Order and Laws and Regulations; and
- d. Any other areas of mutual interest.
34. The Authorities intend to cooperate in the event that a Covered Firm, particularly one whose failure would likely be of systemic importance, experiences, or is threatened by, a potential financial crisis or any other Emergency Situation.

### **Ongoing Notification**

35. In order to fulfil its regulatory mandate and responsibilities or to ensure compliance with a Substituted Compliance Order, the SEC requests (such request making it a Requesting Authority for this purpose) from the ECB, and the ECB intends to provide to the SEC on an ongoing basis without the need for further requests for assistance: (i) Firm Information for each SEC-registered Covered Firm identified by the SEC pursuant to Paragraph 58 of this MOU; and (ii) Regulatory Change Information, as follows:
- a. In the case of information within paragraph (i) of the definition of Firm Information, through periodic updates, at least on an annual basis, between the ECB and the SEC;
  - b. In the case of information within paragraph (ii) of the definition of Firm Information, promptly after the ECB concludes that the material event does not ensure a sound management and coverage by the Covered Firm of its risks related to its Covered Activities;
  - c. In the case of information within paragraph (iii) of the definition of Firm Information, where practicable, prior to the public announcement, completion or termination of the action or sanction, and, where impracticable, no later than promptly after the earlier of the public announcement, completion or termination of the action or sanction;
  - d. In the case of information within paragraph (iv) of the definition of Firm Information, where practicable, prior to the public announcement, completion or termination of the action, and, where impracticable, no later than promptly after the earlier of the public announcement, completion or termination of the action;
  - e. In the case of information within paragraph (v) of the definition of Firm Information, without prejudice to and only after the submission of an initial request to the ECB in accordance with Paragraph 37, in a timely manner; and
  - f. In the case of Regulatory Change Information, promptly after the publication of the relevant Regulatory Change Information.

36. As appropriate in the particular circumstances and with respect to Covered Activities, the SEC will endeavour, where practicable and reasonable, to inform the ECB of any material event or market development of which the SEC is aware that could adversely and directly impact one or more Covered Firms and that would be relevant to the fulfilment of the ECB's supervisory mandate.

### **Request-Based Information Sharing**

37. To the extent necessary to supplement ongoing notification, the Requested Authority intends to provide information to the Requesting Authority for the purposes of supervision, oversight and enforcement of the Laws and Regulations of the Requesting Authority with respect to Covered Activities of Covered Firms. Such information may include information relevant to the financial and operational condition of a Covered Firm including the information within paragraph (v) of the definition of Firm Information. It is anticipated that such requests for information generally will relate to information that is not otherwise available to the Requesting Authority.

38. To the extent possible, a request for assistance pursuant to Paragraph 37 should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person(s) identified in Annex A. A request generally should specify:

- 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 applicable Laws and Regulations and, to the extent such information includes personal data, a statement addressing the necessity for processing the personal data to fulfil the purpose of the request; and
- d. The requested time period for reply and, where appropriate, the urgency thereof.

39. The Authorities will make their reasonable best efforts to handle requests for assistance under Paragraph 37 in a timely manner.

40. In Emergency Situations, the Authorities will endeavour to notify each other as soon as practicable of the Emergency Situation and will cooperate as 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 and responses may be made in any form, including orally, provided such communication is confirmed in writing promptly following each request.

### **Periodic Consultations**

41. Representatives of the Authorities may consult periodically, as appropriate, to update each other on their respective functions and regulatory oversight programmes and to discuss issues

of common interest relating to the supervision and oversight of Covered Firms with respect to Covered Activities and the Enforcement Programme and Supervisory Examination Programme, including, but not limited to: contingency planning and crisis management, potential systemic risks, the adequacy of existing cooperation arrangements, and enhancing cooperation and coordination between the Authorities.

#### **Provision of Unsolicited Information**

42. Where an Authority has information, which will assist or enable the other Authority in the performance of its regulatory functions, the Authority may provide such information, or arrange for such information to be provided, on a voluntary basis although no request has been made by the other Authority. The terms and conditions of this MOU will apply to such information if the providing Authority specifies it is provided under this MOU.

#### **Article IV: Direct Requests Made to Covered Firms**

43. None of the provisions contained in this MOU should be construed as a limitation on: (i) the SEC's ability to obtain Books and Records directly from a Covered Firm or conduct an On-Site Inspection of a Covered Firm in accordance with Article V; (ii) the Covered Firm's obligations under U.S. Laws and Regulations, including the obligation to provide its Books and Records directly to the SEC; or (iii) a non-registered Security-Based Swap Entity's obligation to provide an opinion of counsel and certification pursuant to Exchange Act Rule 15Fb2-4(c)(1) regarding the SEC's ability to obtain the Security-Based Swap Entity's Books and Records and conduct On-Site Inspections.
44. None of the provisions contained in this MOU should be construed as a limitation on the Covered Firms' and the ECB's obligations under applicable laws and regulations.

#### **Article V: On-Site Inspections**

45. The Authorities intend to facilitate access to Covered Firms operating in their respective jurisdictions with a view to improving the effectiveness of the oversight of such Covered Firms. Where necessary in order to fulfil its supervisory and oversight responsibilities in connection with Covered Activities, and to review compliance with its Laws and Regulations in connection with Covered Activities, an Authority may conduct On-Site Inspections of Covered Firms located in the jurisdiction of the other Authority, including to inspect, examine, and obtain Books and Records of a Covered Firm directly through such On-Site Inspection. In conducting On-Site Inspections, the Visiting Authority will consult and work collaboratively with the Local Authority and take into account the sovereignty, legal framework, and statutory obligations of the Local Authority.
46. Where practicable and reasonable, the ECB will notify the SEC in advance of planned On-Site Inspections in a relevant SSM Participating Member State and communicate, as appropriate, relevant findings in a timely manner, in instances where the ECB reasonably believes such On-Site Visit would be relevant to the SEC in fulfilling its supervisory mandate and responsibilities in connection with its oversight of Covered Activities of Covered Firms.

## **Article VI: Permissible Uses of Information**

47. The Requesting Authority may use non-public information obtained from the Requested Authority under this MOU for supervision and oversight of Covered Firms and OTC derivatives markets generally, and to seek to ensure compliance with the Laws and Regulations and orders of the jurisdiction of the Requesting Authority with respect to Covered Activities of Covered Firms.
48. The Requesting Authority may use non-public information obtained from the Requested Authority under this MOU for enforcement purposes, including conducting non-public investigations of suspected violations of, ensuring compliance with, and enforcing the Laws and Regulations administered by the Requesting Authority, including for purposes of conducting a public civil or administrative enforcement proceeding. If a Requesting Authority intends to disclose information obtained from the Requested Authority under this MOU for purposes of assisting in a self-regulatory organisation's surveillance and enforcement activities, or assisting in a criminal investigation or prosecution, the Requesting Authority will notify the Requested Authority prior to such use, and will proceed if no objection has been received from the Requested Authority within 14 days. In circumstances that a Requesting Authority determines are urgent, the Requesting Authority will notify the Requested Authority of the urgency and proceed if no objection has been received within a time frame reasonable to the circumstances. Where the Requested Authority objects to the disclosure, the Authorities will consult to discuss the reasons for the objection, and the circumstances, if any, under which the Requested Authority might withdraw the objection. In the event the Requesting Authority notifies the Requested Authority of any legally enforceable demand for – or any required disclosure of – non-public information furnished under this MOU, the Requesting Authority will follow the measures referred to in Paragraph 55. Nothing in this MOU, however, will impede the Requesting Authority's ability to enforce its laws and regulations, including as contemplated under a Substituted Compliance Order.
49. The Requesting Authority may use information obtained from a Covered Firm for the legitimate and specific purpose of assisting it in fulfilling its regulatory mandate and responsibilities. To the extent a Requesting Authority determines that non-public information obtained from a Covered Firm under this MOU needs to be used for enforcement purposes, the Requesting Authority will notify the Requested Authority where practicable.

## **Article VII: Confidentiality of Information and Onward Sharing**

50. Except for disclosures in accordance with this MOU, including permissible uses of information under Article VI, each Authority will keep confidential, to the extent permitted by law, non-public information shared with it by the other Authority under this MOU, including requests made under this MOU, the contents of such requests, responses and related communications or consultations between the Authorities, and any other matters arising under this MOU and, except as provided in Article VI and Paragraphs 51 to 53 and 55, will not disclose non-public information received from the other Authority under this MOU to any third party for any purpose unless the Requesting Authority has obtained the

prior written consent of the Requested Authority. The Requested Authority will take into account the urgency of the request to provide such consent in a timely manner.

51. 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, the Authorities will consult to discuss the reasons for withholding consent and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
52. To the extent necessary for the fulfilment of its supervisory or regulatory mandate, as applicable, it may become necessary for the Requesting Authority to share non-public information obtained from the Requested Authority under this MOU with a Governmental Entity. In these circumstances and to the extent permitted by law:
  - a. The Requesting Authority seeking to share information with a Governmental Entity will notify the Requested Authority; and
  - b. Prior to sharing the non-public information with a Governmental Entity, the Requesting Authority will:
    - i. Indicate the purpose for which the information is passed to the Governmental Entity; and
    - ii. Receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
      - a. the Governmental Entity has confirmed that it performs a function similar to a function of the Requested Authority or regulates or supervises securities, derivatives, banking, insurance or other financial services and/or entities;
      - b. the Governmental Entity will maintain a level of confidentiality in respect of the non-public information it has received at least equivalent to that which the Requesting Authority is subject to pursuant to this MOU (including, where relevant, restrictions or conditions imposed on it by the Requested Authority);
      - c. the non-public information will be used for supervisory and oversight of Covered Activities and in a manner consistent with this Article VII;
      - d. the Governmental Entity will not use information received in accordance with this MOU in an enforcement proceeding; and
      - e. to the extent permitted by law, the non-public information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority.

53. The ECB represents that it may be required by Article 6(2) of the SSM Regulation to disclose on an ongoing basis, confidential information with the NCAs due to the division of responsibilities between the ECB and the NCAs within the SSM. The ECB further represents that providing notice to the SEC before each such disclosure could prove burdensome with respect to its onward sharing obligations under the SSM Regulation. The ECB may therefore disclose confidential information to the NCAs without the prior consent of the SEC when required by the SSM Regulation, subject to the following conditions:
- a. Before disclosing confidential information to an NCA pursuant to this paragraph, the ECB will obtain assurances from the NCA receiving such confidential information that the NCA will not disclose or otherwise share the confidential information except as authorised by the ECB after the ECB obtains the SEC's written consent; and
  - b. The ECB will provide periodic updates to the SEC regarding any information shared with an NCA pursuant to this paragraph.
54. The Authorities intend that, to the extent permitted by law, the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality.
55. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for – or any required disclosure of – non-public information furnished under this MOU. Prior to compliance with the demand or required disclosure, the Requesting Authority will assist in preserving the confidentiality of the information by taking all appropriate legal measures including asserting all appropriate legal exemptions or privileges with respect to such information as may be available and, where possible, will consult with the Requested Authority in any actions or proceedings which seek to safeguard the confidentiality of the information.
56. The Requesting Authority will establish and maintain such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any non-public information obtained from the Requested Authority. Such safeguards will include restricting access to non-public information from the Requested Authority to only those staff and contractors of the Requesting Authority who have a need to know the information in the performance of their official work duties except as authorised pursuant to this MOU.
57. The Requesting Authority will promptly notify the Requested Authority in the event of an unauthorised disclosure of non-public information obtained from the Requested Authority, including, where possible, identifying the recipient(s) of information.

#### **Article VIII: Notices Regarding Covered Firms**

58. Promptly after the issuance of a Substituted Compliance Order, or amendment thereto or revocation thereof, the SEC intends to provide the ECB notice of such issuance, amendment, or revocation, including identifying the Covered Firms that are eligible for substituted compliance under a Substituted Compliance Order. The SEC may notify the ECB from time to time of any Covered Firm that the SEC becomes aware will or may apply substituted compliance pursuant to such Substituted Compliance Order, and any such entity thereafter will be included in the ongoing notification provisions of Paragraph 35. The SEC will notify the ECB of any Covered Firm that it believes no longer qualifies for substituted compliance pursuant to such Substituted Compliance Order, and any such entity thereafter will not be included in the ongoing notification provisions of Paragraph 35.
59. In the event of (i) the withdrawal of authorisation of a Covered Firm by the ECB; or (ii) the determination by the SEC that a Covered Firm does not comply with, or is otherwise no longer subject to, the Substituted Compliance Order, such Covered Firm will no longer be eligible for substituted compliance under the terms of the Substituted Compliance Order or this MOU.

#### **Article IX: Amendments**

60. This MOU may be amended by the written consent of the Authorities.
61. The Authorities may periodically review the functioning and effectiveness of this MOU with a view to, among other purposes, adjusting the scope or operation of this MOU as necessary.

#### **Article X: Execution**

62. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by both Authorities.

#### **Article XI: Termination**

63. Either Authority may terminate this MOU by delivering written notice to the other Authority of its intention to terminate. An Authority that delivers such a notice may withdraw it by written notice to the other Authority delivered not more than 30 days after delivery of the termination notice.
64. If an Authority gives and does not withdraw notice pursuant to Paragraph 63 above, (i) this MOU will terminate nine months after the expiration of 30 days following the delivery of such notice (hereinafter the 'Transition Period'); and (ii) cooperation will continue with respect to all requests for assistance that were made under this MOU before the expiration of the Transition Period until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Articles VI and VII.

#### **Article XII: Publication**

65. Except for the information contained in Annex A, the Authorities agree that this MOU, once it has taken effect, may be made publicly available in full or in part by either Authority in any manner, including electronic publication on an Authority's website.

Signed this 16th day of August, 2021.

For the U.S. Securities and Exchange Commission

Signature

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Gary Gensler

Chair

For the European Central Bank

Signature

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Andrea Enria

Chair of the Supervisory Board of the ECB

For the European Central Bank

Signature

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Frank Elderson

Vice-Chair of the Supervisory Board of the ECB

## **Annex A: Contact Persons**

**Redacted**