

MEMORANDUM OF COOPERATION



CONSOB

COMMISSIONE NAZIONALE
PER LE SOCIETA' E LA BORSA



Financial Services Agency of Japan

December 22, 2020

MEMORANDUM OF COOPERATION RELATED TO THE SUPERVISION OF COVERED FIRMS

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the Financial Services Agency of Japan and the Commissione Nazionale per le Società e la Borsa (hereinafter collectively referred to as the "Authorities" and individually as an "Authority") have reached this Memorandum of Cooperation ("MoC") regarding mutual cooperation and the exchange of information in the supervision and oversight of regulated firms that operate on a cross-border basis in both Japan and Italy. The Authorities express, through this MoC, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates in the context of supervising firms within the scope of this MoC, particularly in the areas of: protecting customers; fostering the integrity of and maintaining confidence in financial markets; and addressing systemic risk.

ITEM ONE: DEFINITIONS

For purposes of this MoC:

1. "Authority" means:
 - a. In Japan, the Financial Services Agency ("JFSA"); or
 - b. In Italy, the Commissione Nazionale per le Società e la Borsa ("CONSOB").
2. "Books and Records" means documents, electronic media, and books and records within the possession, custody, or control of, and other information about, a Covered Firm.
3. "Covered Firm" means a Person that is, or that has applied to be, authorized, recognized, qualified, licensed, registered, supervised, or overseen by one or more of the Authorities pursuant to Laws and Regulations, which may include, without limitation, Persons that provide investment services or activities on a cross-border basis in both Japan and Italy.
4. "Covered Matters" means all securities and derivatives-related activities and conduct of a Covered Firm that are governed by Laws and Regulations.
5. "Emergency Situation" means the occurrence or imminent occurrence of an event that could materially impair the financial or operational condition of a Covered Firm.
6. "Governmental Entity" means:
 - a. If the Requesting Authority is the JFSA, the Japanese Ministry of Finance or the Bank of Japan; and
 - b. If the Requesting Authority is CONSOB, the Ministero dell'Economia e delle Finanze (Ministry of Economy and Finance) or Banca d'Italia (Central Bank of Italy).
7. "Laws and Regulations" means:

- a. For the JFSA, the Financial Instruments and Exchange Act, and its relevant JFSA regulatory requirements in Japan; and
 - b. For CONSOB, the Legislative Decree no. 58/1998 (“Consolidated Law on Financial Intermediation”), CONSOB regulations and other applicable legal or regulatory requirements in Italy, including Regulation (EU) No. 600/2014.
8. “Local Authority” means the Authority in whose jurisdiction a Covered Firm that is the subject of an On-Site Visit is physically located.
 9. “On-Site Visit” means any regulatory visit to the premises of a Covered Firm located in the other Authority’s jurisdiction as described in Item Five for the purposes of ongoing supervision and oversight in relation to its Covered Matters, including the review of Books and Records.
 10. “Person” means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Covered Firm.
 11. “Requested Authority” means the Authority to whom a request is made under this MoC.
 12. “Requesting Authority” means an Authority making a request under this MoC.
 13. “Visiting Authority” means the Authority conducting an On-Site Visit.

ITEM TWO: GENERAL MATTERS

14. This MoC is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of Covered Firms with respect to their Covered Matters. The cooperation and information sharing arrangements under this MoC should be interpreted and implemented in a manner that is permitted by, and consistent with, the legal requirements applicable to each Authority. With respect to cooperation pursuant to this MoC, the Authorities acknowledge that they may only provide information under this MoC to the other to the extent that they are not prevented from doing so under their respective domestic law. The Authorities believe that no secrecy or blocking laws or regulations should prevent an Authority from providing assistance to the other Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation, including through mutual assistance in obtaining information related to Covered Firms with respect to their Covered Matters. The contents of this MoC are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws and regulations.
15. This MoC does not create any legally binding obligations, confer any rights, modify or supersede domestic or European Union legislation or restrict the Authorities in the exercise of their statutory powers and functions. This MoC 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 MoC.

16. This MoC 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 MoC does not limit an Authority to taking solely those measures described herein in fulfillment of its functions or preclude Authorities from sharing information or documents with respect to Persons that are not Covered Firms but may be subject to regulatory requirements in Japan and in Italy. In particular, this MoC does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (in line with Item Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the jurisdiction of another Authority.
17. This MoC is intended to complement but does not alter the terms and conditions of existing arrangements, including:
 - a. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“IOSCO MMOU”), to which the JFSA and CONSOB are participants, which covers primarily information sharing in the context of enforcement matters;
 - b. The *Memorandum of cooperation concerning consultation, cooperation and the exchange of information related to the supervision of funds and fund managers* (July 22, 2013), to which the JFSA and CONSOB are participants (“AIFMD MoC”); and
 - c. The Administrative Arrangement for the transfer of personal data (“Personal Data Arrangement”), to which the JFSA (April 26, 2019) and CONSOB (June 7, 2019) are participants.

Where a request can be made based on this MoC and AIFMD MoC, the Authorities will prioritize making a request pursuant to the AIFMD MoC where applicable.

The Personal Data Arrangement supplements existing arrangements between the Authorities and sets forth certain safeguards for the transfer of personal data. The Authorities acknowledge that they will act consistent with the Personal Data Arrangement with respect to the transfer of personal data between them under this MoC.

18. To facilitate cooperation under this MoC, the Authorities hereby designate contact persons as set forth in Attachment A, which may be modified from time to time by an Authority transmitting revised contact information in writing to the other Authority.

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

General

19. The Authorities recognize the importance of close communication concerning Covered Firms and intend to consult as appropriate, regarding:
 - a. General supervisory issues, including regulatory, oversight, or other related developments;
 - b. Issues relevant to the operations, activities, and regulation of Covered Firms with respect to their Covered Matters; and
 - c. Any other areas of mutual supervisory interest.
20. The Authorities recognize in particular the importance of close cooperation in the event that a Covered Firm, particularly one whose failure likely would be systemically important to an Authority, experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
21. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
 - a. The initial application of a Covered Firm for authorization, recognition, qualification, license, registration, or exemption therefrom and the acquisition, disposal, or increase of significant holdings in a Covered Firm;
 - b. The ongoing supervision and oversight of a Covered Firm with respect to its Covered Matters, including compliance with Laws and Regulations in either jurisdiction; and
 - c. Regulatory or supervisory actions or approvals taken in relation to a Covered Firm by the JFSA or CONSOB that may materially impact the operations of the Covered Firm with respect to its Covered Matters in the jurisdiction of the other Authority.

Event-Triggered Notification

22. As appropriate in the particular circumstances and with respect to Covered Matters, each Authority will endeavor to inform the other Authority promptly, and where practicable in advance, of:
 - a. Pending regulatory changes that may have a material impact on the operations, reputation, rules, or procedures of a Covered Firm with respect to its Covered Matters;
 - b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a Covered Firm. Such events include the failure of the Covered Firm to satisfy any of its requirements for continued authorization, recognition, qualification, license, registration, or exemption therefrom where that failure could have a material adverse effect in the jurisdiction of the other Authority, as well as any known material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Covered Firm; and

- c. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of authorization, recognition, qualification, license, registration, or exemption therefrom, concerning a Covered Firm and/or any individual involved in the Covered Matters of a Covered Firm.
23. The determination of what constitutes “materially impact” for purposes of Paragraph 21 or “material impact”, “material event”, “adversely impact”, “material adverse effect”, “material change”, “enforcement actions or sanctions”, or “significant regulatory actions” for purposes of Paragraph 22 will be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

Request-Based Information Sharing

24. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide the Requesting Authority with the fullest possible cooperation in line with the terms in this MoC in assisting the Requesting Authority’s supervision and oversight of Covered Firms with respect to Covered Matters, including assistance in obtaining and interpreting information that is relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority and that is not reasonably otherwise available to the Requesting Authority. Such requests will be made pursuant to Item Four of this MoC, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens. Sharing of information in line with this MoC would be conducted to the extent reasonable and subject to any relevant statutory provisions, including those restricting disclosure. In addition, a request for assistance under this MoC may be denied:
- a) where the cooperation would require an Authority to act in a manner that would violate its domestic laws and regulations;
 - b) where a request for assistance is not made in accordance with the terms of this MoC; or
 - c) on the grounds of the national public interest.

Where a request for assistance is denied, or where assistance is not available under domestic laws and regulations applicable in the territory of the Requested Authority, the Requested Authority will provide the reasons for not granting the assistance.

25. The information covered by Paragraph 24 includes, without limitation, information such as:
- a. Information responsive to requests from an Authority that would assist the Requesting Authority to verify the fitness of an applicant for authorization, recognition, qualification, license, registration, or exemption therefrom pursuant to Laws and Regulations of the Requesting Authority;
 - b. Information relevant to the financial and operational condition of a Covered Firm, including, for example, financial resources, risk management, and internal control procedures;

- c. Relevant regulatory information and filings that a Covered Firm is required to submit to an Authority including, for example, interim and annual financial statements and early warning notices; and
- d. Information contained in or relevant to regulatory reports prepared by an Authority, including, for example, examination reports regarding Covered Firms.

Periodic Meetings

26. Representatives of the Authorities intend to meet periodically, 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 Firms, including: contingency planning and crisis management, systemic risk concerns, the adequacy of existing cooperative arrangements, and the possible improvement of cooperation and coordination between the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

ITEM FOUR: EXECUTION OF REQUESTS FOR INFORMATION

27. To the extent possible, a request for information pursuant to Item Three should be made in writing (which may be transmitted electronically) and addressed to the relevant contact person(s) identified in Attachment A. A request generally should specify the following:
- 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; and
 - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information in response to the request, as well as any subsequent communication among Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

The Requesting Authority and the Requested Authority should refer to the Personal Data Arrangement in requesting or providing personal data in line with this MoC.

28. In an Emergency Situation, the Authorities will endeavor to notify each other as soon as possible of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the status of 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 following such notification.

ITEM FIVE: ON-SITE VISITS

29. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, its Laws and Regulations in connection with Covered Matters of Covered Firms, an Authority may need to conduct On-Site Visits to a Covered Firm physically located in the jurisdiction of the other Authority. The Authorities will discuss and reach common recognition on the terms regarding On-Site Visits, taking into full account each other's sovereignty, legal framework and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities.
30. The Authorities will act in line with the following procedures before conducting an On-Site Visit.
- a. The Visiting Authority will provide advance notice to the Local Authority of its intent to conduct an On-Site Visit. The Authorities will consult with a view to reaching common recognition on the intended timeframe for and scope of the On-Site Visit.
 - b. When establishing the scope of any proposed On-Site Visit, the Visiting Authority will give due and full consideration to the supervisory activities of the Local Authority and any information that was made available or is capable of being made available by the Local Authority. Other than in exceptional circumstances, the Visiting Authority will consult with the Local Authority prior to notifying the Covered Firm.
 - c. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have carried out of the Covered Firm.
 - d. The Authorities intend to assist each other regarding On-Site Visits, including providing information that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Covered Firm.
 - e. The Authorities will consult with each other, and the Local Authority may, if required by relevant Laws and Regulations or in its discretion, accompany or assist the Visiting Authority during the On-Site Visit, or the Authorities may conduct joint On-Site Visits where appropriate.
 - f. The Authorities will communicate with each other, including via meetings as appropriate, during the On-Site Visit. After concluding an On-Site Visit, the Visiting Authority will communicate any major issues to the Local Authority that may adversely impact the authorization, recognition, qualification, license, registration, or exemption therefrom of the Covered Firm.

ITEM SIX: PERMISSIBLE USES OF INFORMATION

31. The Requesting Authority may use non-public information obtained under this MoC solely for the supervision and oversight of Covered Firms pursuant to, and to ensure compliance with, the Laws and Regulations of the Requesting Authority with respect to Covered Matters.

32. The Authorities recognize that, while this MoC is not intended to gather information for enforcement purposes, subsequently an Authority may want to use the non-public information provided in line with this MoC for enforcement purposes. In cases where a Requesting Authority seeks to use non-public information obtained pursuant to this MoC for enforcement purposes, including in conducting investigations or taking enforcement actions, the Requesting Authority will notify the Requested Authority of that change of purposes, including the applicable regulations and relevant provisions behind the enforcement. Use for enforcement purposes and confidential treatment by the Requesting Authority of non-public information provided by the Requested Authority will be in line with the terms and conditions of the IOSCO MMOU. The Authorities will, as necessary, discuss and reach common understanding on any potential inconsistencies with the procedures set out in IOSCO MMOU that may occur as a result of the use of non-public information for enforcement purposes, including those in connection with Paragraph 6(e)(iii) of IOSCO MMOU.
33. Before using non-public information furnished under this MoC for any purpose other than those stated in Paragraphs 31 and 32, 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.
34. The restrictions in this Item do not apply to an Authority's use of information it obtains directly from a Covered Firm, whether during an On-Site Visit or otherwise.

ITEM SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

35. Except as set out in Paragraphs 36, 37 and 38, each Authority will keep confidential, to the extent permitted by the laws and regulations applicable in the territory of each Authority, non-public information shared under this MoC, requests made under this MoC, the contents of such requests, and any other matters arising under this MoC.
36. As required by the laws and regulations, it may become necessary for a Requesting Authority to share non-public information obtained under this MoC with a Governmental Entity in its jurisdiction. In these circumstances and to the extent permitted by law:
 - a. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will notify the Requested Authority; and
 - b. Prior to the Requesting Authority 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, assurances that:
 - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction and as required by laws and regulations applicable in the territory; and

- ii. The information will not be shared by the Governmental Entity with other third parties without getting the prior written consent of the Requested Authority.
37. Except as set out in Paragraphs 36 and 38, the Requesting Authority must obtain the prior written consent of the Requested Authority before sharing non-public information received under this MoC with any non-participant to this MoC. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, prior 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 by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
38. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MoC prior to complying with such demand. Prior to complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
39. The Authorities intend that the sharing or disclosure of non-public information, including 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 MoC, will not constitute a waiver of privilege or confidentiality of such non-public information.
40. Without prejudice to the foregoing paragraphs¹, mutual legal assistance in criminal matters remains subject to national laws and regulations and international or bilateral agreements between Italy and/or the European Union and Japan. The Authorities acknowledge the principle that the information obtained under this MoC may be used in criminal proceedings carried out by court or judge, including as evidence in criminal court, following the procedures prescribed in the relevant national and international laws and regulations for international mutual assistance in investigations. For the avoidance of doubt, this paragraph is not intended to, and does not, constitute any consensus for the Authorities to act beyond their supervisory remit under the applicable laws and regulations.

ITEM EIGHT: MODIFICATIONS

41. The Authorities intend to periodically review the functioning and effectiveness of this MoC with a view, *inter alia*, to expanding or altering the scope or operation of this MoC should that be judged necessary. The Authorities may decide on such practical measures as may be necessary to facilitate the implementation of this MoC. In case a material difference arises

¹ CONSOB is under an obligation, deriving from its national law, to promptly report criminal offences to Italian criminal judicial authority or public prosecutor and to comply with requests to provide information and/or documents to said authorities.

with respect to the interpretation of this MoC, the Authorities will consult with each other with a view to reaching a mutually acceptable interpretation. This MoC may be modified with the written consent of the Authorities.

ITEM NINE: EXECUTION OF MOC

42. Cooperation under this MoC will commence on the date this MoC is signed by the Authorities.

ITEM TEN: DURATION

43. Cooperation under this MoC will continue for the duration of 30-day period after an Authority gives written notice to the other Authority of its intention to terminate this MoC. If an Authority gives such notice, the Authorities will consult concerning the disposition of any pending requests. If consensus cannot be reached through consultation, cooperation will continue with respect to all requests that were made under this MoC before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s). In the event of expiration of duration of this MoC, information obtained under this MoC will continue to be treated in the manner prescribed under Items Six and Seven.

This MoC is signed in two duplicates.

Paolo Savona
Chairman
Commissione Nazionale per le Società e la Borsa
Date:_____

Himino Ryozo
Commissioner
Financial Services Agency of Japan
Date:_____