



**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
In Connection with the Use of Substituted Compliance by Such Entities**

The United States Securities and Exchange Commission (“SEC”) and the Swiss Financial Market Supervisory Authority (“FINMA”) 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 Switzerland. 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 Switzerland and supervision and enforcement by the SEC of its laws and regulations regarding Covered Firms’ (as defined below) Covered Activities (as defined below), 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. In the case of FINMA, this MOU is intended to advance its interests in the implementation of its financial market law and furthering the purposes of financial market supervision.

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 Switzerland determining that an SEC-registered security-based swap dealer or major security-based swap participant, or class thereof, may comply with specified Swiss requirements in order to satisfy specified U.S. requirements. Before the SEC may issue such an order, the SEC must determine that specified Swiss requirements applicable to the Covered Activities of a Covered Firm are comparable to specified U.S. requirements, after taking into account factors such as the scope and objectives of Swiss requirements and the effectiveness of the supervisory compliance program administered, and enforcement authority exercised by, authorities in Switzerland.

Further, prior to issuing an order permitting substituted compliance with respect to Swiss requirements, the SEC must have entered into a memorandum of understanding or other arrangement with the relevant Swiss 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. Laws and Regulations.

Article I: Definitions

For purposes of this MOU:

1. “Authority” (collectively, “Authorities”) means:
 - a. In the United States, the SEC; and
 - b. In Switzerland, FINMA.
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. “Confidential Information” means any non-public information.
4. “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.
5. “Covered Firm” means an SEC Security-Based Swap Entity that is also a Swiss Firm.
6. “Emergency Situation” means the occurrence of an event that could have an imminent impact and materially impair the financial or operational condition of a Covered Firm.
7. “Enforcement Program” refers to FINMA’s investigation and enforcement of possible violations of Swiss Laws and Regulations by Persons, including Covered Firms, in the context of Covered Activities. The Enforcement Program includes: (i) the Swiss Laws and Regulations; (ii) FINMA’s powers, resources and capacity to conduct investigations, and conduct administrative or judicial tribunal proceedings for violations of Swiss Laws and Regulations, and resolve enforcement claims; (iii) internal policies and procedures pursuant to which FINMA conducts its investigations, administrative or judicial tribunal proceedings, enforcement actions and resolutions; and (iv) FINMA’s staff that conducts the investigations, administrative or judicial tribunal proceedings, enforcement actions, and resolutions.
8. “Firm Information” means (i) regulatory information and filings that a Covered Firm is required to submit, or has otherwise provided, to FINMA with respect to its Covered Activities, including, for example, interim and annual financial statements and early warning notices; (ii) regulatory or supervisory reports (reports of any kind of reviews carried out or ordered by FINMA), or sections thereof, as well as any information needed for effective supervision of a Covered Firm with respect to its Covered Activities, including annual supervisory letters sent to Covered Firms regarding areas of law where substituted compliance has been granted; (iii) information in the possession of FINMA about any event that could materially impact the financial or operational stability of a Covered Firm or its ability to conduct Covered Activities, including (A) any known failure of a Covered Firm to

satisfy any of its requirements for continued authorization as a Swiss Firm, where that failure could have an adverse effect on the Covered Activities of a Covered Firm; and (B) any known material change in the ownership of, operating environment of, operations related to, financial resources dedicated to, management of, or systems and controls of a Covered Firm impacting, the Covered Activities of a Covered Firm; (iv) information in the possession of FINMA relating to substantial administrative, civil or criminal enforcement or judicial action or sanction concerning a Covered Firm with respect to its Covered Activities and/or any individual involved in the Covered Activities of a Covered Firm; or (v) information in the possession of FINMA relating to significant regulatory actions by any other authority, including the revocation, suspension, or modification of registration or authorization, concerning a Covered Firm with respect to its Covered Activities and/or any individual involved in the Covered Activities of a Covered Firm.

9. “Governmental Entity” means:
 - a. the U.S. Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Financial Stability Oversight Council, if the Requesting Authority is the SEC; and
 - b. the Swiss Takeover Board, the Federal Audit Oversight Authority, or the Swiss National Bank, if the Requesting Authority is FINMA.
10. “Laws and Regulations” means the U.S. Laws and Regulations applicable to the SEC and/or the Swiss Laws and Regulations applicable to FINMA.
11. “Local Authority” means the Authority in whose jurisdiction a Covered Firm that is the subject of an On-Site Visit is located.
12. “On-Site Visit” means any regulatory visit to the premises of a Covered Firm (as described in Article V) for the purposes of ongoing supervision and oversight of its Covered Activities, including the inspection of Books and Records.
13. “Person” means a natural person or a legal entity, including but not limited to, an unincorporated association, a partnership, a trust, an investment company, or a corporation. This definition includes Covered Firms.
14. “Regulatory Change Information” means information about any material publicly available draft, proposed, or final change in law, regulation, or order of the jurisdiction of FINMA that may have a material impact on a Covered Firm with respect to its Covered Activities.
15. “Requested Authority” means the Authority to which a request is made or which provided information pursuant to this MOU.
16. “Requesting Authority” means the Authority that made a request or received information pursuant to this MOU.

17. “SEC Security-Based Swap Entity” means either (i) a security-based swap dealer or (ii) a major security-based swap participant, in each case that is, or has applied to be, registered as such with the SEC under the Exchange Act.
18. “Substituted Compliance Order” means an order, whether conditional or unconditional, of the SEC determining that compliance with specified requirements of the laws of Switzerland 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.
19. “Supervision Program” refers to FINMA’s oversight and examination of its Covered Firms regarding their compliance with Swiss Laws and Regulations with respect to Covered Activities. The Supervision Program includes: (i) the Swiss Laws and Regulations, (ii) internal policies and procedures that govern FINMA’s oversight and examinations of Covered Firms regulated by FINMA; (iii) FINMA’s staff that conducts and coordinates the oversight and examinations of Covered Firms and related supervisory resources; and (iv) the oversight activities and examinations conducted by FINMA’s staff.
20. “Swiss Firm” means a entity that is not a “U.S. Person”, as that term is defined in rule 3a71-3(a)(4) under the Exchange Act, and that under the Swiss financial market acts is required to be licensed, recognized, or registered by FINMA as set forth in Article 3 of FINMASA.
21. “Swiss Laws and Regulations” means all of the provisions of Swiss laws, regulations, ordinances, circulars and guidance that are administered by FINMA and cited in one or more Substituted Compliance Orders, including, but not limited to, the Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 (Financial Market Supervision Act (“FINMASA”)), the Federal Act on Banks and Savings Banks of 8 November 1934 (Banking Act (“BA”)), the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of 19 June 2015 (Financial Market Infrastructure Act (“FinMIA”)), and other relevant requirements applicable in Switzerland, in each case, as applicable to activity and conduct of Swiss Firms in instruments that would be security-based swaps and/or security-based swap agreements (as those terms are defined in Section 3(a)(68) and Section 3(a)(78) of the Exchange Act and rules thereunder).
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).
23. “Visiting Authority” means the Authority conducting an On-Site Visit.

Article II: General Provisions

24. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision, enforcement, and oversight of Covered Firms with respect to 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 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 regulatory cooperation and the exchange of information in order to enhance the Authorities' oversight of the Covered Firms.
25. With respect to cooperation pursuant to this MOU, at the date this MOU is executed, each Authority represents that it is not aware of any domestic secrecy, blocking or data privacy laws, or other regulations or legal barriers, which should prevent that Authority from providing assistance to the other Authority pursuant to this MOU, or otherwise adversely affect or hinder the operation of this MOU.
- a. FINMA represents that under Swiss law,¹ Covered Firms are authorized to transmit information in connection with their Covered Activities, including Books and Records, directly from Switzerland to the SEC either in writing or orally (including by telephone, etc.), provided that:
 - i. this information is used exclusively for the lawful supervision (including enforcement) of financial institutions and financial markets under U.S. Laws and Regulations, or is forwarded to other authorities, courts or bodies for this purpose;
 - ii. the SEC is bound by official or professional secrecy, notwithstanding provisions on the public nature of proceedings and the notification of the general public about such proceedings;² and
 - iii. the rights of clients and third parties are preserved.³

¹ Art. 42c in connection with Art. 42 para. 2 of FINMASA.

² FINMA has taken note that all SEC personnel is bound by professional secrecy under applicable U.S. law. Thus, consistent with U.S. law, the SEC will hold confidential all information obtained from a Covered Firm. Furthermore, FINMA understands that the SEC will use the obtained information only to fulfil its supervisory and oversight responsibility (including enforcement) with respect to Covered Activities of the Covered Firms and OTC derivatives markets in general, or forward it to other authorities, courts or bodies for this purpose.

³ Reference is made to the the Memorandum dated 25 June 2021 concerning Swiss Firm Data Processing and Sharing of Information with the U.S. Securities and Exchange Commission ("FDPIC Memorandum") from the Swiss Federal Data Protection and Information Commissioner ("FDPIC"). In the FDPIC Memorandum, the FDPIC sets out how Swiss firms (including Covered Firms) can transfer data to the SEC in accordance with relevant Swiss data protection laws. The FDPIC Memorandum is available at:

- b. FINMA has issued a waiver of its right to reserve administrative assistance channels in accordance with Article 42c, paragraph 4, of FINMASA (“Article 42c Waiver”) with regard to information in connection with the security-based swap dealer business of a Covered Firm and necessary for the SEC’s lawful supervision (including enforcement) of the Covered Firm’s Covered Activities. The Article 42c Waiver also permits Covered Firms to report to FINMA pursuant to Article 42c, paragraph 3, of FINMASA, direct transmissions to the SEC covered by the Article 42c Waiver, simultaneously with the transmission to the SEC, without waiting for FINMA’s response.
 - c. In circumstances where the transmission of information is not covered by the Article 42c Waiver and FINMA invokes its right to administrative assistance channels in accordance with Article 42c, paragraph 4, of FINMASA, FINMA may transmit such information to the SEC through administrative assistance channels in accordance with the terms of this MOU.
26. 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.
27. The Authorities will, within the framework of this MOU, endeavor to cooperate closely in relation to the supervision and oversight of Covered Firms with respect to their Covered Activities and the operation of the Substituted Compliance Order. Following consultation, cooperation may be denied:
- a. Where the cooperation would require an Authority to act in a manner that would violate domestic laws; or
 - b. Where a request for assistance is not made in accordance with the terms of the MOU.
28. This MOU does not limit the ability of an Authority to take measures not described in this MOU. In particular, this MOU does not impact any right of either Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article V), or obtain information or documents from, any Person subject to its jurisdiction that may be physically located in the jurisdiction of the other Authority to the extent permitted by law.
29. This MOU complements, but does not supersede, limit, or alter the terms and conditions of (i) the *IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (2016) (“IOSCO EMMOU”) to which the SEC and FINMA are signatories, which covers information-sharing in the context of enforcement investigations; and (ii) any other existing arrangements concerning cooperation in securities matters to which the Authorities are signatories.

<https://www.edoeb.admin.ch/dam/edoeb/en/dokumente/2021/Memorandum%20SEC.pdf.download.pdf/Memorandum%20SEC.pdf>

30. To facilitate communication and cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Annex A, which may be amended from time to time by an Authority transmitting revised contact information in writing to the other Authority.
31. Nothing in this MOU shall be construed to limit an Authority in the discharge of its regulatory responsibilities pursuant to applicable laws and regulations, including with respect to an Authority's ability to enforce a Substituted Compliance Order.

Article III: Scope of Consultation, Cooperation, and Exchange of Information

General

32. The Authorities recognize the importance of close communication and cooperation concerning Covered Firms in respect of their Covered Activities and intend to consult regularly, as appropriate, regarding:
 - a. General supervisory and oversight issues or other related developments;
 - b. Issues relevant to the activities, and regulation of Covered Firms;
 - 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, which may be of importance to the SEC's supervision (including enforcement) of Covered Activities; and
 - iii. the ongoing compliance of Covered Firms with the terms of a Substituted Compliance Order and Laws and Regulations; and
 - d. Any other areas of mutual interest.
33. 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

34. In order and to the extent necessary to fulfill its mandate under U.S. Laws and Regulations regarding the supervision (including enforcement) of Covered Firms with respect to their Covered Activities, or to ensure compliance with a Substituted Compliance Order, the SEC requests (such request making it a Requesting Authority for this purpose) from FINMA, and FINMA intends 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 62 and (ii) Regulatory Change Information, as follows:

- a. In the case of information within paragraphs (i) and (ii) of the definition of Firm Information, promptly after FINMA receives or creates such information and at least on an annual basis, unless the Covered Firm has provided the SEC directly with such Firm Information or the SEC has otherwise notified FINMA that it has already received the Firm Information.
- b. In the case of information within paragraph (iii) of the definition of Firm Information, promptly after FINMA concludes that the material event could impact the financial or operational stability of a relevant Covered Firm or its ability to conduct Covered Activities.
- c. 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 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 (v) 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, no later than promptly upon publication of a proposed or final change in applicable Swiss Laws and Regulations, or order of the jurisdiction of FINMA. Where appropriate and practicable, FINMA may also provide Regulatory Change Information to the SEC prior to publication of the relevant change.

Request-Based Information Sharing

35. To the extent necessary to supplement informal consultations, the Requested Authority intends to provide assistance to the Requesting Authority for the purposes of supervision, oversight and enforcement of the Laws and Regulations of the Requesting Authority with respect to Covered Activities of Covered Firms. Such assistance may include providing 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, where such information is necessary for the Requesting Authority to fulfill its mandate under the Laws and Regulations regarding the financial market supervision (including enforcement) of Covered Firms with respect to their Covered Activities. It is anticipated that such requests for assistance generally will relate to information that is not otherwise available to the Requesting Authority and cannot be obtained directly from the Covered Firms.

36. To the extent possible, a request for assistance pursuant to Paragraph 35 should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person(s) identified in Annex A. A request generally should specify:
- a. The information sought by the Requesting Authority;
 - b. A general description of the matter that is the subject of the request;
 - c. The purpose for which the information is sought, including the applicable Laws and Regulations; and
 - d. The requested time period for reply and, where appropriate, the urgency thereof.
37. The Authorities will make their reasonable best efforts to handle requests for assistance under Paragraph 35 in a timely manner.
38. 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

39. Representatives of the Authorities may consult periodically, as appropriate, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision and oversight of Covered Firms with respect to Covered Activities and the Enforcement Program and Supervision Program, including, but not limited to: contingency planning and crisis management, potential systemic risks, the adequacy of existing cooperation arrangements, provided and to the extent such information is necessary for the Requesting Authority to fulfill its mandate under the Laws and Regulations regarding the financial market supervision (including enforcement) of Covered Firms with respect to their Covered Activities, and enhancing cooperation and coordination between the Authorities.

Provision of Unsolicited Information

40. 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

41. The SEC has informed FINMA 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 at all times to examination 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.
42. The SEC will directly request from a Covered Firm the Books and Records when necessary to fulfill the SEC's regulatory mandate consistent with the provisions of Paragraph 52 below. FINMA represents that, consistent with the provisions of Paragraph 52 below, SEC staff may also conduct interviews with employees of a Covered Firm, and maintain any written records of such interviews.
43. FINMA confirms the Article 42c Waiver is in place, permitting Covered Firms, upon request, to transmit directly to the SEC all Books and Records necessary for the SEC's lawful supervision (including enforcement) of the Covered Activities of Covered Firms, provided such transfer complies with Article 42c of FINMASA and the Article 42c Waiver.
44. 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 FINMA who will liaise with the Covered Firm in order to help solve issues resulting from such refusal. FINMA agrees to assist promptly in liaising with such Covered Firm. The SEC routinely may communicate directly with Covered Firms.

Article V: On-Site Visits

45. The Authorities intend to facilitate access to Covered Firms operating in their respective territories with a view to improving the effectiveness of the supervision of such Covered Firms. Where necessary in order to fulfill its supervisory and oversight responsibilities with respect to Covered Activities and to review compliance with its respective Laws and Regulations, an Authority may, upon notice to the other Authority or, in the case of On-Site Visits conducted by the SEC, pursuant to the Article 43 Permission (as defined below), conduct On-Site Visits of Covered Firms located in the territory of the other Authority, including to inspect and examine Books and Records and conduct interviews with employees of a Covered Firm, and maintain any written records of such interviews. The Visiting Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit. The Visiting Authority will take into account the sovereignty, legal framework, and statutory obligations of the Local Authority in conducting On-Site Visits.
46. FINMA confirms that it has granted a permission to the SEC pursuant to Article 43 of FINMASA ("Article 43 Permission") to conduct On-Site Visits of Covered Firms in Switzerland, for the purpose of inspection and examination of Books and Records and conducting interviews with employees of a Covered Firm in connection with the security-based swap dealer business of a Covered Firm and necessary for the SEC's supervision of the Covered Firm's Covered Activities. The SEC agrees to conduct such On-Site Visit in

accordance with the Article 43 Permission.⁴ Where the scope of an intended On-Site Visit or the documents and information to be reviewed are not covered by the Article 43 Permission, FINMA intends to approve any written request submitted by the SEC, permitting the SEC to conduct an On-Site Visit to the extent permitted by Swiss Laws and Regulations.

47. Before conducting an On-Site Visit in the Local Authority's jurisdiction, the Visiting Authority will endeavor to comply with the following procedures:
 - a. The Visiting Authority will notify the Local Authority of its intent to conduct an On-Site Visit by letter or e-mail at least two weeks in advance. Such notification shall indicate the planned scope and timeframe of the On-Site Visit.
 - b. The Local Authority intends to transmit upon request of the Visiting Authority relevant reports, or information contained in reports regarding inspections, examinations, or compliance reviews it may have undertaken regarding the Covered Firm with respect to Covered Activities that are relevant to the Visiting Authority's On-Site Visit.
 - c. The Visiting Authority and the Local Authority intend to assist each other regarding On-Site Visits, including by cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management and employees of a Covered Firm.
 - d. The Local Authority may, at its discretion, or at the request of the Visiting Authority or of the Covered Firm, accompany the Visiting Authority during the On-Site Visit and assist in the On-Site Visit.
48. Following an On-Site Visit in the Local Authority's jurisdiction, the Visiting Authority will inform the Local Authority of any findings from such On-Site Visit and upon request, provide to the Local Authority a copy of any letter and/or report issued by the Visiting Authority to a Covered Firm summarizing the findings from such On-Site Visit.
49. Where practicable and reasonable, FINMA will notify the SEC in advance of planned On-Site Visits in Switzerland in instances FINMA reasonably believes the On-Site Visit would be relevant to the SEC in fulfilling its supervisory mandate and responsibilities in connection with its oversight of Covered Activities of Covered Firms. The SEC may, upon request and subject to consent from FINMA, accompany FINMA during the parts of such On-Site Visit where the main focus is on Covered Activities.

⁴ FINMA has taken note that all SEC staff is bound by professional secrecy under applicable U.S. law. Thus, consistent with U.S. law, the SEC will hold confidential all information obtained in the course of an examination. Furthermore, FINMA understands that the SEC will use the obtained information exclusively to fulfil its supervisory and oversight responsibility (including enforcement) with respect to Covered Activities of the Covered Firms and OTC derivatives markets in general, or forward it to other authorities, courts or bodies for this purpose.

Article VI: Permissible Uses of Information

50. The Requesting Authority may use Confidential Information obtained from the Requested Authority under this MOU exclusively for financial market supervision (including enforcement) and oversight of Covered Firms with respect to Covered Activities and OTC derivatives markets generally, and to seek to ensure compliance with the Laws and Regulations of the jurisdiction of the Requesting Authority, including with a Substituted Compliance Order.
51. To the extent a Requesting Authority determines that Confidential Information obtained from the Requested Authority under this MOU needs to be used for enforcement purposes, the Requesting Authority will use such information in accordance with the terms and conditions of the IOSCO EMMOU, as if such information were collected pursuant to a request for assistance under 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.
52. The Requesting Authority may use information obtained from a Covered Firm under Article IV of this MOU exclusively for implementation of financial market laws, such as the legitimate and specific purpose of assisting it in fulfilling its regulatory mandate and responsibilities, including implementation of its Laws and Regulations, supervision (including enforcement) and oversight, or forward it to other authorities, courts or bodies for this purpose.

Article VII: Confidentiality of Information and Onward Sharing

53. 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, Confidential Information shared with it by the other Authority under this MOU, and requests made to an Authority under this MOU, the contents of such requests, responses and related communications or consultations between the Authorities, and any other matters arising under this MOU and, except as provided in Article VI and Paragraphs 54, 56, and 58, will not disclose any such Confidential Information received from the other Authority under this MOU to any third party for any purpose unless the Requesting Authority has obtained the prior written consent of the Requested Authority. The Requested Authority will take into account the urgency of the request to provide such consent in a timely manner.
54. 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.
55. If consent is denied under this Article VII, the Authorities will consult to discuss the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
56. In certain circumstances, it may become necessary for the Requesting Authority to share Confidential Information obtained from the Requested Authority under this MOU with a

Governmental Entity. In these circumstances and to the extent permitted by law, prior to sharing such information with a Governmental Entity:

- a. The Requesting Authority seeking to share information with a Governmental Entity will notify the Requested Authority; and
 - b. The Requesting Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, assurances that:
 - i. the Governmental Entity has confirmed that it performs a function in financial market supervision 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 Confidential 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 Confidential Information will only be used for the financial market supervision (including enforcement) of Covered Firms with respect to their Covered Activities and in a manner consistent with this Article VII; and
 - iv. to the extent permitted by law, the Confidential Information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority.
57. The Authorities intend that, to the extent permitted by law, the sharing or disclosure of Confidential Information obtained from an Authority under this MOU, including but not limited to deliberative and consultative materials, such as written analysis, opinions or recommendations relating to Confidential Information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.
58. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for – or any legally required disclosure of – Confidential Information obtained from the Requested Authority under this MOU. Prior to compliance with the demand or disclosure, the Requesting Authority shall assist in preserving the confidentiality of the information by taking all appropriate legal measures including asserting all appropriate legal exemptions or privileges with respect to such information as may be available and, where possible, will consult with the Requested Authority in any actions or proceedings which seek to safeguard the confidentiality of the information.
59. The Authorities confirm that in accordance with the law in their jurisdiction: (a) all persons dealing with or having access to Confidential Information subject to this MOU are subject to an obligation of professional or official secrecy; (b) the professional or official secrecy requirements apply to any person currently or previously employed by or acting on behalf of

the Authorities; and (c) any passing on of Confidential Information in breach of official or professional secrecy may result in administrative and/or criminal sanction.

60. 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 Confidential Information obtained from the Requested Authority. Such safeguards will include restricting access to Confidential Information obtained 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.
61. The Requesting Authority will promptly notify the Requested Authority in the event of an unauthorized disclosure of Confidential Information obtained from the Requested Authority under this MOU, including, where possible, identifying the recipient(s) of information.

Article VIII: Notices Regarding Covered Firms

62. Promptly after the issuance of a Substituted Compliance Order, or amendment thereto or revocation thereof, the SEC intends to provide FINMA 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 FINMA from time to time of any Covered Firm that the SEC becomes aware will or may apply for substituted compliance pursuant to such Substituted Compliance Order, and any such entity thereafter shall be included in the ongoing information sharing provisions of Paragraph 34. The SEC may notify FINMA from time to time of any Covered Firm that it believes will no longer qualify 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 34.
63. In the event of (i) the suspension of the license, recognition, or registration by FINMA; 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.
64. The Authorities agree to continue to treat Confidential Information received from the other Authority pursuant to this MOU in accordance with the relevant provisions of Articles VI and VII of this MOU.

Article IX: Amendments

65. This MOU may be amended by the written consent of the Authorities.
66. 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

67. This MOU will enter into force on the date it is signed by both authorities. Cooperation under Articles III and V of this MOU will begin once a Substituted Compliance Order with regard to at least one Covered Firm has entered into force.

Article XI: Termination

68. Either Authority may terminate this MOU by delivering written notice to the other Authority of its intention to terminate. An Authority that delivers such a notice may withdraw it by written notice to the other Authority delivered not more than 30 days after delivery of the termination notice.

69. If an Authority gives and does not withdraw notice pursuant to Paragraph 68 above, (i) this MOU will terminate nine months after the expiration of 30 days following delivery of such notice (the "Transition Period"), and (ii) cooperation will continue with respect to all requests for assistance that were made under this MOU before the expiration of the Transition Period until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Articles VI and VII.

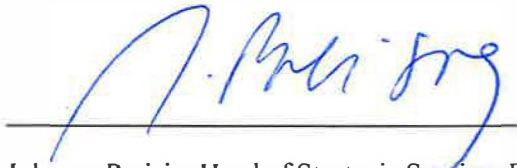
Signed this 8th day of October 2021.



Jan Blöchliger, CEO ad interim
Swiss Financial Market Supervisory Authority



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



Johanna Preisig, Head of Strategic Services Division
Swiss Financial Market Supervisory Authority

Annex A: Contact Persons

Redacted