

MEMORANDUM OF UNDERSTANDING



**The United States
Securities and Exchange
Commission**



**Commissione Nazionale
per le Società
e la Borsa**

**CONCERNING CONSULTATION, COOPERATION AND
THE EXCHANGE OF INFORMATION
RELATED TO MARKET OVERSIGHT
AND THE SUPERVISION OF COVERED FIRMS**

December 22, 2020

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In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the United States Securities and Exchange Commission ("SEC") and the Commissione Nazionale per le Società e la Borsa ("CONSOB") (jointly, the "Authorities") have reached this Memorandum of Understanding ("MOU") regarding consultation, cooperation and the exchange of information in the supervision and oversight of markets and financial services firms in the United States and Italy. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates in the context of supervising firms within the scope of this MOU, particularly in the areas of: investor protection; promoting the compliance culture of regulated entities that operate on a cross-border basis; maintenance of fair, orderly and efficient securities and derivatives markets; and reducing systemic risk.

ARTICLE I: DEFINITIONS

For purposes of this MOU:

1. "Authority" means:
 - a. In the United States, the SEC; or
 - b. In Italy, CONSOB.
2. "Books and Records" means documents, electronic media, and books and records within the possession, custody, or control of, and other information about, a Covered Firm, and which may include personal data.
3. (a) "Covered Firm" means a Person authorized, designated, qualified, registered, or otherwise regulated by, supervised by or subject to the oversight of, one or both of the Authorities, who conducts investment, securities, derivatives, asset management, securities processing, or banking business or participates in securities or derivatives markets (collectively "financial services business") in either, or both, the United States and Italy.¹

(b) "Covered Firms" may include, but are not limited to, exchanges and other trading venues; brokers or dealers; security-based swap dealers; major security-based swap participants; investment firms; credit institutions that provide investment services or perform investment activities; third country banks and third country firms other than banks; investment advisers;

¹ This includes any person or entity authorized to provide investment services or activities in Italy according to Legislative Decree no. 58 of 24 February 1998 as subsequently amended ("Consolidated Law on Financial Intermediation").

investment fund managers; investment funds or investment companies; transfer agents; Poste Italiane S.p.A.; financial intermediaries; independent financial advisors; financial advisory firms; and other market participants. For purposes of clarity, the list of Covered Firms set forth above is meant to be illustrative of the types of Persons conducting financial services business in the United States and/or Italy as of the effective date of this MOU, and does not limit the Authorities' ability to cooperate under this MOU with regard to the supervision and oversight of other Persons conducting financial services business that may come under their respective jurisdictions in the future.

4. "Emergency Situation" means the occurrence or potential imminent occurrence of an event that could materially impair the financial or operational condition of a Covered Firm.
5. "Governmental Entity" means:
 - a. If the Requesting Authority is the SEC, the U.S. Department of the Treasury, the U.S. Department of Justice, the U.S. Board of Governors of the Federal Reserve System, the U.S. Commodity Futures Trading Commission, the Office of the Comptroller of the Currency, or the Financial Stability Oversight Council; and
 - b. If the Requesting Authority is CONSOB, the Ministero dell'Economia e delle Finanze (Ministry of Economy and Finance) or Banca d'Italia (Central Bank of Italy).
6. "Local Authority" means the Authority in whose jurisdiction a Covered Firm that is the subject of an On-Site Visit is located.
7. "On-Site Visit" means any regulatory visit to the premises of a Covered Firm (as described in Article IV) for the purposes of ongoing supervision and oversight, including the inspection of Books and Records.
8. "Person" means a natural person, unincorporated association, partnership, trust, investment company, corporation or other legal entity. This definition includes Covered Firms.
9. "Requested Authority" means the Authority to which a request is made or which provided information pursuant to this MOU.
10. "Requesting Authority" means the Authority making a request or receiving information pursuant to this MOU.
11. "Visiting Authority" means the Authority conducting an On-Site Visit.

ARTICLE II: GENERAL PROVISIONS

12. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of Covered Firms that conduct financial services business in either, or both, the United States and Italy. 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 legal requirements applicable to each Authority. With respect to cooperation pursuant to this MOU, at the date this MOU is executed, each Authority represents that there are no domestic secrecy, blocking or data privacy laws, or other regulations or legal barriers, which 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. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation, including through mutual assistance in obtaining information related to Covered Firms. The provisions of this MOU are intended to support such informal consultations and formal cooperation, and to facilitate the written exchange of non-public information in accordance with applicable laws. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Firms. A primary goal of this MOU is to foster cooperation and the exchange of information among the Authorities to the benefit of oversight of Covered Firms.

13. This MOU does not create any legally binding obligations, confer any rights or supersede applicable 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 exchange of information under this MOU.
14. 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 the individual responsibilities or autonomy of any Authority. This MOU does not limit the ability of an Authority to take measures not described in this MOU in fulfillment of its supervisory and oversight functions or preclude Authorities from sharing information or documents with respect to Persons that are not Covered Firms but may be subject to regulatory requirements in the United States and in Italy. In particular, this MOU does not limit any right of any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article IV), or obtain information or documents from, any Person subject to its jurisdiction that may be physically located in the jurisdiction of another Authority in accordance with applicable laws.
15. This MOU complements, but does not alter the terms and conditions of:
 - a. The *Memorandum of Understanding* between the SEC and CONSOB (May 3-5, 1993);
 - b. The *MoU concerning consultation, cooperation and the exchange of information related to the supervision of the relevant entities in the asset management industry*, between the SEC and CONSOB, dated July 22, 2013;
 - c. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“IOSCO MMOU”), to which the SEC and CONSOB are signatories, which covers primarily information sharing in the context of enforcement matters;

- d. The *Administrative Arrangement for the transfer of personal data* (“Administrative Arrangement”), to which the SEC (May 10, 2019) and CONSOB (June 7, 2019) are signatories; and
 - e. Any other existing arrangements concerning cooperation in securities matters to which the Authorities are signatories. This MOU is also intended to complement, but does not alter the terms and conditions of the following arrangement concerning cooperation in securities matters as of such time that CONSOB becomes a co-signatory to the arrangement with the SEC, should that occur: the *IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (2016) (“IOSCO EMMOU”), which also covers information-sharing in the context of enforcement investigations.
16. To facilitate communication and cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authority.

ARTICLE III: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION

General

17. The Authorities recognize the importance of close communication concerning Covered Firms and intend to consult regularly, as appropriate, regarding:
- a. General supervisory and oversight issues or other related developments;
 - b. Issues relevant to the operations, activities, and regulation of Covered Firms; and
 - c. Any other areas of mutual supervisory interest.
18. The Authorities recognize in particular the importance of close cooperation 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.
19. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- a. The initial application with an Authority for authorization, designation, qualification, registration or exemption therefrom by a Covered Firm that is authorized, designated, qualified, registered or otherwise regulated by the other Authority, or for the acquisition, disposal or increase of holdings in a Covered Firm;
 - b. The ongoing supervision and oversight of a Covered Firm, including compliance with the laws and regulations in either jurisdiction; and

- c. Regulatory actions or approvals taken in relation to a Covered Firm by an Authority that may materially impact the operations of the Covered Firm in the jurisdiction of the other Authority.

Event-Triggered Notification

20. As appropriate in the particular circumstances, each Authority will endeavor to inform the other Authority promptly, and where practicable and reasonable in advance, or as soon as possible thereafter, of:
- a. Regulatory changes that may have a material impact on the operations, reputation, or activities of a Covered Firm;
 - b. Any material event of which the Authority is aware that could adversely and directly impact a Covered Firm. Such events include the failure of the Covered Firm to satisfy any of its requirements for continued authorization, designation, qualification, registration, or exemption therefrom, where that failure could have an adverse effect in the jurisdiction of the other Authority, as well as any known changes in the ownership, operating environment, operations, financial resources, management, or systems and internal controls of a Covered Firm;
 - c. Regulatory actions or sanctions, including but not limited to the revocation, suspension or modification of relevant authorization, designation, qualification, registration, or exemption therefrom, concerning or related to a Covered Firm; and
 - d. Significant changes in the Authority's rules and regulations or the laws and/or regulations applicable to the Authority that may negatively impact its ability to provide assistance under this MOU.

Request-Based Information Sharing

21. To the extent necessary to supplement informal consultations, each Authority intends to provide assistance to the other Authority for purposes of supervision and oversight of Covered Firms and ensuring compliance with the laws and regulations and carrying out other supervisory and oversight functions of the Requesting Authority, including in obtaining information not reasonably otherwise available to the Requesting Authority. Such requests will be made pursuant to Paragraph 22 of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens. The information covered by this paragraph includes, but is not limited to, the following:

- a. Information responsive to requests from an Authority, or an entity to which an Authority has delegated registration functions, related to the fitness of an applicant for authorization, registration, or exemption therefrom;
 - b. Information relevant to the financial and operational condition of a Covered Firm, including, for example, financial resources, risk management, internal control procedures, capital structure, liquidity and funding profiles, reports of capital reserves, and corporate information;
 - c. Relevant regulatory information and filings that a Covered Firm is required to submit to an Authority, including, for example, interim and annual financial statements and early warning notices; and
 - d. Regulatory reports prepared by an Authority, including, for example: inspection or examination reports, and findings or information drawn from such reports regarding Covered Firms.
22. To the extent possible, a request for assistance pursuant to this Article III should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person(s) identified in Appendix A. A request generally should specify the following:
- a. The information sought by the Requesting Authority;
 - b. A general description of the matter that is the subject of the request;
 - c. The purpose for which the information is sought; and
 - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information in response to the request, as well as any subsequent communication among 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.

23. The Administrative Arrangement sets forth certain safeguards for the transfer of personal data as defined therein (“personal data”). As signatories to the Administrative Arrangement, the Authorities acknowledge that they will act consistent with the Administrative Arrangement with respect to any transfer, processing or sharing of personal data between the Authorities. The Administrative Arrangement shall be annexed to and constitute a part of this MOU. The Authorities agree to apply the safeguards specified in the Administrative Arrangement. When available, the Authorities may transfer personal data pursuant to an applicable adequacy decision (Article 45(3) of the General Data Protection Regulation).
24. In an Emergency Situation, the Authorities will endeavor 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 an Emergency Situation, requests for information and responses may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following each request.

Provision of Unsolicited Information

25. Where an Authority has information which will assist or enable the other Authority in the performance of its supervisory or oversight 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.

Periodic Consultations

26. Representatives of the Authorities may consult periodically, as appropriate, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision and oversight of Covered Firms, 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.

ARTICLE IV: ON-SITE VISITS

27. Where necessary in order to fulfill its supervisory and oversight responsibilities, and to review compliance with its laws and regulations, an Authority may conduct On-Site Visits of Covered Firms located in the territory of the other Authority, including to inspect, examine, and obtain Books and Records of a Covered Firm directly through such On-Site Visit.

28. In case of information to be obtained through On-Site Visits, the Authorities will endeavor to comply with the following procedures before conducting an On-Site Visit in an Authority's jurisdiction:

- a. The Visiting Authority will notify the Local Authority of its intent to conduct an On-Site Visit. The Visiting Authority will consult with the Local Authority on the intended timeframe for, and the purpose and scope of, the On-Site Visit.
- b. The Local Authority will share with the Visiting Authority any relevant reports, or information contained therein, related to inspections, examinations, or compliance reviews it may have undertaken regarding the Covered Firm and the Visiting Authority will take the information provided by the Local Authority into consideration when establishing the scope of its proposed On Site Visit.
- c. The Visiting Authority and the Local Authority intend to assist each other regarding On-Site Visits, including by providing information that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining

information from directors and senior management and employees of a Covered Firm.

- d. The Local Authority may, in its discretion, or at the request of the Visiting Authority, accompany the Visiting Authority during the On-Site Visit and assist in the On-Site Visit.

ARTICLE V: PERMISSIBLE USES OF INFORMATION

29. The Requesting Authority may use non-public information obtained from the Requested Authority under this MOU solely for the purpose of performing its regulatory functions, including but not limited to assessing compliance by a Covered Firm with the laws and regulations of the Requesting Authority.
30. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, a Requesting Authority may want to subsequently use the non-public information provided by the Requested Authority pursuant to this MOU for enforcement purposes. In such cases, the Requesting Authority will use such information in accordance with the use and confidentiality provisions of the IOSCO MMOU and/or, as applicable, another arrangement for enforcement cooperation between the Authorities, such as the IOSCO EMMOU at such time as CONSOB becomes a signatory to the IOSCO EMMOU, as if such information were collected pursuant to a request for assistance under the IOSCO MMOU or other such arrangement. Nothing in this MOU, however, shall impede the Requesting Authority's ability to enforce its laws and regulations.
31. Before using non-public information furnished by the Requested Authority under this MOU for any purpose other than those stated in Paragraphs 29 and 30, the Requesting Authority must first consult with and 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.
32. The restrictions in this MOU do not apply to an Authority's use of information that an Authority obtains directly from a Covered Firm, whether during an On-Site Visit or otherwise.

ARTICLE VI: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

33. Except for disclosures in accordance with this MOU, including permissible uses of information under Article V, each Authority will keep confidential, to the extent permitted by law, non-public information shared with it by the other Authority pursuant to 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.
34. In certain circumstances, not to include the circumstances described in Paragraph 30, it may become necessary for a Requesting Authority to share non-public information obtained from

the Requested Authority with a Governmental Entity in its jurisdiction. In these circumstances and to the extent permitted by law:

- a. The Requesting Authority will notify the Requested Authority; and
- b. Prior to passing on 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 performs a function similar to a function of the Requested Authority or regulates, supervises or investigates securities, derivatives, banking, insurance or other financial services;
 - ii. 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);
 - iii. The non-public information will be used for regulatory purposes in a manner consistent with Articles V and VI; and
 - iv. 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.

35. Except as provided in Article V and Paragraphs 34 and 37, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received from the Requested Authority under this MOU with 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, the 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.

36. 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 confidentiality or privilege applicable to such non-public information.

37. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority shall 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.

38. 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 authorized pursuant to this MOU.
39. The Requesting Authority will promptly notify the Requested Authority in the event of an unauthorized disclosure of non-public information obtained from the Requested Authority, including, where possible, identifying the recipient(s) of information.

ARTICLE VII: TERMINATION

40. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate this MOU. If either Authority gives such notice, the Authorities will consult concerning the disposition of any pending requests for assistance. If consensus cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under this MOU before the effective date of notification until all requests are fulfilled or 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 V and VI.

ARTICLE VIII: AMENDMENTS

41. This MOU may be amended with the written consent of both Authorities.
42. The Authorities will periodically review the functioning and effectiveness of this MOU with a view to, among other purposes, expanding or altering the scope or operation of this MOU as necessary.

ARTICLE IX: EXECUTION OF MOU

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

Signed this 22nd day of December, 2020.



Paolo Savona
Chairman
Commissione Nazionale per le Società e la Borsa

Jay Clayton
Chairman
United States Securities and Exchange
Commission

Signed this 22nd day of December, 2020.

Paolo Savona
Chairman
Commissione Nazionale per le Società e la Borsa



Jay Clayton
Chairman
United States Securities and Exchange
Commission

APPENDIX A

CONTACT PERSONS

In addition to the following contact information, the SEC and CONSOB will exchange confidential emergency contact telephone information.

CONSOB

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