

**Memorandum of Understanding**



**European Securities and Markets Authority**

and



**ASIC**  
Australian Securities &  
Investments Commission

**Australian Securities and Investments Commission**

and



**RESERVE BANK  
OF AUSTRALIA**

**Reserve Bank of Australia**

## **Memorandum of Understanding between ESMA, ASIC and RBA Related to CCPs Established in Australia**

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

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

Whilst ESMA has direct supervision and enforcement powers over the Covered CCPs under Articles 25f, 25i to 25m and 25p of EMIR, ESMA agrees, in fulfilling its regulatory mandate, to establish a framework for cooperation with the Australian Securities and Investments Commission ("ASIC") and the Reserve Bank of Australia ("RBA") as the relevant primary authorities accountable for the resilience of the Covered CCPs in Australia. ESMA's oversight of such CCPs generally would focus on the potential risks related to their interlinkages to the EU financial system, and the risks that this could pose to the financial system of the EU or one of its Member States.

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

Under Article 25(6) of EMIR, the European Commission has adopted the Commission Implementing Decision (EU) 2014/755/EU<sup>2</sup> ("Equivalence Decision") determining that i) the legal and supervisory arrangements of Australia ensure that Covered CCPs comply on an ongoing basis with legally binding requirements which are equivalent to the requirements of EMIR (provided that the Covered CCPs fulfil the Equivalence Conditions, where relevant), ii) Covered CCPs are subject to effective supervision and enforcement in Australia on an ongoing basis, and iii) the legal framework of Australia provides for an effective equivalent system for the recognition of CCPs.

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

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<sup>1</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; OJ L 201, 27.7.2012, p. 1.

<sup>2</sup> Commission Implementing Decision of 30 October 2014 on the equivalence of the regulatory framework of Australia for central counterparties to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, OJ L 311, 31.10.2014, p. 66.

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

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

Regulation (EU) No 2019/2099 (“EMIR 2.2”)<sup>3</sup> enhanced the EU framework for recognition and supervision of third-country CCPs and expanded ESMA’s role and powers. In this regard and for the purposes of the recognition, ESMA determines the systemic importance of a third-country CCP applying or having applied for recognition, or that is already recognised, in accordance with the criteria set out in 25(2a) of EMIR, as further specified by Commission Delegated Regulation (EU) 2020/1303<sup>4</sup>. Based on the assessment of these criteria ESMA determines whether the third-country CCP i) is not or is not likely to become systemically important (a “Tier 1 CCP”); or ii) is or is likely to become systemically important (a “Tier 2 CCP”), subject to periodic reviews as per Article 25(5) of EMIR.

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

This MoU is an arrangement between ASIC, the RBA and ESMA and not a collective arrangement with other European Union authorities. As such, it will not impact any arrangements which may be agreed directly between other European Union authorities and either or both of ASIC and the RBA.

This MoU replaces the Memorandum of Understanding dated on or about 27 November 2014 between ESMA, ASIC and the RBA related to ESMA’s monitoring of the on-going compliance with recognition conditions by CCPs established in Australia.

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<sup>3</sup> Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs, OJ L 322, 12.12.2019, p. 1–44

<sup>4</sup> Commission Delegated Regulation (EU) 2020/1303<sup>4</sup> of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States, OJ L 305, 21.9.2020, p. 7–12

## Article 1

### Definitions

For the purpose of this MoU:

- a) “Authority” means a signatory to this MoU or any successor thereto;
- b) “Books and Records” means documents, electronic media, and books and records within the possession, custody and control of, and other information about, a Covered CCP;
- c) “Central Counterparty or CCP” means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer;
- d) “Covered CCP” means a CCP licensed under s824B(1) of the Corporations Act 2001 (Cth) to operate a clearing and settlement facility in Australia that:
  - i. has applied or is applying to ESMA for recognition as a third-country CCP pursuant to Article 25 of EMIR;
  - ii. is already recognised by ESMA as a third-country CCP, pursuant to Article 25 of EMIR.

For clarity, a Covered CCP does not include a CCP which is licenced under s824B(2) of the Corporations Act to operate an overseas clearing and settlement facility in Australia;

- e) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP, including developments in financial markets, which may have an adverse effect on market liquidity and the stability of the financial system in the EU or one of its Member States;
- f) “Governmental Entity” means:
  - i. If the Requesting Authority is ASIC – the Australian Department of the Treasury and the Australian Prudential Regulation Authority, which have responsibilities and mandates in relation to the regulation of the Australian financial system and entities in the financial system, any Minister assigned responsibility for ASIC or its functions, and any Australian Parliamentary committee with ASIC oversight functions;
  - ii. If the Requesting Authority is the RBA – the Australian Department of the Treasury and the Australian Prudential Regulation Authority, which have responsibilities and mandates in relation to the regulation of the Australian financial system and entities in the financial system, any Minister assigned responsibility for the RBA or its functions, and any Australian Parliamentary committee with RBA oversight functions; and

- iii. If the Requesting Authority is ESMA:
- (a) the competent authority of a Member State in the European Union in which the Covered CCP provides or intends to provide clearing services and which has been selected by the Covered CCP;
  - (b) the competent authorities responsible for the supervision of the clearing members of the Covered CCP that are established in the three Member States, of the European Union, which make or are anticipated by the Covered CCP to make the largest contributions to the default fund of the Covered CCP referred to in Article 42 of EMIR on an aggregate basis over a one-year period;
  - (c) the competent authorities responsible for the supervision of trading venues located in the European Union, served or to be served by the Covered CCP;
  - (d) the competent authorities supervising CCPs established in the European Union with which the Covered CCP has established interoperability arrangements;
  - (e) the relevant members of the European System of Central Banks (ESCB) of the Member States, of the European Union, in which the Covered CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs established in the European Union with which the Covered CCP has established interoperability arrangements;
  - (f) the central bank(s) of issue of any of the EU currencies of the financial instruments cleared or to be cleared by the Covered CCP ("CBI");
  - (g) each of the members, except for the chair and the two independent members who are staff of ESMA, of the third-country CCP college described in Article 25c of EMIR in their legal capacity as members of the college and for purposes of their college responsibilities with regard to a Covered CCP.
- g) "Laws and Regulations" means, in relation to ESMA, applicable European Union legislation within ESMA's scope of action as set out in Article 1(2) of Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC<sup>5</sup>, and, in relation to ASIC and the RBA, the

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<sup>5</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. 84–119

Corporations Act 2001, Corporations Regulations 2001, Australian Securities and Investments Commission Act 2001, Reserve Bank Act 1959, Reserve Bank Regulation 2016, legislative instruments made by the RBA and any other applicable national laws, regulations and rules in force in Australia from time to time;

- h) "Local Authorities" means ASIC and the RBA;
- i) "MoU" means this Memorandum of Understanding;
- j) "On-site Visits" means any regulatory visit by ESMA to the premises of a Covered CCP located in Australia, including inspection of Books and Records;
- k) "Person" includes a natural person, unincorporated association, partnership, trust, investment company or corporation and may be a Covered CCP;
- l) "Recognition Conditions" means the conditions set out in Article 25(2) of EMIR;
- m) "Requested Authority" means the Authority to whom a request is made under this MoU; and
- n) "Requesting Authority" means the Authority making a request under this MoU.

## **Article 2**

### **General provisions**

1. With respect to Covered CCPs, the Authorities affirm a commitment to cooperate in the context of one another's regulatory regime and supervisory practices to the greatest extent appropriate and permitted by applicable Laws and Regulations. In the fulfilment of its responsibilities and objectives, ESMA acknowledges the Local Authorities' roles as the relevant primary regulators of the Covered CCPs and will exercise its supervisory and enforcement powers as applicable for Tier 1 CCPs and defined under Articles 25f, 25i to 25m and 25p of EMIR. ESMA will focus generally on risks related to interlinkages to the EU or Member States' financial systems, recognising that the Local Authorities remain accountable in Australia for the resilience of the Covered CCPs under its supervision.
2. This MoU addresses the requirements established in Article 25(2)(c) of EMIR, which requires the establishment of cooperation arrangements as a precondition for recognition by ESMA of the Covered CCPs to provide clearing services to clearing members or trading venues established in the EU and intends to set forth practical arrangements and mechanisms to facilitate the exercise by ESMA of certain of its powers and duties under EMIR in line with the applicable Laws and Regulations.
3. This MoU does not cover cooperation with regards to CCPs established in the European Union because ESMA does not have direct supervisory powers in respect of such CCPs. For the avoidance of doubt, this MoU does not cover, in particular, cooperation

in respect of CCPs established in the European Union for which ESMA is a member of the supervisory college.

4. This MoU is a statement of intent to consult, cooperate and exchange information in connection with ESMA's assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions, and the corresponding supervisory and enforcement powers of ESMA, as well as with ESMA's monitoring of related regulatory and supervisory developments in Australia. The cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other legal or regulatory requirements applicable to each Authority.
5. This MoU does not create any legally binding obligations, confer any rights or supersede any domestic or EU laws. 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.
6. This MoU is not intended to limit or condition the discretion of an Authority in anyway in the discharge of its regulatory or supervisory responsibilities or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoU does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.
7. The Authorities should, within the framework of this MoU, provide each other with the fullest cooperation permissible under their Laws and Regulations in relation to ESMA's assessment of compliance and monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions, and the corresponding supervisory and enforcement powers of ESMA, as well as to ESMA's monitoring of related regulatory and supervisory developments in Australia. Following consultation, cooperation may be denied:
  - a) Where the cooperation would require an Authority to act in a manner that would violate its Laws and Regulations; or
  - b) On the grounds of national public interest for ASIC and the RBA or of European public interest for ESMA.
8. The Authorities represent that as of the date of this MoU no domestic or EU laws or regulations should prevent them from providing assistance to one another in accordance with the terms of this MoU.
9. The Authorities will endeavour to reach an understanding on the interpretation and application of this MoU. Where the Authorities encounter material differences of views related to the interpretation of a provision of this MoU, they should endeavour to make good faith efforts, through cooperation, consultations and discussions, to resolve such differences in order to reach mutually acceptable resolution of the issues raised.

10. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact persons the details of which are set out in Appendix A. Any modifications to the details of contact persons should be communicated in writing without undue delay to the other Authorities.

### **Article 3**

#### **Scope of cooperation**

1. The Authorities recognise the importance of close communication concerning the Covered CCPs and intend to cooperate regarding:
  - a) general issues, including with respect to regulatory, supervisory, enforcement or other developments concerning the Covered CCPs and Australia;
  - b) issues relevant to the operations, activities and services of the Covered CCPs;
  - c) the coordination of supervisory activities and, where appropriate and consistent with applicable laws and each Authority's mandate, providing assistance in the implementation of enforcement decisions;
  - d) any other areas of mutual interest.
2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CCP, particularly one whose failure likely would be systemically important to an Authority, experiences, or is threatened by, a potential financial crisis or other Emergency Situation. One or both of the Local Authorities should provide notification to ESMA, and ESMA should provide notification to the Local Authorities, consistent with Article 3(4) below and each Authority should keep the other Authorities appropriately informed throughout the Emergency Situation. The Local Authorities should coordinate and lead in an Emergency Situation and should consult with and take account of the views of ESMA to the greatest extent practicable. ESMA should coordinate with the relevant CBI(s) regarding an Emergency Situation of a Covered CCP and any emergency measures that the CBI may consider appropriate.
3. Cooperation will be most useful in circumstances where issues of regulatory, supervisory or enforcement concern may arise, including but not limited to:
  - a) the initial application of a Covered CCP for recognition in the European Union pursuant to Article 25 of EMIR and the periodic reviews of its recognition pursuant to Article 25(5) of EMIR;
  - b) ESMA's assessment of compliance and monitoring of the ongoing compliance by a Covered CCP with the Recognition Conditions;
  - c) the tiering determination of a Covered CCP by ESMA pursuant to Article 25(2a) of EMIR;



- d) changes in a Covered CCP's internal rules, policies and procedures that could affect the way in which the Covered CCP complies with any Recognition Conditions;
- e) regulatory, supervisory or enforcement actions or approvals taken by a Local Authority or ESMA in relation to a Covered CCP, including changes to the relevant obligations and requirements to which the Covered CCPs are subject that may impact the Covered CCPs' continued compliance with the Recognition Conditions; and
- f) changes to regulatory status or requirements that could result in a change in the regulatory status of, relief granted to, or supervisory treatment of a Covered CCP and potentially could disrupt cross-border clearing arrangements.

4. *Notification.* The Authorities shall seek to inform each other as soon as possible of:

- a) any known material event that could adversely impact the financial or operational stability of a Covered CCP, including:
  - i. where the Covered CCP is deemed to be in breach of the conditions of any authorisation or recognition, or of any Laws and Regulations to which it is subject;
  - ii. in an Emergency Situation, general information on the nature of the Emergency Situation and any action taken or likely to be taken as far as known to the Authority including, e.g., actual or prospective use of the Covered CCP's default protections or recovery plans, or measures taken or plans to address the default or potential default of a clearing member or clearing participant;
- b) enforcement or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any authorisation or recognition concerning or related to a Covered CCP and which may have a material effect on the Covered CCP;
- c) any permission or approval granted to a Covered CCP to provide clearing services to clearing members, trading venues or, when known to the Covered CCP, clients established in the European Union, including in respect of branches of entities established in the European Union;
- d) in respect of notification by ESMA to the Local Authorities, any request by ESMA to a Covered CCP to observe a measure that ESMA has adopted to ensure compliance with the Recognition Conditions or to cease a practice that ESMA determines is contrary to the Recognition Conditions;
- e) any material extension of the range of activities and services that a Covered CCP provides with respect to current or new asset classes or current or new European Union trading venues;

- f) significant changes to risk models and parameters of a Covered CCP;
- g) changes in the client account structure of a Covered CCP;
- h) changes in the use of payment systems by a Covered CCP that substantially affect the European Union; and
- i) material changes to the Laws and Regulations to which the Covered CCPs are subject.

The information to be provided by an Authority pursuant to this paragraph will refer to the Covered CCPs authorised or recognised by that Authority. The determination of what constitutes “material event”, “adversely impact”, “material effect”, “material extension”, “significant changes”, “substantially affect” or “material changes” will be left to the reasonable discretion of the Authority providing the information.

5. *Exchange of Written Information.* Each Authority, upon written request, intends to provide the other Authorities with assistance in obtaining information not otherwise available to the Requesting Authority and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with the Laws and Regulations to which the Covered CCPs are subject, provided that the Requested Authority has or is authorised to collect such information. Such requests shall be made pursuant to Article 4 of this MoU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimising administrative burdens.

The information covered by this paragraph includes without limitation:

- a) information that would assist ESMA in assessing that a Covered CCP complies with the Recognition Conditions, both in the context of an initial recognition and periodic reviews of recognition, and, thereafter, on an ongoing basis;
- b) information that would assist the Requesting Authority in verifying that a Covered CCP complies with the relevant obligations and requirements of the Laws and Regulations of the Requesting Authority;
- c) information that would assist ESMA in verifying compliance with or enforcement of its request to a Covered CCP to observe a measure that ESMA has adopted to ensure compliance with the Recognition Conditions or to cease a practice that ESMA determines is contrary to the Recognition Conditions;
- d) information that would assist the Requesting Authority in understanding changes to the relevant obligations and requirements to which the Covered CCPs are subject under the Laws and Regulations of the Requested Authority;
- e) information relevant to the financial and operational condition of a Covered CCP, which might include periodic reports submitted directly by a Covered CCP to the Requested Authority;

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

## **Article 4**

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

1. To the extent possible, a request for written information pursuant to Article 3(5) should be made in writing (which may be transmitted electronically) and addressed to the relevant contact person identified in Appendix A. A request generally should specify at least the following:
  - a) the information sought by the Requesting Authority;
  - b) a concise description of the matter that is the subject of the request;
  - c) the purpose for which the information is sought, including the Laws and Regulations applicable to the activity;
  - d) to whom, if anyone, including any Governmental Entity onward disclosure of information is likely to be necessary and the reason for any such disclosure; and
  - e) the desired time period for reply and, where appropriate, the urgency thereof.

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

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

2. In Emergency Situations, the Authorities shall endeavour to notify each other of the Emergency Situation and communicate information between each other as deemed appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

## **Article 5**

### **On-site Visits**

1. ESMA does not intend to conduct any On-site Visits of the Covered CCPs as part of its assessment of compliance and monitoring of the ongoing compliance by Covered CCPs with the Recognition Conditions, since under Article 25(6) of EMIR the European Commission has adopted the Equivalence Decision.
2. Given that ESMA, in respect of Covered CCPs, relies as appropriate on the supervision and enforcement capabilities of the Local Authorities, which supervise and enforce compliance with the applicable Laws and Regulations of the Local Authorities, On-site Visits by ESMA officers will only be considered in exceptional circumstances.
3. In such exceptional circumstances, the Authorities should discuss and reach understanding on the terms regarding an On-site Visit by ESMA officers, in particular in determining the respective roles and responsibilities of the Authorities. ESMA will act in accordance with the following procedure before conducting an On-site Visit:
  - a) ESMA will consult the Local Authorities with a view to reaching an understanding on the intended timeframe for, and the purpose and scope of, any On-site Visit. Each Local Authority may, in its discretion, accompany or assist the visiting ESMA officials during the On-site Visit.
  - b) When establishing the scope of any proposed On-site Visit by ESMA officials, ESMA will consider the supervisory activities of the Local Authorities given ESMA's reliance as appropriate on the supervision and enforcement capabilities of the Local Authorities in respect of the Covered CCPs and will consider any information that was made available or is capable of being made available by the Local Authorities.
  - c) The Local Authorities will assist ESMA in reviewing, interpreting and analysing the contents of public and non-public Books and Records and obtaining information from directors and senior management of a Covered CCP.

## **Article 6**

### **Permissible Uses of information**

1. The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of ensuring, monitoring or assessing compliance by a Covered CCP with the Laws and Regulations of the Requesting Authority.
2. The Authorities recognise that while information is not to be gathered under the auspices of this MoU primarily for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement of the Laws and Regulations

applicable to the Covered CCP. In such a case the Requesting Authority will inform in advance the Requested Authority and allow the Authority to make any representations with reference to the proposed use of the information. Nothing in this MoU, however, shall impede the Requesting Authority's ability to enforce its Laws and Regulations or to assist in civil, administrative and criminal proceedings.

3. Before using non-public information furnished under this MoU for any purpose other than that stated in Article 6(1) and 6(2), the Requesting Authority must obtain the written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed. For the avoidance of doubt, regarding confidentiality and onward sharing of information the Authorities will act in manner consistent with Article 7 of this MoU.
4. If an Authority ("Receiving Authority") receives, via a party that is not a signatory to this MoU, non-public information originally provided by the other Authority ("Disclosing Authority") that is related to the Disclosing Authority's supervision and oversight of a Covered CCP and that the Receiving Authority is aware was obtained by the third party from the Disclosing Authority on a confidential basis, the Receiving Authority will use and treat the information in accordance with the terms of this MoU.
5. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered CCP.

## **Article 7**

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

1. Except as provided in Article 7(2)-(4) or pursuant to a legally enforceable demand, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.
2. Each Local Authority may share non-public information obtained under this MoU with the other Local Authority so long as that other Local Authority uses and treats that information in accordance with this MoU.
3. As required or authorised by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MoU with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
  - a) The Requesting Authority intends to notify the Requested Authority; and

- b) Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
    - i. The Governmental Entity has confirmed that it requires the information for a purpose of enabling it to fulfil its responsibilities and mandates as described within article 1; and
    - ii. The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority,
  - c) Article 7(3)(b) would not apply where the Requesting Authority shares non-public information in response to a request or requirement from an Australian Parliamentary committee, in which case the Requesting Authority will request that committee to treat the information confidentially.
4. Except as provided in Article 7(2), (3), (5) and where disclosure is otherwise required by law, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
  5. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information that has been furnished under this MoU. When complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
  6. The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.
  7. The Authorities acknowledge that nothing in this Article prevents an Authority from disclosing information it receives directly from a Covered CCP.

## **Article 8**

### **Personal Data**

The Administrative Arrangement for the transfer of personal data (AA) between authorities in the European Economic Area (EEA) and non-EEA authorities sets forth certain safeguards for the transfer of personal data as defined therein. As signatories to the AA, ESMA and ASIC acknowledge that they will act consistently with the AA with respect to the transfer of personal data between them.

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

The Authorities will also take into account whether an adequacy decision was adopted by the European Commission for transfers of personal data to the respective jurisdiction.

## **Article 9**

### **Successor authorities**

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of the MoU shall apply to the successor authority or authorities performing those relevant functions, such successor authority or authorities shall become a signatory or signatories to this MoU without the need for any further amendment to this MoU, and notice will be provided to the other Authorities. This will not affect the right of any Authority to give written notice as provided in Article 12(2) that it no longer wishes to be a signatory to this MoU if it wishes to do so.

## **Article 10**

### **Amendments**

The Authorities intend to periodically review the functioning and effectiveness of cooperation arrangements between the Authorities including in consideration of changes in the regulatory status of, relief granted to, or supervisory treatment of one or more Covered CCPs or in the relevant regulatory or supervisory regime in either jurisdiction.

This MoU may be amended with the written consent of all signatories.

## **Article 11**

### **Taking Effect of the MoU**

This MoU will take effect on the date that it is signed by the Authorities, and, with effect from such date, will terminate and substitute for the Memorandum of Understanding related to ESMA's Monitoring of the Ongoing Compliance with Recognition Conditions by Central Counterparties established in Australia entered into between the Authorities and dated 27-November 2014.

## **Article 12**

### **Termination**

1. This MoU will remain operative until terminated or substituted.
2. If an Authority wishes to no longer be a signatory to this MoU, it shall provide thirty (30) calendar days prior written notice to the other Authorities.
3. If an Authority gives such notice, this MoU will be terminated with effect from the date that is 30 calendar days after the provision of that notice (or such other date agreed by the Authorities) and the Authorities will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MoU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance.
4. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in the manner described under Articles 6 and 7.
5. If the MoU is terminated without being substituted in a reasonable timeframe by an equivalent arrangement, pursuant to Article 25 of EMIR, ESMA will consider the withdrawal of recognition of the Covered CCPs.



**Signatures**

Date: 9 February 2022

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| <p>European Securities and Markets Authority</p>  <p>Verena Ross, Chair</p>                         | <p>Australian Securities and Investment Commission</p>  <p>Joseph Longo, Chair</p> |
| <p>Reserve Bank of Australia</p>  <p>Michele Bullock<br/>Assistant Governor (Financial System)</p> |  |

## Appendix A

### Contact Persons

| European Securities and Markets Authority  | Australian Securities & Investments Commission  | Reserve Bank of Australia   |
|--|---|---|
| <p>Name: Mr. Klaus Löber, Chair of the CCP Supervisory Committee</p> <p>Telephone: +33158365195</p> <p>Email: <a href="mailto:Klaus.Loerber@esma.europa.eu">Klaus.Loerber@esma.europa.eu</a></p>                         | <p>Name: Senior Manager, International</p> <p>Telephone: +61 3 9280 3332</p> <p>Email: <a href="mailto:international@asic.gov.au">international@asic.gov.au</a></p> <p>Postal address: GPO Box 9872, Brisbane QLD 4001, Australia</p> | <p>Name: Adam Cagliarini, Deputy Head (FMI), Payments Policy</p> <p>Telephone: +61 2 9551 8805</p> <p>Email: <a href="mailto:cagliarinia@rba.gov.au">cagliarinia@rba.gov.au</a></p>               |
| <p>Name: Ms. Nicoletta Giusto, Independent Member of the CCP Supervisory Committee</p> <p>Telephone: +33158365142</p> <p>Email: <a href="mailto:Nicoletta.Giusto@esma.europa.eu">Nicoletta.Giusto@esma.europa.eu</a></p> | <p>Name: Dodie Green Senior Manager, Market Infrastructure</p> <p>Telephone: +61 (0)478 465 777</p> <p>Email: <a href="mailto:dodie.green@asic.gov.au">dodie.green@asic.gov.au</a></p>  | <p>Name: Matt Gibson, Senior Manager, FMI – Domestic and Payments, Payments Policy</p> <p>Telephone: +61 2 9551 8697</p> <p>Email: <a href="mailto:gibsonm@rba.gov.au">gibsonm@rba.gov.au</a></p> |
| <p>Name: Ms. Froukelien Wendt, Independent Member of the CCP Supervisory Committee</p> <p>Telephone: +33158365110</p> <p>Email: <a href="mailto:Froukelien.Wendt@esma.europa.eu">Froukelien.Wendt@esma.europa.eu</a></p> |   |   |

## **Appendix B**

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

1. Pursuant to undertakings contained in this MoU, ESMA may share, as set out in Article 7(3) of the MoU, non-public information obtained from a Local Authority under the MoU with certain Governmental Entities. Where a CBI, as defined in Article 1(f)(iii)(f) of the MoU, seeks information on a Covered CCP not otherwise provided to ESMA, the CBI may request such information through consultation with ESMA and submission of a written request by ESMA to a Local Authority pursuant to Article 4(1) of the MoU.
2. The information that may be requested by a CBI includes:
  - a) information concerning financial instruments denominated in the EU currency of the CBI that are cleared or to be cleared by the Covered CCP; and
  - b) information in connection with the CBI addressing an Emergency Situation, as defined in Article 1(e) of the MoU, in coordination with ESMA as contemplated by Article 3(2) of the MoU.
3. Pursuant to Article 7(3)(b) of the MoU and prior to sharing any non-public information with a CBI, ESMA will provide the Requested Authority with adequate assurances by the CBI concerning the CBI's use and confidential treatment of the information.
4. In a manner consistent with Article 3(5) of the MoU, requests will be made with the goal of minimising administrative burdens. The Requested Authority will assess any request on a case-by-case basis to determine whether the information can be provided (either in part or in whole) consistent with the undertakings contained in this MoU and in accordance with applicable Laws and Regulations as defined in relation to the Local Authorities in Article 1(g) of the MoU.