

**Memorandum of Understanding
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**

The United States Securities and Exchange Commission (“SEC”) and the German Bundesanstalt für Finanzdienstleistungsaufsicht (“BaFin”) 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 derivatives entities that operate on a cross-border basis in the United States and Germany (Covered Firms, as defined below). Through this MOU, the Authorities intend to cooperate with each other to support the facilitation, where applicable, of the ability of certain entities to comply with particular U.S. requirements through substituted compliance with certain provisions under the laws of Germany 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’ interests in fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; maintenance of fair, orderly and efficient over-the-counter derivatives markets; capital formation; and mitigation of systemic risk.

The Authorities recognize that BaFin is a part of the Single Supervisory Mechanism, in which significant aspects of the supervision of credit institutions are within the remit of the European Central Bank.

Pursuant to Rule 3a71-6 under the Securities Exchange Act of 1934 (“Exchange Act”), the SEC may, conditionally or unconditionally, issue an order with respect to the financial regulatory system of Germany determining that an SEC-registered security-based swap dealer or major security-based swap participant, or class thereof, may comply with specified German requirements in order to satisfy specified U.S. requirements. Before the SEC may issue such an order, the SEC must determine that specified German 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 German requirements and the effectiveness of the supervisory compliance program administered, and enforcement authority exercised by, authorities in Germany

Further, prior to issuing an order permitting substituted compliance with respect to German requirements, the SEC must have entered into a memorandum of understanding or other arrangement with the relevant German financial regulatory authority or authorities that addresses supervisory and enforcement cooperation and other matters arising under the substituted compliance determination. Accordingly, the purpose of this MOU is to: (i) address the requirements of Exchange Act Rule 3a71-6 for an MOU; and (ii) provide the SEC with the necessary tools to monitor and enforce on-going compliance by Covered Firms with any substituted compliance order and with applicable U.S. federal securities laws and regulations.

Article I: Definitions

For purposes of this MOU:

1. “Authority” means:
 - a. In the United States, the SEC; and
 - b. In Germany, the BaFin.
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 a German Firm.
5. “ECB” means the European Central Bank.
6. “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered Firm.
7. “Enforcement Program” refers to BaFin’s investigation and enforcement of possible violations of German Laws and Regulations by Covered Firms and their employees in the context of Covered Activities. The Enforcement Program includes, but is not limited to: (i) the German Laws and Regulations; (ii) BaFin’s powers, resources and capacity to conduct investigations, charge Covered Firms and their employees in an administrative or judicial tribunal for violations of German Laws and Regulations, and resolve enforcement claims; (iii) internal policies and procedures pursuant to which BaFin conducts its investigations, enforcement actions and resolutions; and (iv) BaFin’s staff that conducts the investigations, enforcement actions, and resolutions.
8. “Firm Information” means: (i) regulatory information related to Covered Activities of a Covered Firm; (ii) information in the possession of BaFin about any event that could materially impact the financial or operational stability of a Covered Firm or its ability to conduct Covered Activities, including any known failure of a Covered Firm to satisfy any of its requirements for continued authorization as a German Firm, where that failure could have an adverse effect on the Covered Activities of the Covered Firm in the jurisdiction of any 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 Activities of a Covered Firm; (iii) information in the possession of BaFin relating to administrative, civil or criminal enforcement or judicial actions or sanctions concerning the Covered Activities of a Covered Firm and/or any individual involved in the Covered Activities of a Covered Firm; or (iv) information in the possession of BaFin relating to significant regulatory actions by any other authority, including the revocation, suspension, or modification of registration or

authorization, concerning the Covered Activities of a Covered Firm and/or any individual involved in the Covered Activities of a Covered Firm. With respect to Covered Firms under the supervision of the ECB/SSM, the term Firm Information does not include any information or document or action which is in the sole remit of the ECB/SSM or otherwise cannot be shared by BaFin without the consent of the ECB/SSM (“ECB Information”) and, if applicable, the Single Resolution Board (SRB).

9. “German Firm” means a credit institution or investment firm that is not a “U.S. Person,” as that term is defined in rule 3a71-3(a)(4) under the Exchange Act, and that has applied to be, or is, authorized under German law to provide investment services or perform investment activities in Germany.

10. “German Laws and Regulations” means the German Securities Trading Act (“Wertpapierhandelsgesetz”); the German Banking Act (“Kreditwesengesetz”); the German Money Laundering Act (“Geldwäschegesetz”); the German Act Establishing the Federal Financial Supervisory Authority (“Finanzdienstleistungsaufsichtsgesetz”); the European Market Infrastructure Regulation (“EMIR”), Regulation (EU) No. 648/2012, and related European Union (“EU”) delegated regulations and other related legal or regulatory requirements applicable in Germany; the Capital Requirements Regulation (“CRR”), Regulation (EU) No. 575/2013, and related EU delegated regulations and other related legal or regulatory requirements applicable in Germany; the Markets in Financial Instruments Regulation (“MiFIR”), Regulation (EU) No. 600/2014, and related EU delegated regulations and other related legal or regulatory requirements applicable in Germany; the General Data Protection Regulation (“GDPR”), Regulation (EU) No. 2016/279, and related EU delegated regulations and other related legal or regulatory requirements applicable in Germany; the Market Abuse Regulation (“MAR”), Regulation (EU) 596/2014, and related EU delegated regulations and other related legal or regulatory requirement applicable in Germany; EU delegated directives and regulations and other related legal or regulatory requirements applicable in Germany under the Markets in Financial Instruments Directive (“MiFID”), Directive (EU) 2014/65; EU delegated directives and regulations and other related legal or regulatory requirements applicable in Germany under the Capital Requirements Directive (“CRD”), Directive (EU) 2013/36; EU delegated directives and regulations and other related legal or regulatory requirements applicable in Germany under the Anti-Money Laundering Directive, Directive (EU) 2015/849, in each case as applicable to activity and conduct of German Firms in instruments that would be security-based swaps and/or security-based swap agreements (as those terms are defined by the Exchange Act).

11. “Governmental Entity” means:
 - a. the U.S. Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Financial Stability Oversight Council, if the Requesting Authority is the SEC.
 - b. the Deutsche Bundesbank, or the ECB in its function as banking supervisor, if the Requesting Authority is BaFin.

12. “Laws and Regulations” means the U.S. Laws and Regulations applicable to the SEC and the German Laws and Regulations applicable to BaFin.
13. “Local Authority” means the Authority in whose jurisdiction a Covered Firm that is the subject of an On-Site Visit is located.
14. “On-Site Visit” means a regulatory visit to the premises of a Covered Firm (as described in Article V) for the purposes of ongoing supervision and oversight of its Covered Activities, including the inspection of Books and Records.
15. “Personal Data” means any information relating to an identified or identifiable natural person (“data subject”) within the scope of this Arrangement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
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 law, regulation, or order of the jurisdiction of BaFin 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. “SSM” means Single Supervisory Mechanism, which is the legislative and institutional framework that grants the European Central Bank supervisory authority pursuant to Council Regulation (EU) No 1024/2013 of 15 October 2013.
22. “Substituted Compliance Order” means an order, whether conditional or unconditional, of the SEC determining that compliance with specified requirements of the laws of Germany 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.

23. “Supervision Program” refers to BaFin’s oversight and examination of its regulated entities including the Covered Firms’ compliance with the German Laws and Regulations. The Supervision Program includes: (i) the German Laws and Regulations, (ii) internal policies and procedures that govern BaFin’s oversight and examinations of Covered Firms regulated by BaFin; (iii) BaFin’s staff that conducts and coordinates the oversight and examinations of Covered Firms and related supervisory resources; and (iv) the oversight activities and examinations conducted by BaFin’s staff. With respect to Covered Firms under the supervision of the ECB/SSM, the term Supervision Program does not include ECB Information such as the ECB’s Supervisory Examination Program which is in the sole remit of the ECB/SSM.
24. “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 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).
25. “Visiting Authority” means the Authority conducting an On-Site Visit.

Article II: General Provisions

26. 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 informal 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 oral consultations and formal cooperation, and to facilitate the written exchange of non-public information in accordance with applicable laws. A primary goal of this MOU is to foster cooperation and the exchange of information among the Authorities to the benefit of oversight of the Covered Firms.
27. With respect to cooperation pursuant to this MOU, at the date this MOU is executed, no domestic 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. The transfer of Personal Data is subject to the applicable data protection laws. With respect to the transfer of Personal Data:
- a. Any transfer, onward transfer, processing or sharing of Personal Data between the Authorities will be carried out under the terms of the *Administrative arrangement for the transfer of personal data between EEA Authorities and Non-EEA Authorities* (2019) (“Administrative Arrangement”), to which the Authorities are signatories. The Administrative Arrangement shall be annexed to and constitute a part of this MOU.

- b. The Authorities agree to apply the safeguards specified in the Administrative Arrangement and may transfer Personal Data also pursuant to an applicable adequacy decision (Article 45(3) General Data Protection Regulation (“GDPR”)).
28. This MOU does not create any legally binding obligations, confer any rights or supersede domestic laws, nor should it be construed as an agreement to limit the protection and safeguards provided by the laws applicable to the Authorities. 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.
29. 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
 - b. Where a request for assistance is not made in accordance with the terms of the MOU.
30. This MOU complements, but does not supersede or alter the terms and conditions of: (i) the *Memorandum of Understanding Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws* between the SEC and BaFin (formerly Bundesaufsichtsamt für den Wertpapierhandel), dated October 17, 1997; (ii) the *Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight and the Supervision of Financial Services Firms* between the SEC and BaFin, dated April 26, 2007 (“Supervisory Cooperation MOU”); (iii) 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 BaFin, dated July 22, 2013; (iv) 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 BaFin are signatories, which covers information-sharing in the context of enforcement investigations; (v) the Administrative Arrangement, to which the SEC and BaFin are signatories or (v) 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 supersede or alter the terms and conditions of the following arrangement concerning cooperation in securities matters as of such time that BaFin 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.
31. To facilitate communication and cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Annex A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authority.

32. Nothing in this MOU shall be construed to limit an Authority in the discharge of its regulatory responsibilities pursuant to applicable laws and regulations, including with respect to an Authority's ability to enforce a Substituted Compliance Order.

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

General

33. The Authorities recognize 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;
- 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;
 - ii. the operation of the Enforcement Program and Supervision Program 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 fulfill 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 BaFin, and BaFin 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 62 and (ii) Regulatory Change Information, as follows:

- a. In the case of information within paragraph (i) of the definition of Firm Information, on a periodic basis;

- b. In the case of information within paragraph (ii) of the definition of Firm Information, promptly after BaFin concludes that the material event could impact the financial or operational stability of the relevant Covered Firm or its ability to conduct 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 Regulatory Change Information, on a quarterly basis, any publication of a proposed or final change in applicable German Laws and Regulations from the previous quarter, or order of the jurisdiction of BaFin. Where appropriate and practicable, BaFin may also provide Regulatory Change Information to the SEC prior to publication of the relevant change.

Request-Based Information Sharing

- 36. To the extent necessary to supplement informal consultations, the Authorities intend to provide assistance 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 Firm Information, as well as, for example, financial resources, risk management, internal control procedures, capital structure, liquidity and funding profiles, reports of capital reserves, and corporate information. It is anticipated that such requests for assistance generally will relate to information that is not otherwise available to the Requesting Authority.
- 37. Upon request by the SEC, BaFin agrees to use its best efforts to assist the SEC in obtaining ECB Information from the ECB in a prompt manner.
- 38. To the extent possible, a request for assistance pursuant to Paragraph 36 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 applicable Laws and Regulations and, to the extent such information includes Personal Data, a statement

addressing the necessity for processing the Personal Data to fulfill 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 36 in a timely manner.

40. In Emergency Situations, 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 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 programs and to discuss issues of common interest relating to the supervision and oversight of Covered Firms with respect to Covered Activities and the Enforcement Program and Supervision Program, 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. The SEC has informed BaFin that, as a condition of registration and maintaining its status as an SEC Security-Based Swap Entity, a Covered Firm must commit, among other things, that its Books and Records are subject to examination and copying by the SEC and will be made available and supplied directly by the Covered Firm to the SEC promptly in response to the SEC's request, including in connection with an On-Site Visit.

44. The SEC will directly request from a Covered Firm the Books and Records when necessary to fulfill the SEC's regulatory mandate consistent with the provisions of Paragraph 54 of Article VI below. In addition, SEC staff may conduct interviews with employees of a Covered Firm during examinations, including during On-Site Visits, and maintain any written records of such interviews.

45. The GDPR includes mechanisms that permit the transfer of Personal Data from entities, acting as controller or processor, in the EU such as Covered Firms to public authorities such as the SEC in the absence of an adequacy decision pursuant to Article 45(3) of the GDPR.¹ For instance, Article 46(1) of the GDPR provides that an EU entity may transfer Personal Data to a third country if the entity has provided “appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.” Furthermore, Article 49 of the GDPR provides that in the absence of an adequacy decision pursuant to Article 45(3) of the GDPR, or of appropriate safeguards pursuant to Article 46, a transfer or a set of transfers of Personal Data to a third country may take place pursuant to a derogation provided that the conditions of such a derogation are met. Such conditions include:

- a. the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards;
- b. the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject’s request;
- c. the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person;
- d. the transfer is necessary for important reasons of public interest; and
- e. in case none of the above conditions are applicable, if the transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, and the controller has assessed all the circumstances surrounding the data transfer and has on the basis of that assessment provided suitable safeguards with regard to the protection of Personal Data. The controller shall, in addition to providing the information referred to in Articles 13 and 14 of the GDPR, inform the data subject of the transfer and of the compelling legitimate interests pursued.

46. The European Data Protection Board has issued guidelines to provide guidance as to the application of Article 49 of the GDPR on derogations in the context of transfers of Personal Data to third countries.²

47. 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 from a Covered Firm or conduct an On-Site Visit

¹ According to Article 44 of the GDPR, any transfer of Personal Data to third countries or international organizations must, in addition to complying with Chapter V of the GDPR, also meet the conditions of the other provisions of the GDPR.

² The guidelines are available at:
https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf

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 Visits.

48. None of the provisions contained in this MOU should be construed as a limitation on the Covered Firms' and BaFin's obligations under applicable laws and regulations.

Article V: On-Site Visits

49. The Authorities intend to facilitate access to Covered Firms operating in their respective territories with a view to improving the effectiveness of the oversight of such Covered Firms. Where necessary in order to fulfill 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 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. The Visiting Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit. The Visiting Authority will take into account the sovereignty, legal framework, and statutory obligations of the Local Authority in conducting On-Site Visits.

50. The Authorities will comply with the following procedure 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 intends to 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 endeavor to share with the Visiting Authority information contained in reports, regarding inspections, examinations, or compliance reviews it may have undertaken regarding the Covered Firm that are relevant to the Visiting Authority's On-Site Visit.
- c. The Visiting Authority and the Local Authority intend to assist each other regarding On-Site Visits, including by 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.

51. Where practicable and reasonable, BaFin will notify the SEC in advance of planned On-Site Visits in Germany in instances BaFin reasonably believes would be relevant to the SEC in fulfilling its supervisory mandate and responsibilities in connection with its oversight of Covered Activities of Covered Firms. The SEC may, upon request and subject to consent from BaFin, accompany BaFin during the parts of such On-Site Visit where the main focus is on Covered Activities.

Article VI: Permissible Uses of Information

52. 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.

53. To the extent a Requesting Authority determines that non-public information obtained from the Requested Authority under this MOU needs to be used for enforcement purposes, the Requesting Authority will notify the Requested Authority before using the non-public information for enforcement purposes and will use such information in accordance with the terms and conditions 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 BaFin 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, including as contemplated under a Substituted Compliance Order.

54. 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

55. 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 57 and 59, 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.

56. 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.

57. In certain circumstances, 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;
 - 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.
58. 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 of such information.

59. 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.
60. 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.
61. The Requesting Authority will promptly notify the Requested Authority in the event of an unauthorized disclosure of nonpublic information obtained from the Requested Authority, including, where possible, identifying the recipient(s) of information.

Article VIII: Notices Regarding Covered Firms

62. Promptly after the issuance of a Substituted Compliance Order, or amendment thereto or revocation thereof, the SEC intends to provide BaFin 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 BaFin 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 shall be included in the ongoing notification provisions of Paragraph 35. The SEC will notify BaFin of any Covered Firm that it believes no longer qualifies for substituted compliance pursuant to such Substituted Compliance Order, and any such entity thereafter shall not be included in the ongoing notification provisions of Paragraph 35.
63. In the event of (i) the suspension of authorization, designation, qualification, or registration of a Covered Firm by BaFin; 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

64. This MOU may be amended by the written consent of the Authorities.
65. The Authorities will 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


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

Article XI: Termination

67. 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.

68. If an Authority gives and does not withdraw notice pursuant to Paragraph 67 above, (i) this MOU will terminate nine months after the expiration of 30 days following delivery of such notice (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.

Signed this 18th day of December, 2020.



Elisabeth Roegele, Chief Executive Director
Securities Supervision/Asset Management
Bundesanstalt für Finanzdienstleistungsaufsicht

Jay Clayton, Chairman
U.S. Securities and Exchange Commission

Signed this 18th day of December, 2020.



Elisabeth Roegele, Chief Executive Director
Securities Supervision/Asset Management
Bundesanstalt für Finanzdienstleistungsaufsicht

Jay Clayton, Chairman
U.S. Securities and Exchange Commission

Annex A: Contact Persons

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