

**MEMORANDUM  
OF  
UNDERSTANDING**



**THE UNITED  
STATES  
SECURITIES  
AND EXCHANGE  
COMMISSION**



**THE AUTORITÉ DES  
MARCHÉS  
FINANCIERS OF  
FRANCE**



**THE AUTORITÉ  
DE CONTRÔLE  
PRUDENTIEL ET  
DE RÉOLUTION  
OF FRANCE**

**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**

**July 23, 2021**

**Memorandum of Understanding  
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The United States Securities and Exchange Commission (“SEC”), the French Autorité de contrôle prudentiel et de résolution (“ACPR”), and the French Autorité des marchés financiers (“AMF”) 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 France (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 France 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 ACPR is a part of the SSM (as defined below), 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 France determining that an SEC-registered security-based swap dealer or major security-based swap participant, or class thereof, may comply with specified French requirements in order to satisfy specified U.S. requirements. Before the SEC may issue such an order, the SEC must determine that specified French 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 the French requirements and the effectiveness of the supervisory compliance program administered, and enforcement authority exercised by, authorities in France.

Further, prior to issuing an order permitting substituted compliance with respect to French requirements, the SEC must have entered into a memorandum of understanding or other arrangement with the relevant French 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 cooperation agreement and reciprocity requirements of Articles L632-7 and L632-17, respectively, of the French Monetary and Financial Code.

## **Article I: Definitions**

For purposes of this MOU:

1. “Authority” (collectively, “Authorities”) means:
  - a. In the United States, the SEC; and
  - b. In France, the ACPR or the AMF, (together the “French Authorities”, and individually, a “French Authority”), it being understood that each French Authority only acts within the framework of the powers that are devolved to it under French 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 French 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 the French Authorities’ investigation and enforcement of possible violations of French Laws and Regulations by Covered Firms and their employees in the context of Covered Activities. The Enforcement Program includes: (i) the French Laws and Regulations; (ii) the French Authorities’ powers, resources and capacity to conduct investigations, charge Covered Firms or their employees in an administrative or judicial tribunal for violations of French Laws and Regulations, and resolve enforcement claims; (iii) internal policies and procedures pursuant to which the French Authorities conduct their investigations, enforcement actions and resolutions; and (iv) the French Authorities’ resources regarding the conduct of 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 French 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 French 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 French Authority relating to any 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 French 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 French Authority without the consent of the ECB/SSM (“ECB Information”).

9. “French 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 French law to provide investment services or perform investment activities in France.
  
10. “French Laws and Regulations” means the French Monetary and Financial Code (le “code monétaire et financier” or “MFC”); the General Regulation of the AMF; the Instructions of the ACPR; 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 France; the Capital Requirements Regulation (CRR), Regulation (EU) No. 575/2013, and related EU delegated regulations and other related legal or regulatory requirements applicable in France; 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 France; 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 France; the Market Abuse Regulation (MAR), Regulation (EU) 596/2014, and related EU delegated regulations and other related legal or regulatory requirement applicable in France; EU delegated directives and regulations and other related legal or regulatory requirements applicable in France 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 France under the Capital Requirements Directive (CRD), Directive (EU) 2013/36; EU delegated directives and regulations and other related legal or regulatory requirements applicable in France under the Anti-Money Laundering Directive, Directive (EU) 2015/849, in each case as applicable to activity and conduct of French 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; and
  - b. the ECB in its function as banking supervisor if the Requesting Authority is a French Authority.
12. “Laws and Regulations” means the U.S. Laws and Regulations applicable to the SEC and the French Laws and Regulations applicable to the French Authorities.
13. “On-Site Visit” means a regulatory visit to the premises of a Covered Firm (as described in Article V of the *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* (“Supervisory Cooperation MOU”) between the SEC and the French Authorities, dated July 23, 2021) for the purposes of ongoing supervision and oversight of its Covered Activities, including the inspection of Books and Records.
14. “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.
15. “Regulatory Change Information” means information about any material publicly available draft, proposed, or final change in law, regulation, or order of the jurisdiction of a French Authority that may have a material impact on the Covered Firm with respect to its Covered Activities.
16. “Requested Authority” means the Authority to which a request was made or which provided information pursuant to this MOU.
17. “Requesting Authority” means the Authority that made a request or received information pursuant to this MOU.
18. “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.
19. “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.
20. “Substituted Compliance Order” means an order, whether conditional or unconditional, of the SEC determining that compliance with specified requirements of the laws of France 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.

21. “Supervision Program” refers to the French Authorities’ oversight and examination of its regulated entities including the Covered Firms’ compliance with French Laws and Regulations. The Supervision Program includes: (i) the French Laws and Regulations, (ii) internal policies and procedures that govern the French Authorities’ oversight and examinations of Covered Firms regulated by the French Authorities; (iii) the French Authorities’ 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 French Authorities’ staff.
22. “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).

## **Article II: General Provisions**

23. 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.
24. 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 that Authority from providing assistance to another Authority pursuant to this MOU, or otherwise adversely affect or hinder the operation of this MOU.
  - a. The French Authorities further represent that under French law,<sup>1</sup> Covered Firms are authorized to supply to the SEC, or provide the SEC directly with access to,

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<sup>1</sup> See the Banking and Financial Law No. 2019-486, dated 22 May 2019, which, through a specific provision dedicated to credit institutions and investment firms, derogates from other legal provisions of general application, including from (i) the French Act No. 68-678 of 26 July 1968 relating to the communication of documents and information of an economic, commercial, industrial, financial or technical nature to natural

information either in writing, including Books and Records, or orally related to Covered Firms' Covered Activities.

- b. The French Authorities confirm that this MOU complies with the cooperation agreement and reciprocity requirements of Articles L632-7 and L632-17, respectively, of the MFC.
  - c. The SEC represents that U.S. laws do not prohibit a Covered Firm, which also is authorized by the French Authorities, from providing the French Authorities with direct access to its Books and Records, either in writing or orally, related to its Covered Activities.
25. 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.
26. 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.
27. This MOU complements, but does not supersede or alter the terms and conditions of (i) 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 AMF are signatories, which covers information-sharing in the context of enforcement investigations; (ii) 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 the AMF, dated February 12, 2014; (iii) the *Administrative Arrangement for the transfer of personal data*, to which the SEC (May 10, 2019) and AMF (May 14, 2019) are signatories; (iv) the Supervisory Cooperation MOU; 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 the AMF 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 covers information-sharing in the context of enforcement investigations.
28. 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.

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persons or legal entities, as amended by French Act No. 80-538 dated July 16, 1980, and (ii) French professional secrecy law (Articles L511-33 and L531-12 of the MFC).

29. 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**

30. 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.

31. 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 Information Sharing**

32. 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 French Authorities, and the French 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 60 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 French Authority concludes or the French Authorities conclude 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 French Laws and Regulations from the previous quarter, or order of the jurisdiction of the French Authorities. Where appropriate and practicable, the French Authorities may also provide Regulatory Change Information to the SEC prior to publication of the relevant change.

### **Request-Based Information Sharing**

- 33. To the extent necessary to supplement informal consultations, the Requested Authority intends to provide assistance to the Requesting Authority for the purposes of supervision and oversight of Covered Firms with respect to Covered Activities 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.
- 34. Upon request by the SEC, the French Authorities agree to use their best efforts to assist the SEC in obtaining ECB Information from the ECB in a prompt manner.
- 35. To the extent possible, a request for assistance pursuant to Paragraph 33 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 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.
36. The Authorities will make their reasonable best efforts to handle requests for assistance under Paragraph 33 in a timely manner.
37. 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**

38. 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 Activities of Covered Firms and the Enforcement Programs and Supervision Programs, 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**

39. 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**

40. The SEC has informed the French 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.
41. 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 Paragraphs 48 and 51 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.

42. In case of refusal by a Covered Firm to supply promptly and directly to the SEC a copy of the Books and Records, the SEC may inform the French Authorities who will liaise with the Covered Firm in order to help solve issues resulting from such refusal. The French Authorities agree to assist promptly in liaising with such Covered Firm. The SEC routinely may communicate directly with Covered Firms.
43. The GDPR includes mechanisms that permit the transfer of personal data from entities, acting as controller or processor, in the European Union (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.<sup>2</sup> 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

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<sup>2</sup> 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

Articles 13 and 14 of the GDPR, inform the data subject of the transfer and of the compelling legitimate interests pursued.

44. 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.<sup>3</sup>
45. 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.
46. None of the provisions contained in this MOU should be construed as a limitation on the Covered Firms' and the French Authorities' obligations under applicable laws and regulations.

#### **Article V: On-Site Visits**

47. The provisions of Article V of the Supervisory Cooperation MOU shall apply to On-Site Visits of Covered Firms in the territory of the other Authority. In addition, the French Authorities agree to notify the SEC in advance of any planned On-Site Visit in France where Laws and Regulations subject to a Substituted Compliance Order will be covered. The SEC may, at its discretion, accompany the French Authorities during the parts of such On-Site Visit where the main focus is on Covered Activities.

#### **Article VI: Permissible Uses of Information**

48. The Requesting Authority may use non-public information obtained under this MOU for supervision and oversight of Covered Firms and, in cases where the Requesting Authority is the SEC, for supervision and oversight of other SEC Security-Based Swap Entities, 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.
49. Before using non-public information obtained from the Requested Authority under this MOU for any purpose other than those stated in Paragraphs 48, 50 and 51, 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.

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<sup>3</sup> The guidelines are available at: [https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_guidelines\\_2\\_2018\\_derogations\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_guidelines_2_2018_derogations_en.pdf).

50. 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 and 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 the AMF becomes a signatory to the IOSCO EMMOU.
51. 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 and will send a request for assistance to the Requested Authority pursuant to 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 the AMF becomes a signatory to the IOSCO EMMOU. 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.

#### **Article VII: Confidentiality of Information and Onward Sharing**

52. 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 another Authority pursuant to Article III of 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. Except as provided in Article VI and Paragraphs 53, 54, 55, and 57, the Authorities will not disclose non-public information received from another Authority under Article III of 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.
53. 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.
54. Each French Authority may share non-public information obtained from the SEC under this MOU with the other French Authority so long as that other French Authority uses and treats the information in accordance with the terms of this MOU.
55. 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 receive adequate assurances 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 or supervises 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 supervisory and oversight of Covered Activities and in a manner consistent with this Article VII;
  - iv. the Governmental Entity will not use information received in accordance with this MOU in an enforcement proceeding; and
  - v. 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.

56. 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.

57. 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.

58. 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.

59. 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**

60. Promptly after the issuance of a Substituted Compliance Order, or amendment thereto or revocation thereof, the SEC intends to provide the French 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 French Authorities from time to time of any Covered Firm that it believes will or may apply substituted compliance pursuant to such Substituted Compliance Order, and any such entity thereafter shall be included in the ongoing information sharing provisions of Paragraph 32. The SEC will notify the French 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 information sharing provisions of Paragraph 32.
61. In the event of (i) the suspension of authorization, designation, qualification, or registration of a Covered Firm by the French 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**

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

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

#### **Article XI: Termination**

65. An Authority may terminate this MOU by delivering written notice to the other Authorities of its intention to terminate. An Authority that delivers such a notice may withdraw it by written notice to the other Authorities delivered not more than 30 days after delivery of the termination notice.
66. If an Authority gives and does not withdraw notice pursuant to Paragraph 65 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.

67. The termination of the Supervisory Cooperation MOU will result in automatic termination of this MOU effective as of the termination date of the Supervisory Cooperation MOU.

Signed this 23rd day of July, 2021.



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Robert Ophèle, Chairman  
Autorité des Marchés Financiers



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



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Denis Beau, Chairman  
Autorité de Contrôle Prudentiel et de Résolution

## Annex A: Contact Persons

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