

**Memorandum of Understanding Related to ESMA’s Monitoring of
the Ongoing Compliance with Recognition Conditions by CCPs
established in New Zealand**

European Securities and Markets Authority (“ESMA”)



Reserve Bank of New Zealand (“RBNZ”)



Financial Markets Authority (“FMA”)



In view of central counterparties ("CCPs") established in New Zealand having applied to the European Securities and Markets Authority ("ESMA") for recognition as CCPs, pursuant to Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") ("Covered CCPs"), the Reserve Bank of New Zealand and the Financial Markets Authority ("The Local Authority[ies]") and ESMA have reached this Memorandum of Understanding ("MoU") regarding arrangements for cooperation related to ESMA's monitoring of the on-going compliance by the Covered CCPs with the recognition conditions set out in Article 25 of EMIR (the "Recognition Conditions").

Under Article 25(6) of EMIR, the European Commission has adopted DECISION (EU) 2016/2274 determining that the legal and supervisory arrangements of New Zealand ensure that Covered CCPs comply with legally binding requirements which are equivalent to the requirements of EMIR, that Covered CCPs are subject to effective supervision and enforcement in New Zealand on an on-going basis, and that the legal framework of New Zealand provides for an effective equivalent system for the recognition of CCPs under the New Zealand legal regimes of third countries.

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

Therefore, the purpose of this MoU is two-fold, namely to 1) ensure the fulfilment of the condition set out in Article 25(2)(c) of EMIR, *i.e.*, that cooperation arrangements have been established as regards the Covered CCPs; and 2) provide ESMA with adequate tools to monitor the on-going compliance by the Covered CCPs with the Recognition Conditions.

This MoU is an arrangement between the Local Authority[ies] 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 Local Authority[ies].

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) "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) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP;
- e) "ESCB" means the European System of Central Banks;

- f) "Governmental Entity" means:
- i. If the Requesting Authority is Local Authority[/ies], the Reserve Bank of New Zealand and the Financial Markets Authority; and
 - ii. If the Requesting Authority is ESMA, the authorities identified in Article 25(3) of EMIR, namely;
 - (a) the competent authority of a Member State in which the Covered CCP provides or intends to provide clearing services and which has been selected by the CCP;
 - (b) the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States of the European Union which make or are anticipated by the CCP to make the largest contributions to the default fund of the 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 CCP;
 - (d) the competent authorities supervising CCPs established in the European Union with which interoperability arrangements have been established;
 - (e) the relevant members of the ESCB of the Member States in which the CCP provides or intends to provide clearing services and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;
 - (f) the central banks of issue of the most relevant European Union currencies of the financial instruments cleared or to be cleared.
- 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 and, in relation to Local Authority[/ies], the *[insert name the relevant regulations]*;
- h) "On-site Inspection" means any regulatory visit by ESMA to the premises of a Covered CCP located in the Local Authority's[/ies'] territory, including inspection of Books and Records;
- i) "Person" includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered CCP;
- j) "Requested Authority" means the Authority to whom a request is made under this MoU; and
- k) "Requesting Authority" means the Authority making a request under this MoU.

Article 2

General provisions

1. Pursuant to the regime under EMIR for recognition of third-country CCPs, ESMA does not have direct supervision or enforcement powers over the Covered CCPs and relies on the supervision and enforcement capabilities of the Local Authority[ies].which supervise and enforce compliance with the Local Authority[ies]'s Laws and Regulations.
2. 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 of the supervisory college of which ESMA is a member.
3. This MoU is a statement of intent to consult, cooperate and exchange information in connection with ESMA's monitoring of the On-going compliance by the Covered CCPs with the Recognition Conditions. The cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and other legal or regulatory requirements applicable to each Authority.
4. This MoU does not create any legally binding obligations, confer any rights or supersede any domestic laws. This MoU does not confer upon any Person the right or ability, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU.
5. This MoU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoU does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.
6. The Local Authority[ies] 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 monitoring of the ongoing compliance by the Covered CCPs with the Recognition Conditions. Following notification, 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 the Local Authority[ies] and of European public interest for ESMA.
7. The Authorities represent that as of the date of this MoU no domestic laws or regulations should prevent them from providing assistance to one another.
8. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact persons the details of which are as set out in the Appendix. Any

amendments to the details of contact persons shall be communicated without undue delay to the other Authority.

Article 3

Scope of cooperation

1. The Authorities recognise the importance of close communication concerning the Covered CCPs and intend to cooperate regarding:
 - a) general issues, including with respect to regulatory, supervisory or other developments concerning the Covered CCPs;
 - b) issues relevant to the operations, activities and services of the Covered CCPs; and
 - c) any other areas of mutual interest.
2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CCP, particularly one whose failure likely would be systemically important to an Authority, experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
3. Cooperation will be most useful in circumstances where issues of regulatory concern may arise, including but not limited to:
 - a) the initial application of a Covered CCP for recognition in the European Union pursuant to Article 25 of EMIR;
 - b) changes in a Covered CCP's internal rules, policies and procedures that could affect the way in which the Covered CCP complies with any Recognition Conditions; or
 - c) regulatory or supervisory actions or approvals taken by the Local Authority[/ies] 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.
4. *Notification.* The Authorities shall seek to inform each other as soon as practicable of:
 - a) any known material event that could adversely impact the financial or operational stability of a Covered CCP, including where the Covered CCP is deemed to be in breach of the conditions of any license, registration, authorisation or recognition, or of any Laws and Regulations to which it is subject;
 - b) enforcement or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any license, registration, authorisation or recognition concerning or related to a Covered CCP and which may have a material effect on the Covered CCP;
 - c) in respect of notification by ESMA to the Local Authority[/ies], any permission or approval granted to a Covered CCP to provide clearing services to clearing members, trading venues or, when known to the CCP, clients established in the