European Securities and Markets Authority

ESMA/2014/608

Multilateral Memorandum of Understanding on

Cooperation Arrangements and Exchange of Information

For the purposes of enhancing the modalities of cooperation and the necessary exchange of information in relation to the regulation of financial services and markets in the Union and in the European Economic Area (EEA),

In order to update the Multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities of the Committee of European Securities Regulators agreed on 26 January 1999 (CESR MMoU),

The signatories of this Multilateral Memorandum of Understanding (MMoU) have reached the following understanding:

Article 1
Definitions

Unless otherwise specified, terms used in Regulation (EU) No 1095/2010 (ESMA Regulation) have the same meanings in this MMoU. In addition, the following definitions apply:

1. "Applicable Union Legislation" means the acts referred to in Article 1(2) of the ESMA Regulation, which are listed in Appendix A, including any legally binding Union act which conferred tasks on the European Securities and Markets Authority (ESMA) since the date of adoption of the ESMA Regulation, any further legally binding Union act which confers tasks on ESMA and any national laws implementing that legislation.

2. "Authority" means the authorities listed in Appendix C and the Authorities that have executed the Joinder Agreement in Appendix B.

3. "Requested Authority" means the Authority to whom a request for assistance is made under this MMoU and which is, except in relation to ESMA, an Authority of a State other than the State of the Requesting Authority.

4. "Requesting Authority" means the Authority making a request for assistance under this MMoU and which is, except in relation to ESMA, an Authority of a State other than the State of the Requested Authority.

5. "Person" means any natural or legal person, or any unincorporated entity or association, including without limitation corporations and partnerships.

6. "Laws and Regulations" means Applicable Union Legislation and, except in relation to ESMA, any other national laws or national regulations relating to securities and financial markets in force in the respective States of the Authorities.

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Article 2
Purpose and general provisions

1. The purpose of this MMoU is to provide a general framework for cooperation and the exchange of information between the Authorities of different States in the Union and in the EEA, as well as between the Authorities and ESMA, in relation to the regulation of securities and financial markets in the Union and in the EEA. The cooperation and exchange of information between the Authorities is designed to facilitate the provision of the fullest mutual assistance between them to better enable their carrying out of the responsibilities entrusted to them under the Laws and Regulations.

2. This MMoU sets out basic parameters for the day-to-day cooperation between the Authorities. However:

    a. to the extent that Union law requires different cooperation arrangements or information exchange, in particular by technical standards laying down standard forms, templates and procedures for cooperation, the Applicable Union Legislation shall prevail; and

    b. to the extent that any national law conflicts with this MMoU, provided that national law does not conflict with Applicable Union Legislation, that national law shall prevail.

3. ESMA's participation in this MMoU relates only to its responsibilities as a direct supervisor of financial market participants. In this respect, it has direct powers to, for example, require information from, investigate and carry out on-site inspections of certain Persons within Member States. Accordingly, with the exception of its role under Article 11 in resolving disputes under this MMoU and provided that Union law does not require different cooperation arrangements and information exchange, ESMA's participation in this MMoU only relates to the following areas in carrying out its supervisory functions:

    a. its provision of information to, and obtaining information from, other Authorities; and

    b. joint investigations and joint on-site inspections with one or more other Authorities.

Article 3
Scope of assistance

1. The Authorities shall provide each other with the fullest mutual assistance in any matters within their competence within the scope of the Laws and Regulations.

2. In particular, the Authorities shall assist each other as required with authorisation, supervision, monitoring, investigation and enforcement in accordance with the requirements of the Laws and Regulations. That assistance includes but is not limited to matters relating to:

    a. insider dealing, market manipulation and other related fraudulent or manipulative practices in financial markets, whether attempted or committed;

    b. whether or not a financial market participant should be authorised under the Laws and Regulations and whether it continues to meet the requirements for continuing

business as a financial market participant;

c. entities providing market infrastructure including clearing, settlement or custody services and activities;

d. the duties of issuers or offerors of financial instruments in relation to the registration, issuance, offer or sale of financial instruments and the disclosure of information; and

e. general conduct of business and prudential requirements of the Laws and Regulations.

3. The scope of assistance available from the Requested Authority shall include, inter alia:

a. having access to any document and any other data in any form from any Person, including documents sufficient to enable transactions in financial instruments to be reconstructed, the origin and destination of any funds transferred for those transactions to be identified and any beneficial owners of those transactions or Persons that own or control those beneficial owners to be known;

b. requiring information from any Person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, taking or compelling a statement from such Person and, where permissible, testimony under oath;

c. the verification of any information held by an Authority;

d. carrying out investigations and on-site inspections;

e. the provision of existing recordings of telephone conversations, electronic communications held by investment firms, credit institutions or other financial institutions;

f. the provision of existing data traffic records held by a telecommunication operator, where there is a reasonable suspicion of a breach of the Laws and Regulations and where such records may be relevant to the investigation; and

g. without prejudice to the generality of Article 2.2(b), to the extent permitted by applicable national law, identification of the owner (individual or firm) of a telephone number and the obtainment of the telephone numbers of an individual or a firm.

4. The Requested Authority may only refuse to act on a request for assistance if that refusal:

a. relates to a request that is outside of the scope of assistance in this article; or

b. is permissible under Applicable Union Legislation; or

c. (if the request does not relate to Applicable Union Legislation) is permissible under national law.

5. In cases where the Requested Authority refuses to act, it shall notify the Requesting Authority which of the exceptions it has relied upon and provide full reasons for its decision.

6. A Requesting Authority shall undertake all action reasonably practicable in its own jurisdiction prior to making a request for assistance, noting that it may not be reasonably practicable for the Requesting Authority to have exhausted all the methods of enquiry prior to requesting assistance from the Requested Authority.

7. In considering the content of its request for assistance, an Authority shall ensure that it reserves requests for the taking of a statement (Article 5), the opening of an investigation or the carrying out of an on-site inspection (Article 6), for cases where a simple information request would not provide the necessary level of assistance. If it makes such a request, the Requesting Authority and the Requested Authority shall have regular communication to explain the respective legal and regulatory frameworks and to assess how the request can best be fulfilled.

8. The Authorities shall also provide each other with unsolicited assistance where appropriate.

9. In cases where the information requested may be maintained by, or available to, another authority of the State of the Requested Authority, the Requested Authority will provide full assistance in obtaining the information requested in accordance with this Article. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information to establish direct contact between the Requesting Authority and the other authority.

Article 4
Sending and processing requests for assistance

1. A request for assistance and a reply to a request for assistance shall be made in writing (by post, fax or secure electronic means). Both shall be addressed to the designated contact person unless otherwise specified by the Authorities.

2. If the request for assistance is urgent, the request and the reply may be made verbally but they shall subsequently be confirmed in writing unless the Authorities agree otherwise. A Requesting Authority shall ensure that a request for urgent processing is confined to cases of necessity rather than deriving from tardiness on its part.

3. A Requesting Authority shall send its request for assistance in the format and including the information in Annex 1, identifying in particular issues relating to the confidentiality of information that may be obtained.

4. If a Requesting Authority does not routinely make such requests to the Requested Authority, it shall contact the Requested Authority before sending its written request in order to communicate its intention to send a request and, if relevant, identify any problematic issues that may impede assistance being provided.

5. A Requested Authority shall:

    a. acknowledge receipt of a request for assistance as soon as possible but at least within seven calendar days of its receipt, including the contact details of a contact person and, if possible at that stage, an estimated date of response;

    b. request further clarifications in whatever form as soon as possible if it has any doubt in relation to the precise information requested;

c. take all reasonable steps within the scope of its powers to provide the assistance requested;

d. execute requests for assistance without delay and in a manner which ensures any necessary regulatory action may proceed expediently, taking into account the complexity of the request and the necessity to involve third parties or another authority; and

e. reply to the request for assistance in the format and including the information in Annex II.

6. The communication between the Requested Authority and the Requesting Authority shall be by the most expedient means, taking due account of confidentiality considerations, correspondence times, the volume of material to be communicated and the ease of access to the information by the Requesting Authority. In particular, the Requesting Authority shall respond promptly to any clarifications requested by the Requested Authority.

7. If for reasons owing to the request, it is not possible to use the format in Annex 1 or Annex 2 for the request for assistance or the reply to it, the Requesting Authority and the Requested Authority may agree on the formats to be used.

8. The Requested Authority shall notify the Requesting Authority as soon as a delay of more than seven calendar days beyond the estimated date of response becomes apparent unless the request has been designated by the Requesting Authority as urgent, in which case the Authorities shall agree on the frequency of updates required. Where appropriate, the Requested Authority shall provide regular feedback as to progress, including revised estimates of the projected date of reply.

9. The Requested Authority and the Requesting Authority shall consult each other expeditiously to resolve any difficulties that may arise in executing a request; for example in resolving any costs issues if the costs of providing assistance are projected to be burdensome on the Requested Authority.

10. To ensure constant improvement of cooperation, both Authorities shall provide feedback to each other where appropriate on the usefulness of assistance received, the outcome of the case in relation to which the assistance was sought and any problems encountered in providing such assistance.

Article 5
Requests for an authority to take a statement from a person

1. If the Requesting Authority intends to include within its request the taking of a statement of any Person, the Authorities shall assess:

a. any legal limitations or constraints and any differences in procedural requirements;

b. the rights of the Persons from which the statements will be taken, including where applicable, any self-incrimination issues;

c. the nature of the participation of the Requesting Authority's staff (observer or active participant);

d. the role of the staff of the Requested Authority and Requesting Authority in the taking of the statement, for example which person will act as an inspector, investigator or officer and the respective powers being exercised by each Authority;

e. whether the Person from which the statement will be taken has the right to be assisted by a legal representative and, if so, the scope of the representative's intervention during the taking of the statement including in relation to any records or report of the statement;

f. if applicable and known, whether the statement will be taken on a voluntary or compelled basis;

g. if applicable and known, whether the Person from which the statement will be taken is a witness or a suspect;

h. whether the statement could and, if known, will be used in criminal proceedings;

i. the admissibility of the statement in the Requesting Authority's jurisdiction;

j. the recording of the statement and the applicable procedures, for example whether it will be contemporaneous or summarised written minutes or a tape recording;

k. procedures on the certification or confirmation of the statement by the Person providing the statement, including whether that takes place after the statement is taken; and

l. the delivery procedure of the statement by the Requested Authority to the Requesting Authority, including the requested format and time period.

2. The Requested Authority and the Requesting Authority shall ensure that arrangements are in place for their operational staff to proceed efficiently. In particular, the Authorities shall put in place arrangements to enable their staff to efficiently agree on:

a. dates;

b. any additional information that may be necessary;

c. the list of questions to be asked of the Person from which the statement will be taken and its review;

d. travelling arrangements, including ensuring that the Authorities are able to meet to discuss the matter prior to the taking of the statement; and

e. if necessary, language arrangements.

Article 6
Requests for an authority to open an investigation or carry out an on-site inspection

1. If a Requested Authority decides to open an investigation or carry out an on-site inspection on behalf of a Requesting Authority, the supervisory and investigative steps taken by the Requested Authority shall remain the responsibility and within the overall control of the

Requested Authority. The Requesting Authority and the Requested Authority may consult on the best way to give useful effect to the request. The Requested Authority is expected to keep the Requesting Authority informed of the progress of the investigation or on-site inspection and will deliver its findings in good time.

2. The relevant Authorities shall consult each other on the merits of conducting a joint investigation or a joint on-site inspection. However, in the event that an Authority declines to enter into a joint procedure, this shall not be considered as a failure by the Requested Authority to provide full cooperation or assistance to the Requesting Authority.

3. In deciding on whether to initiate a joint investigation or a joint on-site inspection, the Requesting Authorities and the Requested Authorities shall consider as a minimum:

    a. any requests for assistance received from the Requesting Authority that might suggest that it is appropriate to carry out the investigation or on-site inspection jointly;

    b. whether they are separately conducting their own inquiries into a matter with cross-border implications which would be more suitable for collaboration jointly;

    c. issues relating to double jeopardy;

    d. the legal and regulatory framework in each of their jurisdictions to ensure they have a good understanding of the potential constraints and legal limitations on its conduct and any proceedings which might follow;

    e. the management and direction of the investigation or on-site inspection;

    f. prospects of agreeing a joint finding of facts;

    g. the allocation of resources and appointment of investigators;

    h. the determination of actions to be taken, jointly or individually, by the relevant Authorities;

    i. whether to establish a joint action plan and timings of work by each relevant Authority;

    j. mutual sharing of information gathered and reporting on the outcomes of the individual actions taken; and

    k. case specific issues.

4. If a Requesting Authority and a Requested Authority decide to open a joint investigation or joint on-site inspection, those Authorities shall:

    a. agree on procedures for its conduct and conclusion;

    b. engage in ongoing dialogue to coordinate the information gathering process and the findings of fact;

    c. work closely and cooperate with each other as to the conduct of the joint investigation or joint on-site inspection; and

d. provide assistance to each other in respect of subsequent enforcement proceedings to the extent legally permitted, including coordinating any proceedings or other enforcement action related to the outcome of the joint investigation or joint on-site inspection (administrative, civil or criminal) or, where appropriate, the prospects of a settlement.

5. Although it may not be possible to resolve all of these issues at the outset of a joint investigation or joint on-site inspection, the participating Authorities shall as a minimum have considered:

    a. the specific laws which will form the subject matter of the investigation or on-site inspection;

    b. the drawing up of a joint action plan (Who, What, When, Where and How), including milestones and the allocation of responsibilities in delivering the product of the work and taking into account each authority's respective priorities;

    c. the identification and assessment of any legal limitations or constraints and any differences in procedures with respect to investigative or enforcement action or any other proceedings, including the rights of any Person subject to investigation;

    d. the identification and assessment of specific legal professional privileges that may have an impact on the investigation proceedings as well as on the enforcement proceedings, for example, self-incrimination;

    e. the public and press strategy; and

    f. the use of information provided or exchanged.

Article 7
Confidentiality restrictions and permissible uses of information

1. An Authority shall keep any non-public information related to the provision of cooperation arrangements or information exchange under this MMoU confidential, including:

    a. the fact of a request for assistance being made under this MMoU and the content of that request;

    b. any matter arising in the course of executing the request, in particular consultations between Authorities; and

    c. unsolicited information provided by an Authority and the fact that such information was provided.

2. If, in order to execute the request, the Requested Authority is required to disclose the fact that the Requesting Authority has made the request, the Requested Authority shall only make that disclosure after it has discussed the nature and extent of the disclosure required with the Requesting Authority and obtained its consent to the disclosure. If the Requesting Authority does not provide its consent to the disclosure, the Requesting Authority shall instead be given the option of withdrawing its request or keeping its request on hold until such time as it is able to consent to disclosure.

3. If the information is exchanged pursuant to the provisions of any of the Applicable Union Legislation, the Requesting Authority shall observe the requirements of that legislation with respect to confidentiality restrictions and the permissible uses of that information.

4. If the information is not exchanged pursuant to the provisions of any of the Applicable Union Legislation, the Authorities, within the remit of their competencies, shall use the information exchanged solely for the purposes of:

    a. securing compliance with or enforcement of the Laws and Regulations specified in the request;

    b. initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the Laws and Regulations specified in the request;

    c. any of the particular purposes covered in Article 3 to the extent that they are administered by the Requesting Authority.

5. The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings resulting from a breach of the Laws and Regulations or for the discharge of the obligation to report to judicial authorities.

6. To the extent permitted by the Laws and Regulations, information received by a Requesting Authority may be communicated to another Authority. However, prior to voluntarily providing that information, the Requesting Authority shall obtain the consent of the Requested Authority to disclose it to the other Authority. In cases where it would be more expedient to do so, the Requesting Authority may request the Requested Authority to provide the information directly to the other Authority.

7. If an Authority places a restriction on the information that it provides, an Authority in receipt of that information shall comply with that restriction to the extent permitted by law. If in doubt whether an onward disclosure is permissible, an Authority shall favour safety over speed and seek guidance from the Authority that disclosed the information to it.

8. If a Requesting Authority intends to use or disclose information furnished under this MMoU for any purpose other than those stated in this Article, it must obtain the prior consent of the Requested Authority which provided the information. If the Requested Authority consents to the use of the information for purposes other than those stated in this Article, it may subject it to certain conditions.

9. In the event of a legally enforceable demand to disclose information that an Authority has received from another Authority, the Authority subject to the demand shall notify the other Authority prior to complying with the demand and shall assert such appropriate legal exemptions or privileges with respect to that information as may be available.

10. If an Authority decides to make public an administrative or a disciplinary sanction within the course of its duties and intends to make public that the successful outcome of the case has been achieved with the aid of the international cooperation mechanisms provided for in this MMoU, it shall obtain the consent of that Authority.

Article 8
Designated contact persons

1. The Authorities shall designate specified contact persons for communication under this MMoU.

2. The Authorities shall notify ESMA of the designated contact persons and ESMA shall maintain a list of those persons for use by the Authorities.

Article 9
Amendment, supplementary provisions and review of this MMoU

1. With the consent of all of the Authorities, this MMoU may be amended or supplemented.

2. The Authorities shall regularly monitor and review the implementation of this MMoU and carry out consultations with each other in order to improve its operation and to resolve possible difficulties.

Article 10
Additional Parties

1. A competent authority within the meaning of Article 4(3) of Regulation (EU) No 1095/2010 may become a party to this MMoU after its entry into force by signing this MMoU and giving notice of that fact to ESMA.

2. The Authorities may agree that further authorities of the Member States of the Union or of the EEA with responsibilities in respect of the Laws and Regulations but which are not competent authorities within the meaning of Article 4(3) of Regulation (EU) No 1095/2010 may become a party to this MMoU by executing the Joinder Agreement included in Appendix B.

Article 11
Resolution of disputes

The Authorities shall endeavour to resolve any disputes between them on the scope of assistance requested or provided under this MMoU or on the application of the procedures set out in this MMoU. If disputes in relation to cooperation under Applicable Union legislation cannot be resolved between the Authorities, the Authorities have agreed to resolve them under the mediation mechanism available at ESMA.

Article 12
Termination

1. This MMoU shall be concluded for an unlimited period of time.

2. An Authority seeking to withdraw from this MMoU shall provide at least thirty calendar days prior written notice to the other authorities before doing so.

3. Any requests for information communicated before the effective date of its withdrawal will be processed under this MMoU unless the withdrawing Authority requests otherwise.

4. Following an Authority's withdrawal from this MMoU, that Authority shall continue to apply the confidentiality protections set out in this MMoU and the withdrawal shall not have any impact on that Authority's obligation of cooperation and information exchange under the Laws and Regulations.

Article 13
Publication

The Authorities agree to publish this MMoU. Any amendments or supplements made under Article 9(1) shall also be published through ESMA's publication of a consolidated version of the MMoU.

Article 14
Entry into force

1. This MMoU shall enter into force two months following ESMA's issuance of the guidelines on cooperation arrangements and information exchange between competent authorities and between competent authorities and ESMA (ESMA/2014/298) and it shall be effective in respect of ESMA and all competent authorities that are signatories of this MMoU by that date.

2. Following its entry into force, this MMoU shall be effective as to additional parties:

    a. in respect of a competent authority, on the date on which that authority has signed this MMoU and provided notice of that fact to ESMA; and

    b. in respect of a non-competent authority, on the date specified in its Joinder Agreement.

3. The Authorities agree to treat any requests for assistance under the CESR MMoU that have not received a full reply at the time of entry into force of this MMoU in accordance with the provisions of this MMoU.

ANNEX I

Standard format for a request for assistance

[insert reference number]

[insert date]

FROM

[insert name and legal address of the Requesting Authority including contact details of the designated contact person]

TO

[insert name and legal address of the Requested Authority including contact details of the designated contact person]

Request for Assistance in a case of [insert summary of request] under [insert details of the Applicable Union Legislation where there is an obligation to cooperate under Applicable Union Legislation]

Dear [insert appropriate name]

In accordance with the Multilateral Memorandum of Understanding on cooperation arrangements and information exchange between competent authorities and between competent authorities and ESMA, entered into by national competent authorities and ESMA on …, and [where relevant] under [insert Applicable Union Legislation], your assistance is sought in relation to the matter(s) set out in further detail below.

[The following information is required:

a. a detailed description of the subject matter of the request;

b. a detailed description of the purpose for which the assistance is sought and why the assistance will be helpful to the Requesting Authority, including the Laws and Regulations under which the Requesting Authority is competent to deal with the matter;

c. a detailed description of the type of assistance sought, such as the provision of information, taking of a statement, the opening of an investigation, a joint investigation or other assistance;

d. if the request concerns an investigation into breaches of Laws and Regulations:

    i. details of the offence;

    ii. description of the facts underlying the investigation which forms the basis of the request;

iii. details of the Laws and Regulations which may have been breached;

e. if the request concerns information relating to a transaction or order in a specific financial instrument, any information known to the Requesting Authority that provides:

i. a precise description of the financial instrument, including the ISIN code;

ii. the identity of any Person connected with the transaction or order, including a Person dealing in the financial instrument or on whose behalf the dealing is considered to have taken place;

iii. the dates between which transactions or orders in those financial instruments took place including in the case of a significant period of time, reasons why the entirety of the time period is beneficial;]

[Insert the following information as appropriate:

a. where possible, a list of the Persons considered by the Requesting Authority to possess the information sought or the places where such information may be obtained by the Requested Authority;

b. if a request is made for further information based on an earlier request relating to the same subject matter of this request, a detailed description of the previous request in order to enable it to be identified;

c. if the request relates to information concerning the business or activities of a Person, as precise information as the Requesting Authority is able to provide so as to enable that Person to be identified;

d. an indication of the sensitivity of the information contained in the request and any special precautions that shall be taken in collecting the information due to investigatory considerations;

e. whether the Requesting Authority has been or will be in contact with any other authority or law enforcement agency in the Member State of the Requested Authority in relation to the subject matter of the request;

f. any other Authority whom the Requesting Authority is aware has an active interest in the subject matter of the request;

g. in urgent cases, a full explanation of the urgency of the request and an explanation of any deadlines that the Requesting Authority has asked for the information to be provided by.]

[If the request concerns the taking of a statement, the following information is required:

a. description and explanation of the type of the statement requested;

b. detailed description of the need for and purpose of the taking of a statement;

c. details of the Persons from which the statement will be taken to enable the Requested Authority to begin the summoning process where applicable;

d. a detailed description of the information sought, including a preliminary list of questions (if available at the time of the request);

Insert the additional information, as appropriate:

a. whether the Requesting Authority's staff are requesting participation in the taking of the statement;

b. details of the participating officials of the Requesting Authority, where appropriate;

c. description of any legal and procedural requirements that must be complied with to ensure the admissibility of statements made in the interview in the jurisdiction of the Requesting Authority.]

[If the request concerns the opening of an investigation on behalf of an Authority or the opening of a joint investigation, insert the additional information:

a. sufficient information to enable the Requested Authority to assess whether it may have an interest in entering into a joint investigation, including the Requesting Authority's proposal for the investigation, its reasoning and the perceived benefits to the Requested Authority; and

b. all relevant information required by the Requested Authority to enable the latter to provide the necessary assistance by opening an investigation or a joint investigation, as appropriate.]

[If the request concerns the opening of an inspection on behalf of an Authority or the opening of a joint inspection, insert the additional information:

a. sufficient information to enable the Requested Authority to assess whether it may have an interest in entering into a joint inspection, including the Requesting Authority's proposal for the inspection, its reasoning and the perceived benefits to the Requested Authority; and

b. all relevant information required by the Requested Authority to enable the latter to provide the necessary assistance by opening an inspection or a joint inspection, as appropriate.]

[Insert description of uses for which assistance is sought, if other than in accordance with the provisions of the MMoU.]

[Insert confidentiality language].

Your contact for any queries you might have in relation to any aspects of this request is [insert relevant contact name and contact details].

I would be grateful for the above assistance by [insert indicative date for the reply] or, if that is not possible, for an indication as to when you anticipate being in a position to provide the assistance which is sought.

Yours sincerely

[insert appropriate name]

ANNEX II

Standard format for a response to a request for assistance

[insert reference number]

[insert date]

FROM

[insert name and legal address of the Requested Authority including contact details of the designated contact person]

TO

[insert name and legal address of the Requesting Authority including contact details of the designated contact person]

Dear [insert appropriate name]

In accordance with the multilateral Memorandum of Understanding on cooperation arrangements and information exchange between competent authorities and between competent authorities and ESMA, entered into by national competent authorities and ESMA on … (the "MMoU"), and [where relevant] under [insert Applicable Union Legislation], your request dated [*dd.mm.yyyy*] with reference [*insert request reference number*] has been processed by us.

[Set out the information here or provide an explanation of how it will be provided.]

The information provided is confidential and is disclosed to [name of Requesting Authority] pursuant to the [MMoU] [Applicable Legislation] and on the basis that the information shall remain confidential in accordance with Article 7 of the MMoU.

[If the information is exchanged pursuant to the provisions of any of the Applicable Union Legislation, insert the following:

[Name of Requesting Authority] shall observe the requirements of the [insert Applicable Union Legislation] with respect to confidentiality restrictions and the permissible uses of that information.]

[If the information is not exchanged pursuant to the provisions of any of the Applicable Union Legislation, insert the following:

[Name of Requesting Authority], within the remit of its competencies, shall use the information solely for the purposes of:

a. securing compliance with or enforcement of the Laws and Regulations specified in the request;
b. initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the Laws and Regulations specified in the request;
c. any of the particular purposes covered in Article 3 of the MMoU to the extent that they are administered by the [name of Requesting Authority].]

[Where applicable, provide information as to any additional conditions on the use of the information provided.]

Yours sincerely

[insert appropriate name]

APPENDIX A

ESMA's scope of action in Article 1(2) of the ESMA Regulation

(i) Specific list of acts

Directive 97/9/EC	–	Investor Compensation Scheme Directive
Directive 98/26/EC	–	Settlement Finality Directive
Directive 2001/34/EC	–	Consolidated Admissions and Reporting Directive
Directive 2002/47/EC	–	Financial Collateral Directive
Directive 2003/6/EC	–	Market Abuse Directive
Directive 2003/71/EC	–	Prospectus Directive
Directive 2004/39/EC	–	Markets in Financial Instruments Directive
Directive 2004/109/EC	–	Transparency Directive
Directive 2009/65/EC	–	UCITS IV Directive
Directive 2011/61/EU	–	Alternative Investment Fund Managers Directive
Directive 2006/49/EC	–	Capital Adequacy Directive (without prejudice to the competence of the EBA for prudential supervision)
Regulation (EC) No 1060/2009	–	Credit Rating Agencies Regulation
Regulation (EU) No 1095/2010	–	ESMA Regulation

Within the relevant part of the following directives to the extent they apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them:

i. Directive 2002/87/EC – Financial Conglomerates Directive;
ii. Directive 2005/60/EC – Third Money Laundering Directive;
iii. Directive 2002/62/EC – Distance Marketing Directive;

(ii) General description of acts

- All legally binding Union act which conferred tasks on ESMA since the date of adoption of the ESMA Regulation.

- All further legally binding Union acts that confer tasks on ESMA.

- All Directives, Regulations and Decisions based on the acts listed above.

APPENDIX B

Joinder agreement

The undersigned;

Having given notice of its intent to participate in this Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information (MMoU);

Having received consent to that participation from all Authorities that are presently signatories thereto;

Hereby accedes to the MMoU on equal terms as the other Authorities.

This declaration of joinder shall be effective on the date below.

Date: _____

Name: _____

Signature: _____

Joining Authority: _____

APPENDIX C

Signatures