

MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

RESERVE BANK OF AUSTRALIA (RBA)

NEW ZEALAND FINANCIAL MARKETS AUTHORITY (FMA)

AND

RESERVE BANK OF NEW ZEALAND (RBNZ)

Known collectively as the Authorities and individually as an Authority

CONCERNING COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF CROSS-BORDER COVERED ORGANISATIONS

This Memorandum of Understanding (MOU) establishes a framework pursuant to which the Authorities express their willingness to cooperate with each other in the interest of fulfilling their respective supervisory and regulatory mandates with respect to Covered Organisations.

ARTICLE ONE: DEFINITIONS AND INTERPRETATION

1. For the purposes of this MOU:

'Australian Authorities' means ASIC and the RBA.

'Authority' means each of the FMA, RBNZ, ASIC, and the RBA, together referred to as 'Authorities'.

'Covered Organisation' means each entity listed in Appendix A, as amended from time to time.

'Emergency Situation' means the occurrence of an event that could materially impair the financial or operational condition of a Covered Organisation.

'Governmental Entity' means:

- a. If the Requesting Authority is the RBNZ, the RBNZ, the Treasury, and the Minister of Finance;
- b. If the Requesting Authority is the FMA, the FMA, the Ministry of Business, Innovation and Employment (MBIE), and the Minister of Commerce and Consumer Affairs;
- c. If the Requesting Authority is the RBA – the Australian Department of the Treasury and the Australian Prudential Regulation Authority, which have responsibilities and mandates in relation to the regulation of the Australian financial system and entities in the financial system, any Minister assigned responsibility for the RBA or its functions, and any Australian Parliamentary committee with RBA oversight functions; and
- d. If the Requesting Authority is ASIC – the Australian Department of the Treasury and the Australian Prudential Regulation Authority, which have responsibilities and mandates in relation to the regulation of the Australian financial system and entities in the financial system, any Minister assigned responsibility for ASIC or its functions, and any Australian Parliamentary committee with ASIC oversight functions.

'Laws and Regulations' means, in relation to the Australian Authorities, the *Reserve Bank Act 1959*, *Reserve Bank Regulation 2016*, *Corporations Act 2001*, *Corporations Regulations 2001*, *Australian Securities and Investments Commission Act 2001*, legislative instruments made by the RBA or ASIC, and any other applicable national laws, regulations and rules in force in Australia from time to time, and in relation to the NZ Authorities, applicable the *Reserve Bank of New Zealand Act 2021*, *Banking (Prudential Supervision) Act 1989*, *Financial Market Infrastructures Act 2021* and *Financial Markets Authority Act 2011*, and any other applicable laws, regulations and rules in force in New Zealand from time to time.

'NZ Authorities' means FMA and the RBNZ.

'Person' includes a natural person, unincorporated association, partnership, trust, investment company, or corporation and may be a Covered Organisation.

'Primary Authorities' means, in relation to a Covered Organisation the Authorities with primary responsibility for regulating and/or supervising that Covered Organisation established in the

jurisdiction of the Primary Authorities, as identified in Appendix A.

'Relevant Jurisdictions' means Australia and New Zealand.

'Requested Authority' means the Authority to whom a request is made under this MOU.

'Requesting Authority' means the Authority making a request under this MOU.

'Secondary Authorities' means in relation to a Covered Organisation, the Authorities that regulate and/or supervise that Covered Organisation established in the jurisdiction of the Primary Authorities, as identified in Appendix A.

For the purposes of this MOU:

A reference to any primary or secondary legislation is to such legislation as updated, amended or replaced from time to time.

ARTICLE TWO: GENERAL PROVISIONS

1. This MOU is a statement of intent to consult, cooperate and exchange information in connection with each of the Authority's respective functions relating to Covered Organisations. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, applicable Laws and Regulations. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation. The provisions of this MOU are not intended to discourage or hinder such informal communication.
2. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede any Laws and Regulations. Any acknowledgement, agreement or commitment by or of an Authority under this MOU is to be read as being subject to any Laws and Regulations.
3. 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 execution of a request for assistance under this MOU.
4. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. This MOU does not affect any rights or arrangements between an Authority and a Covered Organisation or any other Person.
5. This MOU is subject to the Laws and Regulations in each jurisdiction and the Authorities in each jurisdiction will be responsible for interpretation of their own Laws and Regulations.
6. To facilitate communication and cooperation under this MOU, the Authorities designate contact persons as set out in Appendix B. An Authority may amend its contact information set out in Appendix B in accordance with Article 7.4 of this MOU.

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

1. The Authorities recognise the importance of close communication concerning Covered Organisations and intend to cooperate regarding:
 - a. general issues, including with respect to regulatory, supervisory, enforcement or other developments concerning Covered Organisations and issues relevant to the operations, activities, and regulation of such Covered Organisations in the Relevant Jurisdictions;
 - b. issues relevant to the operations, activities, and services of the Covered Organisations;
 - c. coordination of supervisory activities; and
 - d. any other areas of mutual interest.

2. The Authorities recognise the importance of close cooperation and communication in the event that a Covered Organisation experiences, or is threatened by, a potential financial crisis or other Emergency Situation. Where there is an Emergency Situation with respect to a Covered Organisation:
 - a. one or both Primary Authorities should provide notification to the Secondary Authorities, and the Authorities should keep each other appropriately informed throughout the Emergency Situation; and
 - b. the Primary Authorities should coordinate and lead in an Emergency Situation and should consult with and take account of the views of the Secondary Authorities to the greatest extent practicable.
3. Cooperation will be most useful in circumstances where issues of regulatory, supervisory, or enforcement concern may arise, including but not limited to:
 - a. the initial consideration of whether a Covered Organisation should be authorised or licensed to operate in the jurisdiction of the Secondary Authority in accordance with the applicable Laws and Regulations;
 - b. an Authority's assessment of compliance and monitoring of the ongoing compliance by a Covered Organisation within the conditions of such authorisation;
 - c. changes in a Covered Organisation's internal rules, policies, or procedures that could affect the way in which a Covered Organisation complies with such conditions;
 - d. regulatory, supervisory, or enforcement actions or approvals taken by an Authority in relation to a Covered Organisation, including changes to the relevant obligations and requirements to which Covered Organisations are subject which may impact a Covered Organisation's continued compliance with such conditions; and
 - e. changes that could affect the regulatory status or supervisory treatment of, or relief granted to, a Covered Organisation, particularly where this may disrupt cross-border activities.

Event-Triggered Notification

4. Each Authority will endeavor to inform each other Authority promptly, and where practicable in advance of:
 - a. pending regulatory changes or proposed regulatory action by an Authority that may have a significant impact on the operations, activities, or reputation of a Covered Organisation, including changes related to default rules or procedures;
 - b. any enforcement actions against a Covered Organisation;
 - c. any material event that could adversely impact the financial or operational stability of a Covered Organisation including, without limitation, such events as:
 - i) a default or potential default of a participant;
 - ii) market or settlement bank difficulties;
 - iii) failure by the Covered Organisation to satisfy any requirement or condition of any licence or authorisation it holds;
 - iv) changes in the operating environment, financial resources, operations management or systems and controls of a Covered Organisation; and
 - d. the status of efforts to address any material events that could adversely impact the financial or operational stability of a Covered Organisation or participant.
5. In each case, the determination of what constitutes 'significant impact', 'material event', 'adverse impact', or 'difficulties', will be left to the reasonable discretion of the Authority providing the information.

Request-Based Information Sharing

6. To the extent necessary to supplement informal consultations, the Requested Authority will, upon written request, provide to the Requesting Authority the fullest practicable cooperation in assisting the Requesting Authority's exercise of its functions relating to a Covered Organisation. Such requests will be made in a manner that is consistent with Article 4.1 of this MOU and the goal of minimising administrative burdens, and will relate to information that is not otherwise readily available to the Requesting Authority.
7. If the cost to the Requested Authority of fulfilling a request for information or assistance is likely to be substantial, it may require the Requesting Authority to contribute to the cost as a condition of providing the information or assistance.

Periodic Meetings

8. Representatives of the Authorities may meet, as necessary, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of Covered Organisations. Such meetings may be conducted in person or virtually, as judged appropriate by the Authorities. Representatives of a Covered Organisation may also be invited to such meetings.

ARTICLE FOUR: EXECUTION OF REQUESTS FOR ASSISTANCE

1. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically) and addressed to the relevant contact details set out in Appendix B. A request generally should specify:
 - a. the information sought by the Requesting Authority;
 - b. a general description of the matter that is the subject of the request;
 - c. the purpose for which the information is sought, including Laws and Regulations applicable to the activity;
 - d. to whom, if anyone, including any Governmental Entity onward disclosure of information is likely to be necessary and the reason for any such disclosure; and
 - e. the desired time period for reply and, where appropriate, any urgency of the request.
2. In an Emergency Situation, the Authorities will endeavor to notify each other of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the efforts to address the Emergency Situation. During an Emergency Situation, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible and where possible within five business days following such request.

ARTICLE FIVE: PERMISSIBLE USES OF INFORMATION

1. Subject to Articles 5.2 and 5.3 below, the Requesting Authority may use non-public information obtained under this MOU solely for the purposes of exercising its powers and functions in relation to Covered Organisations.
2. Before using non-public information obtained under this MOU for any purpose other than those stated in Article 5.1, the Requesting Authority must first inform and gain the written approval of the Requested Authority for the intended use. The Authorities will consult to discuss the reasons for any denial by the Requested Authority of such use and the circumstances under which such use might be allowed.
3. Articles 5.1 and 5.2 do not apply to:
 - a. an Authority's use of information it obtained directly from a Covered Organisation; and

- b. information shared between ASIC and FMA and sought to be used for enforcement purposes. This will remain governed by Paragraph 10 of the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

ARTICLE SIX: CONFIDENTIALITY

1. Except for disclosures in accordance with this MOU, each Authority intends to keep confidential, to the extent permitted by the Laws and Regulations, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
2. Each Authority acknowledges that it may become necessary for a Requesting Authority to share non-public information obtained under this MOU with a Governmental Entity in its jurisdiction. In these circumstances and to the extent permitted by the Laws and Regulations, subject to Article 6.3:
 - a. the Requesting Authority will notify the Requested Authority; and
 - b. prior to sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurance that:
 - i) The Governmental Entity has confirmed that it requires the information for the purpose of enabling it to fulfil its functions; and
 - ii) The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority.
3. The FMA and RBNZ acknowledge that:
 - a. the RBA is enabled by legislation to assess clearing and settlement facilities licensed under section 824B of the Corporations Act 2001, including Covered Organisations, against the financial stability standards that it sets and is required to report the outcome of those assessments to ASIC and the relevant Australian Government Minister;
 - b. it is the RBA's practice to publish each assessment as permitted by legislation and after consultation with the relevant licensee about matters that the RBA believes are relevant to its assessment;
 - c. information that the FMA or RBNZ holds about a Covered Organisation may be useful to the RBA in preparing such an assessment;
 - d. where the RBA deems it appropriate, the assessment may incorporate information provided by the FMA or RBNZ under this MOU;
 - e. for the purpose of the RBA carrying out its legislative responsibilities outlined in this Article 6.3, the RBA's report to ASIC and the relevant Australian Government Minister may refer to matters identified by FMA or RBNZ and included or referred to in information provided by FMA or RBNZ; and
 - f. the RBA will consult with the FMA and RBNZ about publication of any assessment of a Covered Organisation to the extent that the assessment refers to matters identified by the FMA or RBNZ.
4. Each Australian Authority may share non-public information obtained under this MOU with the other Australian Authority and each NZ Authority may share non-public information obtained under this MOU with the other NZ Authority, provided that the other Australian Authority or other NZ Authority (as applicable) uses and treats that information in accordance with this MOU.
5. Except as provided in Articles 6.2 and 6.3, and subject to any applicable Laws and Regulations, the Requesting Authority must obtain consent from the Requested Authority prior to providing non-public information obtained under this MOU to any non-signatory to this MOU. The Requested Authority will

take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is not obtained from the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding consent to such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.

6. 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 will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
7. Each Authority intends that the sharing or the disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.
8. The Requesting Authority is to notify the Requested Authority immediately, in writing, of any disclosure or use of non-public information furnished under this MOU in a manner contrary to this MOU and advise of the steps that have been and/or will be taken to deal with the situation.
9. Each Authority acknowledges that nothing in this Article prevents it from disclosing information it receives directly from a Covered Organisation were permitted by Laws and Regulations.

ARTICLE SEVEN: REVIEW AND AMENDMENTS

1. The Authorities may consult to review the functioning and effectiveness of the cooperation arrangements with a view to, *inter alia*, altering the scope or operation of the arrangements under the MOU.
2. This MOU may be amended with the written consent of all the Authorities.
3. An Authority may propose in writing to each of the other Authorities to amend any of the details in Appendix A. Any such proposed amendment will take effect once each of the other Authorities has provided their written consent.
4. An Authority may amend any of the contact details in Appendix B by providing written notice to each of the other Authorities. The amendment does not require the Authorities to give their written consent or sign an amended MOU.

ARTICLE EIGHT: PUBLICATION OF THIS MOU

Each Authority agrees to this MOU (including the information set out in Appendix A, as amended from time to time but excluding Appendix B) being made publicly available.

ARTICLE NINE: TERMINATION

1. This MOU will remain operative until terminated or substituted.
2. If an Authority wishes to no longer be a signatory to this MOU, it shall provide 30 calendar days prior written notice to the other Authorities
3. If an Authority gives such notice:
 - a. the Authorities will consult in relation to any pending requests. If an agreement cannot be reached through consultation, the MOU will continue to apply to all requests for assistance that were made under the MOU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance.
 - b. the other Authorities:

- i. will consult about any consequential amendments required to the MOU, including whether the MOU should be terminated and the remaining Authorities enter into a new MOU; and
 - ii. may agree in writing to terminate the MOU with effect from a specified date.
4. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner described under Articles Five and Six.

ARTICLE TEN: EFFECT OF MOU

This MOU will enter into effect on the date it is signed by all of the Authorities and with effect on and from that date, will replace the Memorandum of Understanding Concerning Cooperation and the Exchange of Information related to the Supervision of Cross-Border Clearing Organisations between the RBA and RBNZ dated 1 August 2014.

Signatures:

This MOU is executed in counterparts.

Signed on 24 April 2023

for the **Reserve Bank of New Zealand**



Christian Hawkesby
Deputy Governor

Signed on 26 April 2023

for the **New Zealand Financial Markets Authority**



Samantha Barrass
Chief Executive

Signed on **17 April 2023**

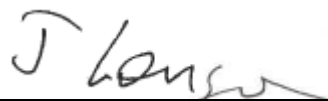
for the **Reserve Bank of Australia**



Bradley Jones
Assistant Governor

Signed on **29-March-2023**

for the **Australian Securities and Investments Commission**



Joseph Longo
Chair

APPENDIX A: COVERED ORGANISATIONS

Covered Organisation	Primary Authorities	Secondary Authorities
ASX Clear (Futures) Pty Limited	Each of ASIC and the RBA	Each of the FMA and RBNZ