

2015

**MEMORANDUM  
OF  
UNDERSTANDING  
IN RESPECT OF  
CENTRAL COUNTERPARTIES**

**NEW ZEALAND**  
**Reserve Bank of New Zealand**  
**Financial Markets Authority**

**UNITED KINGDOM**  
**Bank of England**

## MEMORANDUM OF UNDERSTANDING

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### Recitals

- A. The Reserve Bank of New Zealand (RBNZ) has a statutory responsibility to promote the maintenance of a sound and efficient financial system in New Zealand. The Financial Markets Authority's (FMA) main purpose is to promote and facilitate the development of fair, efficient and transparent financial markets in New Zealand. Accordingly both the RBNZ and FMA (the joint NZ regulators) oversee the activities of financial market infrastructures operating in New Zealand.
- B. The Bank of England (the Bank) has an objective to protect and enhance the stability of the UK financial system. The Bank has particular responsibilities to supervise certain market infrastructure (recognised payment systems, securities settlement systems and central counterparties) and as the UK's resolution authority. A statutory Financial Policy Committee has been established as a sub-committee of the Court of Directors of the Bank to act as a macroprudential body, charged with contributing to the Bank's financial stability objective.
- C. The joint NZ regulators and the Bank wish to enter into this MOU to provide a formal basis for co-operation, including for the exchange of information and investigative assistance. The joint NZ regulators and the Bank believe such co-operation will enable them to perform their functions more effectively. The joint NZ regulators and Bank of England have a particular interest in co-operation as regards financial market infrastructure supervision. The Bank of England and the joint NZ regulators acknowledge that clearing service providers which are principally regulated by one party may offer services in the jurisdiction of the other; or be materially important to the other jurisdiction. This MoU will facilitate their cooperation in the supervision of such clearing service providers.
- D. The policy framework for market infrastructure supervision is to a large extent agreed globally to ensure that all jurisdictions uphold appropriate standards in their collective interest and co-operate appropriately. This MoU seeks to facilitate this participation and co-operation.

### Definitions

In this Memorandum of Understanding ("*MoU*") unless the context requires otherwise:

- i. *Applicable Laws and Requirements*" means any law, regulation or requirement to which an Authority is subject or administers, and where the context permits, includes:

- (a) relevant European Economic Area (*EEA*) legislation (whether or not transposed into UK domestic law); and
  - (b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority.
- ii. **Authority** means: for the United Kingdom, the Bank of England, and for New Zealand, the Reserve Bank of New Zealand and/or the Financial Markets Authority acting jointly or separately.
  - iii. **Emergency Situation** means the occurrence of an event that could materially impair the financial or operational condition of a Regulated Entity resulting in damage to financial stability.
  - iv. **Local Authority** means, in respect of an On-Site Visit, the Authority in whose jurisdiction the On-Site Visit takes place.
  - v. **On-Site Visit** means any routine, sweep, or for-cause regulatory visit to the premises of, or inspection of the Books and Records of, a Regulated Entity by an Authority for the purposes of that Authority's ongoing supervision and oversight.
  - vi. **permitted onward recipient** means identified domestic organisations that carry out similar regulatory and/or supervisory functions and are subject to similar information protection regimes.
    - a. For the UK this means the PRA and FCA,
    - b. For New Zealand this means the RBNZ and FMA.
  - vii. **Person** means a natural or legal person, unincorporated association, partnership, trust, company, or corporation.
  - viii. **Regulated Entity** means a domestic or overseas clearing and settlement facility operating in New Zealand that may be subject to oversight in New Zealand under the Reserve Bank of New Zealand Act 1989 and that is also a recognised central counterparty recognised under section 290(1)(b) of the Financial Services and Markets Act 2000.
  - ix. **Requested Authority** means the Authority that receives a request pursuant to this MoU.
  - x. **Requesting Authority** means an Authority making a request under this MoU.

## Purpose and Principles

1. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information and investigative assistance, to facilitate timely and effective supervision, identify risks to the financial system and, where necessary, to address emergency/crisis situations (including resolution). This MoU will also help reduce any regulatory overlap as regards Regulated Entities to the extent permitted by, Applicable Laws and Requirements.
2. This MoU does not create any legally binding obligations, confer any rights, modify or supersede Applicable Laws and Requirements or fetter the discretion of the Authorities. 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.

3. The Authorities acknowledge that they may provide information under this MoU only if permitted or not prevented under Applicable Laws and Requirements.
4. The Authorities acknowledge that they may be party to other MoUs and, where relevant, will clarify in requests which MoU the request relates to. This MoU does not affect any arrangements under other MoUs.

### **Requests for Assistance**

5. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to its laws and overall policy.
6. Requests for the provision of information or other assistance will be made in writing to the nominated contact points (including by email), or made orally and, unless otherwise agreed, confirmed in writing. In an Emergency Situation, requests for information may be made in any form, including orally, provided that such communication is confirmed in writing as promptly as possible following such notification.
7. To facilitate assistance, the Requesting Authority should specify in any written request the information or other assistance requested and the desired time within which the information sought should be provided. The Requested Authority may request further clarification ahead of responding to the request.
8. Each request for assistance will be assessed on a case-by-case basis by the requested Authority, to determine whether assistance can be provided (either in part or in whole) under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Requested Authority will consider whether there may be other assistance that can be given by itself or by any other authority in its jurisdiction and, wherever possible, will endeavour to provide this.

### **Enhanced Cooperation for Regulated Entities**

9. Given the importance of co-operation for Regulated Entities, the Authorities have agreed specific cooperation procedures for such entities.
10. To the extent permitted by Applicable Laws and Requirements, each Authority will use reasonable efforts as far as practicable to proactively provide the other Authority on a timely basis with information concerning such Regulated Entities that is in its possession or discovered which:
  - (a) concerns a Regulated Entity's serious financial and operational difficulties, including member failure, that could have a material impact on the other Authority's performance of its duties;
  - (b) gives rise to a suspicion of a breach of the Applicable Laws and Requirements of the other Authority; or
  - (c) any other matter that that could have an impact on the other Authority's performance of its duties.
11. Each Authority intends, to the extent practicable and as appropriate in the particular circumstances, to endeavour to inform the other Authorities in advance of, or as soon as possible thereafter of:

- (a) pending regulatory changes that may have a significant impact on the operations, activities, or reputation of Regulated Entities in the jurisdiction of the other Authority;
  - (b) significant proposed changes to the ownership, risk management or service offerings of Regulated Entities;
  - (c) enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorization, designation, recognition, qualification or registration or exemption therefrom (as appropriate), concerning or related to Regulated Entities.
  - (d) material changes in their respective professional secrecy legislation.
12. The determination of what constitutes a “significant impact”, “material event” or “material change” shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.
13. Requests for additional information should be made using the process outlined in paras 6-8. The Authorities may mutually agree to provide additional regular information; the arrangements for this will be set out in a side letter.
14. The Authorities recognize in particular the importance of close cooperation in the event a Regulated Entity experiences, or is threatened by, an Emergency Situation. In an Emergency Situation, the Authorities will each endeavour to notify the other of its nature and communicate information to the other as would be appropriate pertaining to the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation in question. And, wherever and to the extent possible, the Authorities will co-operate in seeking potential solutions, especially in instances where cross-border entities are systemic to the other Authority.
15. An Authority seeking to conduct an On-Site Visit in the jurisdiction of the other Authority will notify, consult and work collaboratively with the Local Authority, where such an examination is permitted and necessary in order to fulfil its supervision and oversight responsibilities.
16. In particular:
- (a) the Authority seeking to conduct an On-Site visit will provide advance notice of at least 7 days to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it in accordance with Applicable Laws and Requirements, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit;
  - (b) the Authorities will consult on and, where desired and permitted by Applicable Laws and Requirements, may agree to conduct an On-Site Visit jointly;
  - (c) the Authority seeking to conduct an On-Site visit will share the findings of the on-site examination in a timely manner with the Local Authority.
17. Representatives of the Authorities intend to meet periodically and at least annually. The meetings will update each other on their respective functions and regulatory supervision and oversight programs and to discuss issues of common interest relating to the supervision and oversight of clearing service providers including: contingency planning

and crisis management, the adequacy of existing cooperative arrangements, any systemic risk concerns, and the possible improvement of cooperation and coordination between the Authorities. Such meetings may be conducted over conference call or on a face-to-face basis, as judged appropriate by the Authorities. This and other responsibilities within the MoU may be discharged through other co-operative agreements to which both entities are party.

### **Recovery & Resolution planning**

18. This MoU seeks to facilitate rapid information exchange and co-operation and liaison, to address information sharing in Emergency Situations as well as in day to day supervision.
19. The Authorities will periodically review whether any entities merit specific discussion of contingency planning and crisis management preparations.
20. To the extent practicable and as appropriate in the particular circumstances, each Authority will endeavour to inform the other Authority of regulatory changes relating to resolution measures, which will or may have a significant, material impact on the operations or activities of a Regulated Entity in the other jurisdiction.

### **Enforcement**

21. The Bank will consider taking enforcement action against Regulated Entities and/or individuals as it considers appropriate to support the exercise of its supervisory judgment.
22. The parties recognise that there may be circumstances in which one or the other of them wishes to take enforcement action in a situation where the other party has a regulatory interest. Appendix 1 sets out what the parties have agreed with respect to such cases, and in relation to requests for assistance in enforcement matters.

### **Confidentiality and treatment of information received**

23. Information received under this MoU may be used only in connection with the signatories' public functions. The Requesting Authority will comply with any reasonable restrictions on the use of information that are agreed when the information is provided.
24. In cases where a Requesting Authority seeks to use information obtained under this MoU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the Requested Authority. Such use will be subject to the terms and conditions of the arrangements referred to in Paragraph 23 to the extent applicable.
25. An Authority that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted or required under its applicable official information, professional secrecy laws, regulations and requirements.
26. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Authority receiving the demand will use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available.
27. The Requesting Authority will consult with the Requested Authority if it proposes to pass on information to another person and obtain the written consent of the Requested

Authority (and such consent may be subject to restrictions or conditions with which the Requesting Authority shall comply).

28. Notwithstanding para 27, the Requesting Authority may share information without seeking prior consent with permitted onward recipients that carry out similar regulatory and/or supervisory functions and are subject to similar information protection regimes.
29. The Authorities intend that the sharing or disclosure of non-public information will not constitute a waiver of privilege or confidentiality of such information.

### **Rights of persons preserved**

30. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the jurisdiction of the Requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the Requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.

### **Contact Points**

31. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MOU should be directed. This is detailed in Annex 2 and should be reviewed annually.

### **Commencement**

32. This MoU will take effect when all Authorities have signed this document. It may be amended by agreement in writing.

### **Publication of this MoU**

33. The parties agree to this MoU being made publicly available. [The signatures and contact details will not be made public.]

### **Review of this MoU and of supervisory developments**

34. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters, where they arise, that hinder its operation.

### **Termination of MoU**

35. This MOU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Articles 23-29.

Signed



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NAME: David Bailey  
ROLE: Director  
For the Bank of England  
Date: 23 November 2015



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NAME Grant Spencer  
ROLE Deputy Governor  
For the Reserve Bank of New Zealand  
Date: 10.12.15.



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NAME GARTH STANSELL  
ROLE Director of Capital Markets  
For the Financial Markets Authority  
Date: 11.12.15.