

Memorandum of Understanding concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities

In view of the growing globalisation of the world's financial markets and the increase in cross-border operations and activities of Managers of alternative investment funds, the Australian Securities and Investments Commission (ASIC) and Banca d'Italia (hereinafter collectively 'the Authorities') have agreed this Memorandum of Understanding (**MoU**) regarding mutual assistance in the supervision and oversight of Managers of alternative investment funds, their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories of these MoU. The Authorities express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of risk monitoring and sound and prudent management, fostering market and financial stability and integrity, and maintaining confidence and systemic stability.

ASIC is Australia's corporate, markets, financial services and consumer credit regulator. It is set up under and administers the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and carries out most of its work under the *Corporations Act 2001*. ASIC's responsibilities include licensing and monitoring financial services businesses in Australia to ensure they operate efficiently, honestly and fairly. These businesses typically deal in superannuation, managed funds, securities, derivatives and insurance. ASIC also licenses and regulates people and businesses engaging in consumer credit activities, including banks, credit unions, finance companies and mortgage and finance brokers.

Banca d'Italia supervises banks and non-banking intermediaries (including investment firms, asset management companies and collective investment undertakings as regards risk containment, stability and the sound and prudent management). Since November 2014 its prudential supervisory tasks related to significant institutions have been carried out within the framework of the Single Supervisory Mechanism (SSM) as set out in the SSM regulation.

Article 1. Definitions

For the purpose of this MoU:

- a) "Authority" means a signatory to this MoU or any successor.
- b) "Requested Authority" means the Authority to whom a request is made under this MoU; and
- c) "Requesting Authority" means the Authority making a request under this MoU.
- d) "EU competent Authorities": means any Authority designated in an EU Member State to carry out the duties provided under the AIFMD as well as any of the following:
 - i. the competent Authorities as referred to in Article 4 (2) of Regulation (EU) no. 1093/2010;
 - ii. the European Central Bank (**ECB**);
 - iii. the European Banking Authority (**EBA**);
 - iv. the European Securities and Markets Authority (**ESMA**);
 - v. the European Insurance and Occupational Pensions Authority (**EIOPA**);

- vi. the Authorities designated in accordance with Title VII, Chapter 4 of Directive 2013/36/EU;
 - vii. the Commissione Nazionale per le Società e la Borsa (**CONSOB**);
 - viii. the Italian Institute for the Supervision of Insurance (**IVASS**); and
 - ix. the Italian Institute for the Supervision of Pension Funds (**COVIP**).
- e) “AIFMD” means the Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
- f) “Manager” means a legal person whose regular business is managing one or more Covered Funds in accordance with the AIFMD or in accordance with the Corporations Act 2001 of Australia.
- g) “Covered Fund” means a collective investment undertaking, including investment compartments thereof, which:
- i. raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
 - ii. is not a UCITS.
- h) “UCITS” means an undertaking for collective investment in transferable securities authorised in accordance with Article 5 of Directive 2009/65/EC.
- i) “Delegate” means an entity to which a Manager delegates the tasks of carrying out the portfolio management or risk management of one or more Covered Funds under its management in accordance with Article 20 of the AIFMD or in accordance with the Corporations Act 2001 of Australia.
- j) “Depositary” means an entity appointed to perform the depositary functions of a Covered Fund in accordance with Article 21 of the AIFMD or in accordance with the Corporations Act 2001 of Australia.
- k) “Operate on a cross-border basis” means the following situations: when
- i. EU Managers manage non-EU Covered Funds;
 - ii. EU Managers market non-EU Covered Funds in an EU Member State;
 - iii. non-EU Managers market EU and/or non-EU Covered Funds in an EU Member State;
 - iv. EU Managers market non-EU Covered Funds in the EU with a passport;
 - v. non-EU Managers manage EU Covered Funds in the EU;
 - vi. non-EU Managers market non-EU Covered Funds in the EU with a passport;
 - vii. EU Managers market Covered Funds in Australia; and
 - viii. EU Managers manage Covered Funds in Australia.

Insofar as there is a link to the activity of the Managers and Covered Funds, the MoU also covers delegates and depositaries as defined in letters i) and j) of this Article.

- l) “Covered Entity” means a Manager, Covered Fund where applicable, and, insofar as there is a link to the Manager and the Covered Fund, delegates and depositaries as defined in letters i) and j) of this Article, including the persons employed by such entities.
- m) “Cross-border on-site inspection” means any inspection by one Authority to the premises of a Covered Entity located in the other Authority’s jurisdiction, for the purposes of its supervisory tasks.
- n) “Governmental Entity” means the Ministry of Finance or Treasury, the Central Bank and any other national prudential authority in the jurisdiction of the relevant Authority.
- o) “Local Authority” means the Authority in whose jurisdiction a Covered Entity operates.
- p) “Emergency Situation” means the occurrence of any event that could materially impair the financial or operational condition of a Covered Entity, AIF investors or other investors, or relevant markets, independently from a decision of the European Council within the meaning of Article 18 of the ESMA Regulation (Regulation 1095/2010/EU) or an act of the Australian Parliament.

Article 2. General provisions

1. This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Covered Entities that operate on a cross-border basis in the jurisdictions of the signatories, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.
2. 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 execution of a request for assistance under this MoU.
3. This MoU does not intend to limit an Authority to taking solely those measures described herein in fulfilment of its supervisory or oversight functions. In particular, this MoU does not affect any right of any Authority to communicate with, or obtain information or documents from, any person or Covered Entity subject to its jurisdiction that is established in the territory of the other Authority.
4. The Authorities will, within the framework of this MoU, provided one another with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Entities. Following consultation, cooperation may be denied:

- a. where the cooperation would require an Authority to act in a manner that would violate domestic law;
 - b. where a request for assistance is not made in accordance with the terms of the MoU;
or
 - c. on the grounds of the national public interest.
5. No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to another Authority.
 6. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, inter alia, to expanding or altering the scope or operation of this MoU should that be judged necessary.
 7. To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A.

Article 3. Scope of cooperation

1. The Authorities recognise the importance of close communication concerning Covered Entities, and intend to consult at the staff level where appropriate regarding:
 - a. general supervisory issues, including with respect to regulatory, oversight or other program developments;
 - b. issues relevant to the operations, activities, and regulation of Covered Entities; and
 - c. any other areas of mutual supervisory interest.
2. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:
 - a. the initial application of a Covered Entity for authorisation, registration or exemption from registration in another jurisdiction;
 - b. the ongoing oversight of a Covered Entity;
 - c. regulatory approvals or supervisory actions taken in relation to a Covered Entity by one Authority that may impact the operations of the entity in the other jurisdiction; and
 - d. enforcement actions taken against a Covered Entity.
3. *Notification.* Each Authority will inform the other Authority as soon as practicable of:

- a. any known material event that could adversely impact a Covered Entity; and
 - b. enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration concerning or related to a Covered Entity which may have, in its reasonable opinion, a material effect on the Covered Entity.
4. *Exchange of Information.* To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information not otherwise available to the Requesting Authority, and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations. To the extent practicable the Requesting Authority should seek to obtain information from the Covered Entity prior to approaching the Requested Authority. The information covered by this paragraph includes, without limitation, information such as:
- a. information that would permit the Requesting Authority to verify that the Covered Entities covered by this MoU comply with the relevant obligations and requirements of the national law of the Requesting Authority;
 - b. information relevant for monitoring and responding to the potential implications of the activities of an individual Manager, or Managers collectively, for the stability of systemically relevant financial institutions and the orderly functioning of markets in which Managers are active;
 - c. information relevant to the financial and operational condition of a Covered Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal control procedures;
 - d. relevant regulatory information and filings that a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices; and
 - e. regulatory reports prepared by an Authority, including for example: examination reports, findings or information drawn from such reports regarding Covered Entities.

Article 4. Cross-border on-site inspections

1. Authorities should discuss and reach understanding on the terms regarding cross-border on-site inspections, 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. The Authorities will act in accordance with the following procedure before conducting a cross-border on-site inspection.
 - a. The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any cross-border on-site inspection. The local Authority

shall decide whether the inspecting officials shall be accompanied by its officials during the visit.

- b. When establishing the scope of any proposed inspection, the Authority seeking to conduct the inspection will give due and full consideration to the supervisory activities of the other Authority and any information that was made available or is capable of being made available by that Authority.
- c. The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from directors and senior management of Covered Entities or any other relevant person.

Article 5. Execution of requests for assistance

1. To the extent possible, a request for written information pursuant to Article 3.4 should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:
 - a. the information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request;
 - b. a concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions behind the supervisory activity; and
 - c. the desired time period for reply and, where appropriate, the urgency thereof.
2. In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information to the other as would be 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 may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

Article 6. Cooperation on enforcement

1. The Requested Authority should, as far as its national law permits, assist the Requesting Authority where it is necessary to enforce the AIFMD, its implementing measures or the national legislation of an EU Member State or the Corporations Act 2001 of Australia breached by a Covered Entity established in its jurisdiction. In particular, this assistance should be provided by the Requested Authority in at least the following situations:
 - a. when the Requesting Authority has required a Covered Entity established in the jurisdiction of the Requested Authority to cease any practice that is contrary to the provisions adopted in the implementation of the AIFMD and its implementing measures or the Corporations Act 2001 of Australia. In this situation, and at the

request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify the compliance with the request by the Covered Entity;

- b. when the Requesting Authority has requested the freezing or the sequestration of assets of a Covered Fund that is established in the jurisdiction of the Requested Authority. In this situation the Requested Authority should either order the freeze or sequestration of the assets of the Covered Fund located in its jurisdiction, or inform and assist to the extent possible the Requesting Authority about the legal procedures that lead to that result;
- c. when the Requesting Authority has requested the temporary prohibition of professional activity in relation to a Covered Entity established in the jurisdiction of the Requested Authority. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify whether the temporary prohibition is being observed by the addressee of the measure;
- d. when the Requesting Authority has adopted any type of measure to ensure that Covered Entities established in the jurisdiction of the Requested Authority continue to comply with the requirements of the AIFMD and its implementing measures or with the Corporations Act 2001 of Australia. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify whether the addressee observes the measure adopted by the Requesting Authority;
- e. when, in the interest of the investors or of the public, the Requesting Authority has required the suspension of the issue, repurchase or redemption of units or shares of Covered Funds established in the jurisdiction of the Requested Authority. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify that the Covered Fund complies with the request of suspension.

Article 7. Permissible uses of information

1. The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Covered Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority, including assessing and identifying systemic risk in the financial markets or the risk of disorderly markets.
2. In addition to paragraph 1 of this Article:
 - a. if confidential information is obtained upon request, the Requesting Authority should use it solely for the purposes specified in the request; and

- b. if confidential information is obtained without request, the Authority obtaining the information should use it solely for the purposes specified by the Authority providing the information.
3. The Authorities recognise that while information is not to be gathered under this MoU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement purposes. In such cases, the Authorities should consult, and the Requested Authority's consent obtained prior to the information being used for law enforcement purposes.

Article 8. Confidentiality and onward sharing of information

1. Except for disclosures in accordance with this MoU, including permissible uses of information under Article 7, each Authority will keep confidential, to the extent permitted by law, information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.
2. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been furnished under this MoU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
3. In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MoU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
 - a. the Requesting Authority will notify the Requested Authority;
 - b. prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.
4. Except as provided in paragraph 2, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. If consent is not obtained from the Requested Authority, the Authorities will 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.
5. The Authorities intend that the sharing or 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.

Article 9. Special rules on onward sharing of information in the EU internal market

1. Article 8 paragraph 4 does not apply in all cases where the EU competent Authorities are required to share information with other EU competent Authorities under the AIFMD. In particular, Article 8 paragraph 4 does not apply in the following circumstances:
 - a. in accordance with Article 25(2) of the AIFMD, an EU competent authority may need to share information received from ASIC with other EU competent Authorities where a Manager under its responsibility or a Covered Fund managed by that Manager could potentially constitute an important source of counterparty risk to a credit institution or other systematically relevant institutions in other EU Member States;
 - b. in accordance with Article 50(4) of the AIFMD, the EU competent authority of the Member State of reference of a non-EU Manager¹ shall forward the information received from ASIC in relation to that non-EU Manager to the competent authority of the host Member States, as defined in Article 4(1)(r) of the AIFMD; and
 - c. in accordance with Article 53 of the AIFMD, an EU competent authority shall communicate information to other EU competent Authorities, the ESRB or ESMA, where this is relevant for monitoring and responding to the potential implications of the activities of individual Manager or Managers collectively for the stability of systematically relevant financial institutions and the orderly functioning of markets on which the Managers are active.
2. In the cases mentioned in paragraph 1, the following conditions would apply:
 - a. in accordance with Article 47(3) of the AIFMD, all the information exchanged between the EU competent Authorities, the ESRB and ESMA shall be considered confidential, except where the Requested Authority states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings; and
 - b. the EU competent Authorities, ESMA and the ESRB shall only use the information for the purposes envisaged in the AIFMD and in accordance with the founding regulations of ESMA and the ESRB.

Article 10. Signatures and amendments

1. The MoU has been prepared and signed in two counterparts in English. Any electronic signatures appearing on this MoU are as valid as handwritten signatures. The Authorities may exchange copies of this MoU in written or electronic format. Any amendments to this MoU, including this Article, will be made by the Authorities' mutual consent, formulated in English and have effect only if executed by both Authorities in writing (electronically or handwritten).

¹ The Member State of reference is the EU Member State in charge of the authorisation of a non-EU Manager in accordance with Article 37 of the AIFMD.

Article 11. Termination of the MOU; Successor authorities

1. If a signatory wishes to terminate the MoU, it shall give written notice to the counterparty. Cooperation in accordance with this MoU will continue until the expiration of 30 days after an Authority gives written notice to the other. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MoU before the effective date of notification 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 a manner prescribed under Articles 7 to 9.
2. Where the relevant functions of a signatory to this MoU are transferred or assigned to another authority or authorities, the terms of this MoU shall apply to the successor authority or authorities performing those relevant functions without the need for any further amendment to this MoU or for the successor to become a signatory to the MoU. This shall not affect the right of the successor authority and its counterparty to terminate the MoU as provided hereunder if it wishes to do so.

Article 12. Entry into force

This MoU will take effect when signed by the Authorities.

Signatures

Australian Securities and Investments Commission

(Australia)

_____ SIGNED _____

Dated: _____

Banca d'Italia

(Italy)

_____ SIGNED _____

Dated: _____