

Memorandum of Understanding



BANCO DE ESPAÑA
Eurosystem



**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**

October 2021

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Concerning Consultation, Cooperation and the Exchange of Information
Related to the Supervision and Oversight of Certain
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The United States Securities and Exchange Commission (“SEC”) and the Spanish Comisión Nacional del Mercado de Valores (“CNMV”) and the Banco de España 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 Spain (“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 Spain 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 the Banco de España 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 (“ECB”).¹ In particular, the ECB is the prudential supervisory authority for all significant credit institutions established in participating European Union (EU) Member States, according to article 6 of the Council Regulation (EU) No 1024/20131 (the “SSM Regulation”). The SEC and the ECB entered into the SEC-ECB MOU, which also will support the SEC’s supervision of, and enforcement against, Covered Firms.² Within the ECB’s Single Supervisory Mechanism, the Banco de España is in charge of the direct prudential supervision of less significant credit institutions.

¹ The Authorities acknowledge that: (i) staff from the Banco de España acting in an official capacity as a member of a single supervisory mechanism (“SSM”) supervisory team or an SSM on-site inspection team; (ii) staff from the Banco de España performing activities related to the application and execution of ECB supervisory tasks within the SSM; or (iii) staff from the Banco de España acting in an official capacity as a member of the ECB Governing Council or the SSM Supervisory Board on matters relating to prudential banking supervision, will be treated as staff members of the ECB and to the extent described therein and will be subject to the confidentiality provisions of the Memorandum of Understanding regarding consultation, cooperation and the exchange of information in the supervision and oversight of certain over-the-counter (OTC) derivatives entities that operate on a cross-border basis in the United States and the EU between the SEC and the ECB entered into on 16 August 2021 (“SEC-ECB MOU”).

² The SEC-ECB MOU is available at: https://www.sec.gov/files/8162021-executed-ecb-mou-redacted-annex-secured_0.pdf.

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 Spain determining that an SEC-registered security-based swap dealer or major security-based swap participant, or class thereof, may comply with specified Spanish requirements in order to satisfy specified U.S. requirements. Before the SEC may issue such an order, the SEC must determine that specified Spanish 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 Spanish requirements and the effectiveness of the supervisory compliance program administered, and enforcement authority exercised by the CNMV, the Banco de España, as well as the ECB as competent supervisory prudential authority of significant institutions.

Further, prior to issuing an order permitting substituted compliance with respect to Spanish requirements, the SEC must have entered into a memorandum of understanding or other arrangement with the relevant Spanish 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. This MOU also aims at fulfilling the reciprocity requirements of Article 82.3 of the Law 10/2014 of 26 June 2014 and the article 247 Royal Legislative Decree 4/2015 of 23 October.

Article I: Definitions

For purposes of this MOU:

1. “Authority” (collectively, “Authorities”) means:
 - a. In the United States, the SEC; and
 - b. In Spain, the CNMV or the Banco de España (together the “Spanish Authorities,” and individually, a “Spanish Authority”), it being understood that each Spanish Authority only acts within the framework of the powers that are devolved to it under the Spanish law.
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 Spanish 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 a Spanish Authority’s investigation and enforcement of possible violations of Spanish 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 Spanish Laws and Regulations; (ii) a Spanish Authority’s powers, resources and capacity to conduct investigations, charge Covered Firms and their employees in an administrative or judicial tribunal for violations of Spanish Laws and Regulations, and resolve enforcement claims; (iii) internal policies and procedures pursuant to which a Spanish Authority conducts its investigations, enforcement actions and resolutions; and (iv) a Spanish Authority’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 a Spanish Authority 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 Spanish 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 a Spanish Authority 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 a Spanish Authority 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 a Spanish Authority without the consent of the ECB/SSM (“ECB Information”) and, if applicable, the Single Resolution Board.
9. “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; or
 - b. the ECB in its function as banking supervisor, if the Requesting Authority is a Spanish Authority.

10. "Laws and Regulations" means the U.S. Laws and Regulations applicable to the SEC and the Spanish Laws and Regulations applicable to Spanish Authorities.
11. "Local Authority" means the Authority in whose jurisdiction a Covered Firm that is the subject of an On-Site Visit is located.
12. "On-Site Visit" means any 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.
13. "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.
14. "Regulatory Change Information" means information about any material publicly available draft, proposed, or final change in law, regulation, or order of the EU or Spain that may have a material impact on the Covered Firm with respect to its Covered Activities.
15. "Requested Authority" means the Authority to which a request was made or which provided information pursuant to this MOU.
16. "Requesting Authority" means the Authority that made a request or received information pursuant to this MOU.
17. "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.
18. "Spanish 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 Spanish law to provide investment services or perform investment activities in Spain.
19. "Spanish Laws and Regulations" means all of the provisions of Spanish laws, regulations and guidance cited in one or more Substituted Compliance Orders, including, but not limited to, 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 Spain; the Capital Requirements Regulation ("CRR"), Regulation (EU) No. 575/2013, and related EU delegated regulations and other related legal or regulatory requirements applicable in Spain; 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 Spain; 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 Spain; the Market Abuse Regulation ("MAR"), Regulation (EU) 596/2014, and related EU delegated

regulations and other related legal or regulatory requirement applicable in Spain; EU delegated directives and regulations and other related legal or regulatory requirements applicable in Spain 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 Spain under the Capital Requirements Directive (“CRD”), Directive (EU) 2013/36; EU delegated directives and regulations and other related legal or regulatory requirements applicable in Spain under the Anti-Money Laundering Directive, Directive (EU) 2015/849; and any other law, regulation or requirement applicable in Spain and any rule, direction, requirement, guidance or policy made or given by or to be taken into account by a Spanish Authority, in each case as applicable to activity and conduct of Spanish Firms in instruments that would be security-based swaps and/or security-based swap agreements (as those terms are defined by the Exchange Act and the rules thereunder).

20. “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.
21. “Substituted Compliance Order” means an order, whether conditional or unconditional, of the SEC determining that compliance with specified requirements of the laws of Spain by an SEC Security-Based Swap Entity, or class thereof, may satisfy corresponding requirements of the Exchange Act, and rules and regulations thereunder, identified in such order that would otherwise apply to such SEC Security-Based Swap Entity, or class thereof.
22. “Supervision Program” refers to a Spanish Authority’s oversight and examination of its regulated entities including the Covered Firms’ compliance with Spanish Laws and Regulations. The Supervision Program includes: (i) the Spanish Laws and Regulations; (ii) internal policies and procedures that govern a Spanish Authority’s oversight and examinations of Covered Firms regulated by such Spanish Authority; (iii) the Spanish Authority’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 the Spanish Authority’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.
23. “U.S. Laws and Regulations” means the Securities Act of 1933, the Exchange Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, SEC rules and regulations, and other relevant requirements in the United States, in each case as applicable to activity and conduct of SEC Security-Based Swap Entities in security-based swaps and/or security-based swap agreements (as those terms are defined by the Exchange Act).
24. “Visiting Authority” means the Authority conducting an On-Site Visit.

Article II: General Provisions

25. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision, enforcement, and oversight of Covered Firms and their Covered Activities in a manner that is permitted by, and consistent with, the laws and requirements that govern each Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing 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.
26. 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.³ The Spanish Authorities confirm and the SEC acknowledges that this MOU complies with the equivalence and reciprocity requirements of Article 82.3 h) of Law 10/2014 and article 247 of the Spanish Securities Market Law. 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 SEC and the CNMV 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 SEC and the CNMV are signatories. The Administrative Arrangement shall be annexed to and constitute a part of this MOU.
 - b. The SEC and CNMV 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”)).
 - c. In the absence of an adequacy decision of the European Commission for transfer of personal data to the United States, any transfer of information from the Banco de España to the SEC under this MOU containing personal data will be carried out by the Banco de España in compliance with the GDPR and, in particular, in compliance with applicable derogations, such as for transfers that are necessary for important reasons of public interest pursuant to Article 49.1(d) of the GDPR, and guidelines in force of the European

³ See Law 10/2014 of 26 June 2014, on the regulation, supervision and solvency of credit institutions, article 82.3.h, and the Spanish Securities Market Law (Royal Legislative Decree 4/2015, of 23 October), article 247, which requires equivalence and reciprocity to share confidential information.

Data Protection Board on derogations in the context of transfers of personal data to third countries.

27. This MOU does not create any legally binding obligations, confer any rights or supersede 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 exchange of information under this MOU.
28. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the Laws and Regulations in relation to the supervision and oversight of Covered Firms and the operation of the Substituted Compliance Order. Following consultation, cooperation may be denied:
 - a. Where the cooperation would require an Authority to act in a manner that would violate domestic laws; or
 - b. Where a request for assistance is not made in accordance with the terms of this MOU.
29. 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 CNMV, dated July 8, 1992; (ii) *Protocol between the CNMV, Spain, and the SEC, USA, to facilitate implementation of the CESR- SEC Work Plan*, dated February 5, 2012; (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 CNMV, 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 CNMV are signatories, which covers information-sharing in the context of enforcement investigations; (v) the Administrative Arrangement, to which the SEC and CNMV are signatories; (vi) the SEC-ECB MOU; and (vii) 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 CNMV 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.
30. 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 Authorities.
31. 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

32. 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.
33. As appropriate in the particular circumstances and with respect to Covered Activities, the Authorities, where practicable and reasonable, intend to cooperate and consult regarding any material event or market development that could adversely and directly impact one or more Covered Firms and that would be relevant to the fulfilment of the Authorities' respective regulatory mandates and responsibilities. In particular, 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

34. 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 the Spanish Authorities, and the Spanish Authorities intend 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 61 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 the Spanish Authority 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 Spanish Laws and Regulations from the previous quarter, or order of the jurisdiction of the Spanish Authority. Where appropriate and practicable, the Spanish Authority may also provide Regulatory Change Information to the SEC prior to publication of the relevant change.

Request-Based Information Sharing

- 35. To the extent necessary to supplement informal consultations, the Requested Authority intends 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.
- 36. Upon request by the SEC, the Spanish Authorities agree to use best efforts to assist the SEC in obtaining ECB Information from the ECB and Firm Information from the Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias and/or the Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias, as applicable, in a prompt manner.
- 37. To the extent possible, a request for assistance pursuant to Paragraph 35 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.
38. The Authorities will make their reasonable best efforts to handle requests for assistance under Paragraph 35 in a timely manner.
39. 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

40. 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

41. 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

42. The SEC has informed the Spanish Authorities 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.
43. 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 53 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.

44. 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.⁴ 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.

⁴ 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.

45. 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.⁵
46. 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 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.
47. None of the provisions contained in this MOU should be construed as a limitation on the Covered Firms' and the Spanish Authorities' obligations under applicable laws and regulations.

Article V: On-Site Visits

48. 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. The Authorities understand that each Spanish Authority only acts within the framework of the powers granted to it under Spanish law.
49. 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, including the intended timeframe for, and the purpose and scope of, the On-Site Visit.

⁵ The guidelines are available at:
https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf

- 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.
50. Where practicable and reasonable, the Spanish Authorities will notify the SEC in advance of planned On-Site Visits in Spain in instances the Spanish Authorities reasonably believe 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 the Spanish Authority, accompany the relevant Spanish Authority during the parts of such On-Site Visit where the main focus is on Covered Activities.

Article VI: Permissible Uses of Information

51. 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.
52. 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 a Spanish Authority 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.
53. 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

54. 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 55, 56, and 58, 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.
55. 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.
56. 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:
 1. the Governmental Entity has confirmed that it performs a function similar to a function of the Requested Authority or regulates or supervises securities, derivatives, banking, insurance or other financial services and/or entities;
 2. 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);

3. the non-public information will be used for supervisory and oversight of Covered Activities and in a manner consistent with this Article VII;
 4. the Governmental Entity will not use information received in accordance with this MOU in an enforcement proceeding; and
 5. 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.
57. 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.
58. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for, or any required disclosure of, non-public information furnished by the Requested Authority under this MOU. Prior to compliance with the demand or required disclosure, 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.
59. 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.
60. 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

61. Promptly after the issuance of a Substituted Compliance Order, or amendment thereto or revocation thereof, the SEC intends to provide the Spanish Authorities notice of such issuance, amendment, or revocation, including identifying the Covered Firms that are eligible for substituted compliance under a Substituted Compliance Order. The SEC may notify the Spanish Authorities 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

34. The SEC will notify the Spanish Authorities 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 34.

62. In the event of (i) the suspension of authorization, designation, qualification, or registration of a Covered Firm by the Spanish Authorities; 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

63. This MOU may be amended by the written consent of the Authorities.

64. 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

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

Article XI: Termination

66. 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.

67. If an Authority gives and does not withdraw notice pursuant to Paragraph 66 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 21st day of October, 2021



Rodrigo Buenaventura, Chairman
Comisión Nacional del Mercado de Valores



Gary Gensler, Chair
U.S. Securities and Exchange Commission



Mercedes Olano, General Directorate of Supervision
Banco de España

(Reino de España)

Annex A: Contact Persons

Redacted