

# **Memorandum of Understanding**



**CONCERNING CONSULTATION,  
COOPERATION AND THE EXCHANGE OF  
INFORMATION RELATED TO THE  
SUPERVISION OF REGULATED ENTITIES**

**May 25, 2022**

**MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION, COOPERATION  
AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF  
REGULATED ENTITIES**

- I.** On 18<sup>th</sup> November 2019, SIX Group AG (“**SIX**”) launched a voluntary takeover offer for the acquisition of the shares of Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros, S.A. (“**BME**”), representing 100% of its share capital.
- II.** Once the transaction received, among others, the corresponding regulatory authorization by the Spanish Government, as a result of the transaction execution and the subsequent exercise by SIX of the squeeze out right over BME’s remaining shares, SIX acquired direct control over BME, by means of the acquisition of the 100% of its share capital and indirect control of the Spanish FMIs, as defined below.
- III.** SIX and its affiliates are one of the main providers of financial infrastructures in Switzerland. Some of its affiliates are regulated FMIs and as such subject to the Swiss Financial Market Infrastructure Act (“**FinMIA**”) and its implementing ordinance. In addition, systemically relevant FMIs of SIX Group are subject to the Swiss National Bank Act.
- IV.** The Swiss Financial Market Supervisory Authority (“**FINMA**”) is responsible for the supervision of FMIs, including trading venues, in Switzerland. SIX and its affiliates are under the consolidated supervision of FINMA, in accordance with articles 1 and 3 of the Swiss Financial Market Supervision Act (“**FINMASA**”) in combination with article 15 of FinMIA.
- V.** BME is the holding company of all stock exchanges and other financial market infrastructures domiciled in Spain. Some of its subsidiaries are regulated entities, such as the governing companies of the Spanish stock exchanges, the Spanish central securities depository and the Spanish central counterparty. These regulated entities are subject to the Spanish Securities Markets Act (“**SSMA**”) and other national legal provisions and to the applicable European Law provisions.
- VI.** The Spanish Comisión Nacional del Mercado de Valores (“**CNMV**”) is responsible for the supervision and oversight in Spain of the securities markets and the trading activities of all individuals and corporate bodies in these markets, the exercise of power to sanction them and other duties attributed to it pursuant to the SSMA. BME, its regulated subsidiaries and any company with direct or indirect control over the regulated subsidiaries are under the supervision **CNMV**, in accordance with article 233. 1 a) of the SSMA.
- VII.** As BME’s share capital is currently wholly owned by SIX, a more intense coordination between FINMA and CNMV would be required in order to guarantee an adequate compliance by both supervisory authorities within their regulatory tasks. In this regard, FINMA and CNMV hereby acknowledge that both Authorities have similar functioning and organisational regimes. In addition, the Authorities take note that an effective coordinated supervision between FINMA and CNMV was one of the conditions required for the authorization of the transaction over BME, as provided in the resolution of the Spanish Council of Ministers, as of 24<sup>th</sup> March 2020.
- VIII.** The Authorities express, through this Memorandum of Understanding (“**MoU**”), their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection, fostering market and financial integrity and functioning of financial markets. The Authorities acknowledge their willingness to resolve any disagreement that could arise out of this MoU.

**IX.** In particular, FINMA and CNMV have reached this MoU regarding mutual assistance on the following matters: (i) the supervision of BME and of the Spanish FMIs by CNMV, and (ii) the consolidated supervision of the SIX Group by FINMA.

## **ARTICLE 1: DEFINITIONS**

“**Authority**” or “**Authorities**” means FINMA and/or CNMV, or any authority that may substitute any of them in their faculties.

“**BME Group**” means BME, the Spanish FMIs and the rest of its affiliates.

“**Confidential Information**” means any non-public information, be it written or spoken, and regardless of its format (electronic, paper, etc.), that the Authorities receive from each other within the scope of this MoU.

“**Cross-Border Establishment**” means a place of business of a Regulated Entity which is not its head office and which has no legal personality, including a branch or a representative office, located within a jurisdiction, and over which the Authority of the other jurisdiction exercises supervisory responsibilities.

“**Cross-border On-Site Visit**” means any regulatory visit by one Authority to the premises of a Regulated Entity located in the other Authority’s jurisdiction, for the purposes of ongoing supervision.

“**Cross-Border Regulated Entity**” means a Regulated Entity subject to supervision and/or oversight by both Authorities, each of them to the extent of the supervisory scope granted pursuant to the relevant national provisions that could be not coincident. For the sake of clarity, a Cross-Border Regulated Entity includes entities authorized in one jurisdiction whose material affiliate or parent company is authorized in the other jurisdiction.

“**Emergency Situation**” means the occurrence or potential imminent occurrence of an event that could materially impair the financial or operational condition of a Regulated Entity.

“**FMIs or Financial Market Infrastructures**” means any Trading Venue, central counterparty (also referred as “**CCP**”) or central securities depository (also referred as “**CSD**”).

“**Home Authority**” means an Authority responsible for the initial authorisation or registration of a Regulated Entity which provides services or performs activities in the jurisdiction of the other Authority.

“**Laws and Regulations**” means the provisions of the laws applicable in the jurisdictions of the Authorities, the regulations promulgated thereunder, and other regulatory requirements, that govern the Financial Market Infrastructures and fall within the competence of the Authorities as financial markets regulators or impose obligations to such Authorities.

“**Oversight**” means focusing on assessing aspects that affect efficiency and safety as a result of the potential impact on both the infrastructure and on the financial system as a whole, evaluating the degree to which these objectives are met and introducing changes where necessary.

“**Person**” means a natural person, unincorporated association, partnership, trust, investment company or corporation.

“**Public Entity**” means any governmental entity or public agency in each Authority’s jurisdiction that the Authority may be legally required to pass information on to in order to implement financial market law, including but not limited to prudential regulators, the Central Bank or the Ministry of Economy and/or Finance (or authority carrying out a similar function) in its jurisdiction.

“**Regulated Entity**” means (i) the Spanish FMIs, as defined below, (ii) any company having a direct or indirect qualifying holding over the Spanish FMIs and being subject to supervision by either Authority, including SIX, and (iii) Sociedad de Bolsas, S.A

“**Requested Authority**” means the Authority to whom a request is made under this MOU;

“**Requesting Authority**” means the Authority making a request under this MOU.

“**Secure Electronic Means**” means electronic methods of communications that ensure that completeness, integrity and confidentiality of information are maintained during transmission.

“**SIX Group**” means SIX, the Swiss FMIs and the rest of its affiliates.

“**Sociedad de Bolsas, S.A.**” is a Spanish public limited liability company which currently manages the functioning of the Spanish Stock Exchange Interconnection System (SIBE).

“**Spanish FMIs**” means any Financial Market Infrastructure governed by BME or any of the affiliates of BME Group, including as of the date of the execution of this MoU, the following entities or those infrastructures governed by the following entities:

- a) Sociedad Rectora de la Bolsa de Valores de Barcelona, S.A.
- b) Sociedad Rectora de la Bolsa de Valores de Bilbao, S.A.,
- c) Sociedad Rectora de la Bolsa de Valores de Madrid, S.A.,
- d) Sociedad Rectora de la Bolsa de Valores de Valencia, S.A.,
- e) Bolsas y Mercados Españoles, Sistemas de Negociación, S.A
- f) MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A.,
- g) BME Renta Fija, S.A
- h) Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.
- i) BME Clearing, S.A.

The entities referred in a) to d) above, both inclusive, are the governing companies of the Spanish stock exchanges, being these the following regulated markets respectively, Bolsa de Valores de Barcelona, Bolsa de Valores de Bilbao, Bolsa de Valores de Madrid and Bolsa de Valores de Valencia.

The entity referred to in e) above is the governing company of the multilateral trading facilities BME Growth and Latibex.

The entity referred to in f) above is the governing company of the Spanish regulated market MEFF (Mercado Oficial de Futuros y Opciones Financieros).

The entity referred to in g) above is the governing company of certain Spanish trading venues on fix income, in particular AIAF, SENAF and MARF.

The entity referred to in h) is the Spanish CSD also referred as “**Iberclear**”

The entity referred to in i) is the Spanish CCP also referred as “**BME Clearing**”.

For the sake of clarity, any Financial Market Infrastructure belonging to the BME Group that may be authorized in the future by CNMV, will be considered as a Spanish FMI for the purpose of this MoU.

“**Supervision**” means verifying compliance with the set of standards governing the functioning of the infrastructure (members, operations, etc.)

“**Swiss FMIs**” means any Financial Market Infrastructure controlled by SIX Group, including as of the date of the execution of this MoU, the following entities or those infrastructures governed by the following entities:

- a) SIX Swiss Exchange AG
- b) SIX x-clear AG
- c) SIX SIS AG
- d) SIX Repo AG
- e) SIX Trade Repository AG
- f) SIX Digital Exchange AG
- g) SDX Trading AG

“**Third Party**” means any person that is not one of the Authorities, including the public.

“**Trading Venue**” means a regulated market, multilateral trading facility or organised trading facility under the European Union legislation, and a stock exchange or a multilateral trading facility under Art. 26 FinMIA

## **ARTICLE 2: PURPOSE AND GENERAL PROVISIONS**

1. This MOU is a statement of intent to consult, cooperate and exchange information in connection with (i) the supervision and oversight of BME Group by CNMV and the consolidated supervision of the SIX Group by FINMA and (ii) the supervision and oversight of any of the Regulated Entities by the Authorities, in their operations in Spain and Switzerland, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities.
2. The Authorities anticipate that, if suitable, cooperation may be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth ad hoc cooperation, formalized by written means.

The provisions of this MOU are intended to form the basis and support such informal and oral communication as well as to systematize and facilitate the written exchange of Confidential Information and to articulate clear procedures for the easiness and effectiveness of the cooperation.

3. This MoU does not create any legally binding obligations, confer any enforceable rights, or supersede applicable legislation.
4. This MoU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. This MOU does not affect the right of an Authority to communicate with or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority, so long as the requirements of the other Authority's legal framework are complied with.
5. The Authorities will, within the framework of this MoU, provide one another with the fullest cooperation permissible to better enable them to carry out the responsibilities entrusted to them under the Laws and Regulations.
6. Following consultation, assistance may be denied:
  - a. where the cooperation would require an Authority to act in a manner that would violate the applicable Laws and Regulations;
  - b. where a request for assistance is not falling within the scope of this MoU or is not made in accordance with the terms of this MoU, or
  - c. for reasons of public interest.

Assistance will not be denied based on the fact that the type of conduct described in the request for assistance would not be a violation of the Laws and Regulations of the Requested Authority.

In case of denial, the Requested Authority will provide as soon as possible the reasons in written means, including via e-mail, for not granting the assistance.

Where the Requested Authority presents objective grounds by reasons of which the request cannot be fulfilled in part or in whole, the Authorities will consult with a view to reaching an understanding on the assistance to be provided.

7. As long as a request for assistance is made in compliance with the requirements of the other Authority's legal framework, no domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to the other Authority.

### **ARTICLE 3: SCOPE OF COOPERATION**

1. The Authorities will cooperate with regard to the areas and Regulated Entities falling within the Laws and Regulations, including, but not limited to, any issues concerning:
  - a. Trading Venues and data reporting services providers;
  - b. Central Securities Depositories (CSDs);
  - c. Central Counterparties (CCPs),
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 for authorization or registration of a Spanish FMI or a company having a direct or indirect qualifying holding on them or exemptions therefrom;
  - b. The direct or indirect acquisition, disposal or increase of qualifying holdings in BME, SIX and the Spanish FMIs;
  - c. The on-going supervision of a Regulated Entity;
  - d. Regulatory approvals or supervisory or enforcement actions taken by an Authority that may impact the operations of a Regulated Entity;
  - e. Supervisory or enforcement actions which could have a negative impact on the orderly functioning or the operation of a Financial Market Infrastructure, or any limitation or withdrawal of rights;
  - f. Market Surveillance, transparency requirements and application of any requirement set forth in the market abuse provisions, including those requirements to be complied with by a Trading Venue in relation to market abuse prevention and detection;
  - g. Control of the implementation and compliance by the Financial Market Infrastructures of any regulatory requirements; and
  - h. Appropriateness of delegation and outsourcing and related verifications and controls if significant for the FMIs in scope of this MoU.

The Authorities recognize the importance of close communication concerning Regulated Entities and intend to consult where necessary at the staff level regarding: (i) general supervisory issues, including with respect to regulatory, supervision or other program developments; (ii) issues relevant to the operations, activities and regulation of the Regulated Entities; and (iii) any other areas of mutual supervisory interest.

#### **ARTICLE 4: GENERAL PROVISIONS FOR THE EXCHANGE OF INFORMATION**

1. Within the applicable legislation, the Requested Authority will provide the Requesting Authority, upon written request, with the information not otherwise available to the Requesting Authority, and, where needed, with assistance interpreting such information so as to enable the Requesting Authority to discharge its responsibilities and assess compliance with its Laws and Regulations.
2. In circumstances where the information is not available in the files of the Requested Authority, the Requested Authority may obtain, through the most appropriate means, the requested information on behalf of the Requesting Authority, provided that the Requested Authority is authorized to collect such information.
3. The Requested Authority may also obtain the relevant information from unregulated third parties on behalf of the Requesting Authority, provided that the Requested Authority is authorized to collect such information.
4. In addition, under an Emergency situation, the Authorities hereby agree that written requests to be issued by the CNMV to the Regulated Entities domiciled in Switzerland could be made directly by CNMV to these entities within the applicable legislation. FINMA will be copied or informed without delay by any means of such requests. Three working days before sending such a request, CNMV will inform FINMA by Secure Electronic Means about its intention of sending directly the written requests and the related reasons, so that FINMA may allege any inconvenient and, if appropriate, the Authorities may agree to proceed otherwise.
5. The information covered by this Article includes, without limitation, the following information, provided that it is under the remit of both Authorities and that it is not directly available to the Requesting Authority:
  - a. Information relevant to the financial and operational condition of a Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal controls procedures;
  - b. Relevant regulatory information and filings that a Regulated Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices;
  - c. Information and documents held in the files of the Requested Authority regarding the matters set forth in the request for assistance; and
  - d. Findings from regulatory and/or supervisory reports prepared by the Requested Authority.
6. The Authorities will do their best efforts to provide the information referred to in this article to the other Authority, also, by their own initiative.

#### **ARTICLE 5: SPECIFIC EXCHANGE OF INFORMATION**

For the purposes of on-going supervision of a specific Regulated Entity, taking into account its relevance and significance, the Authorities will share and discuss with each other any significant information on such Regulated Entity which is likely to be relevant in the performance of ongoing supervision of Regulated Entities. Such information may be exchanged between the Authorities by any of their own initiative or as

per a request of a Requesting Authority, pursuant to Article 4 of this MoU. Such information which the Authorities intend to exchange could include, where relevant, without limitation:

1. Any information relating to any amendments to the By-laws, shareholders agreement, the board of director's regulation or the shareholders meeting regulation of BME or SIX or any of the Spanish FMIs or any companies having a qualifying holding on them under the Oversight or Supervision of one of the Authorities that may have an impact in the activities of the Financial Markets Infrastructures under the remit of the other Authority.
2. Information relevant to the governance, the financial, organisational and operational conditions of the Regulated Entity, including, but not limited to, that referred to situations whose impact could be extended to the Financial Market Infrastructure corporate group level or could weaken the financial position of the group or any of the FMIs, such as, for example:
  - a. liquidity or other prudential measures, regulatory capital position, including internal ratings-based data as reported to the Authorities;
  - b. internal organisation, risk management and other internal control areas, such as:
    - i. Any change in the composition of the board members, any change in the managerial structure design or any appointment of directors or managers holding key functions in the Regulated Entities, without prejudice of the obligations set forth in article 12 relating to the fitness and probity assessment that may apply;
    - ii. Information on risk management policies and procedures including, but not limited to, arrangements on conflicts of interest, internal control mechanisms, administrative and accounting procedures, arrangements for information processing systems and security mechanisms, client asset protection and business continuity and contingency arrangements;
    - iii. Relevant information from regular reports to the group management (e.g. risk reports, reports on IT, internal audit reports, internal control reports, country-level reports, and operational and compliance risk reports) as far as known to the authorities;
    - iv. Information regarding major operational risk incidents and operational risk losses including any substantial faults or disruptions in services provided to customers or IT systems, including those caused by cyber-attacks or information security incidents / threats, as well as disruptions or faults that may damage or jeopardise the capacity of the Regulated Entity or group to continue its business activities or fulfil its obligations and any upcoming major changes in IT systems;
    - v. The external auditor's findings if relevant in order to understand the group's overall risk profile or the risk profile of the Cross-Border Regulated Entity and/or the Cross Border Establishment specifically, and relevant information from reports submitted to the group and the Cross-Border Regulated Entity and/or Cross-Border Establishment, if any, pursuant to inspections, and any other supervisory remarks, as well as from communication between the group and the relevant Authority and information on material outsourcings or delegations and recovery plans in order to obtain an understanding or knowledge of the group's overall risk profile or the risk profile of the Cross-Border Regulated Entity or Cross-Border Establishments specifically;



3. Any information relating to enforcement proceedings or sanctions imposed or to be imposed to the Regulated Entities or any person discharging managerial responsibilities or holding a key posts in the Regulated Entities or any other information on measures or procedures or initiated procedures that may have an impact in the activities of the Financial Market Infrastructures under the Oversight or Supervision of the other Authority.

#### **ARTICLE 6: ORAL REPRESENTATIONS**

With regard to issues under the remit of the Requesting Authority, the Requesting Authority may contact the other Authority to jointly obtain, through the most appropriate means, oral representations from any Person on facts or documents relating to the request of assistance. Under these circumstances, a staff member from the Requested Authority may also participate with the Requesting Authority in the exchange of the oral representations.

Where necessary, the Requested Authority will share, upon request, appropriate documentation of the oral representations with the Requesting Authority, provided that the Requested Authority is authorized to obtain such representations.

#### **ARTICLE 7. ON-SITE VISITS**

In case of information to be obtained through Cross-Border On-site Visits, the Authorities should discuss and reach an understanding on the terms of such on-site visits, taking into full account each other's sovereignty, applicable legislation 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 Visit:

1. The Authorities will consult with a view to reaching an understanding on the intended timeframe and the scope of any Cross-Border On-site Visit at their earliest convenience and, to the possible extent, within a term of ten (10) working days since the initial request from the Requesting Authority. The Requested Authority will decide whether the visiting officials will be accompanied by its officials during the visit.
2. When establishing the scope of any proposed visit, the Requesting Authority will give due and full consideration to the supervisory activities of the Requested Authority and any information that was made available or is capable of being made available by the Requested Authority.
3. The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from relevant directors, senior management, employees of the Regulated Entities or any other Person.
4. In circumstances where the Authorities jointly perform a Cross-Border On-site Visit they will give each other an opportunity to consult and discuss the findings arising from the on-site visit.
5. In circumstances where only one Authority performs the Cross-Border On-site Visit, the Authority which has conducted the on-site visit will share its findings and / or report on the on-site visit with the other Authority.

## **ARTICLE 8. OUTSOURCING/DELEGATION**

Where a Regulated Entity outsources or delegates any of its functions (in particular, but not limited to, critical or important operational functions and/or risk management) to a Person located in the other jurisdiction, the Home Authority of the relevant Regulated Entity may request assistance in accordance with article 9 of this MoU and other applicable provisions, from the other Authority in which jurisdiction the outsourcee/delegatee is established.

The Requested Authority will assist the Home Authority in particular in obtaining or analysing any information relating to the outsourcing or delegation, in performing Cross-Border On Site Visits and/or obtaining any oral representations.

Such assistance should allow the Home Authority to undertake its supervisory tasks, receive information on the supervisory regime of the Requested Authority and ensure all entities are effectively supervised.

## **ARTICLE 9. REQUESTS FOR ASSISTANCE**

1. A request pursuant to Articles 4 to 7 should be made in writing, by post or Secure Electronic Means and addressed to the relevant contact point identified in **Annex I**. A request should specify at least the following:
  - a. The information sought by the Requesting Authority, including specific questions to be asked, if possible and known, the Person(s) from whom the information should be sought, 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 provisions of the Laws and Regulations behind the supervisory activity; and
  - c. The desired time period for reply and, if necessary, the urgency thereof.
2. The Requested Authority will send the acknowledgement of receipt to the contact point identified in the request as soon as practicable from the receipt of the written request for assistance, and include, if possible, at that stage, a response or, if not possible, an estimated date of response.
3. The Authorities will make their best efforts to provide information or deal with requests for assistance under this MoU in a timely manner.
4. In Emergency Situations, the Authorities will endeavor 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.

## **ARTICLE 10. NOTIFICATIONS OF CHANGES IN THE SUPERVISORY SYSTEMS AND IN LAWS AND REGULATIONS**

The Authorities will advise each other on own initiative or upon request on any major aspect or major planned modification, to be implemented close in time, of their regulatory and supervisory systems and will notify each other of any change or projected change with a reasonable degree of concretion and to be

implemented in the short term to the Laws and Regulations which is likely to have a significant bearing on the activities of Regulated Entities. Such advice will be provided sufficiently in advance to the extent practicable, when provided on the Authority's own initiative.

#### **ARTICLE 11. UNSOLICITED ASSISTANCE**

Each Authority will make all reasonable efforts to provide the other Authority, in as much detail as possible, without prior request and in advance to the extent practicable, with any information likely to be of assistance to the other Authority for the purposes of carrying out its responsibilities under the Laws and Regulations, including but not limited to, information concerning:

1. Any known material risk or event that could have a significant effect on the operation of a Regulated Entity or could otherwise adversely impact the Financial Market Infrastructures at group level or weaken their financial position;
2. Any known material risk or event that could impact investor protection, financial stability or the integrity and orderly functioning of the markets in the jurisdiction of the other Authority;
3. Enforcement or regulatory actions, including, investigations or sanctions which could have, in its reasonable opinion, a material effect on a Regulated Entity, including the withdrawal, suspension or modification of relevant authorization or registration, concerning or related to such Regulated Entity.

Where the Authority sending the information believes the information should be transmitted urgently, it may inform the other Authority verbally, provided that a subsequent transmission is made in writing without undue delay.

#### **ARTICLE 12: COOPERATION IN RELATION TO REGISTRATION AND AUTHORISATION PROCEDURES**

1. The Authorities intend to cooperate during the registration and/or authorisation processes of Regulated Entities and in the case of withdrawal of a registration or authorisation thereof.
2. In particular, the Authorities intend to notify each other of applications for approval to (i) establish a Cross-Border Establishment and/or (ii) provide services and/or perform activities on a cross-border basis in their jurisdictions. The Authorities intend to consult each other before granting authorisation (i) to a Cross-Border Establishment of a Regulated Entity authorised in the other jurisdiction or (ii) to provide services and/or perform activities on a cross-border basis in their jurisdiction.
3. During the process of authorisation of a Regulated Entity and / or its Cross-Border Establishment, the Requested Authority, upon request, will inform the Requesting Authority of, inter alia, the programme of operation and type of business envisaged by the Cross-Border Establishment, the amount of own funds and the historic compliance performance of the Regulated Entity. In addition, the Requested Authority intends to inform the Requesting Authority of whether the Regulated Entity is entirely subject to and complies with the Laws and Regulations, and whether it can be expected, in light of its administrative structure and internal controls, to run the Cross-Border Establishment in an orderly, prudent and proper manner.

**ARTICLE 13: COOPERATION CONCERNING QUALIFYING HOLDINGS ASSESSMENTS, FITNESS AND PROBITY ASSESSMENT AND BY-LAWS APPROVAL.**

**1. Qualifying holdings assessments.**

- a. The Authorities will notify and consult with each other without undue delay in case of communications or applications for approval or not opposition to acquire, dispose of or increase direct or indirect qualifying holdings in BME, SIX and the Spanish FMIs, where the Authorities hold or have the powers to access such information.
- b. Once the relevant Authority received the notification referred in a) above, the Authorities will convene to assess, in close collaboration or independently, the communications or applications for approval or not opposition relating the qualifying holdings in the event that they both have competences over them.
- c. The Authorities will set out an appropriate calendar to analyse the applications and will do their best efforts to coordinate with each other to offer a coordinated and coherent response, if such response, from both or any of the Authorities, is required pursuant to the Laws and Regulations.
- d. Upon request, the Authorities will inform each other about any relevant information on the proposed applicant, such as, for example, whether the applicant complies with the Laws and Regulations. The Authorities will also, upon request, assist each other with verifying or supplementing any information submitted by the applicant.
- e. In the event that pursuant to the Laws and Regulations of any of the jurisdictions, the approval or future amendments of the by-laws of the applicant and the appointment of its board members and main managerial positions are required to be approved by any of the Authorities, that Authority could rely on the assessment performed by the other Authority in such regard, if permitted by the applicable legislation.

**2. Fitness and Probity Assessment and By-laws approvals or amendments.**

- a. The Authorities will share information on the fitness and properness of prospective directors and managers, qualifying shareholders, and, where relevant, management body members and key functions holders of BME, SIX and the Spanish FMIs and companies having a qualifying holding on them. In addition, the Authorities will share information of the prospective approvals or amendments of the By-laws of such entities.
- b. The Authorities will notify with undue delay each other in case of communications or applications for approval or not opposition relating (i) the appointment of management body members, directors or key function holders and (ii) the by-laws approval or amendments in BME, SIX and the Spanish FMIs and companies having a qualifying holding on them, where the Authorities hold or have the powers to access such information.
- c. Once the relevant Authority received the notification referred in b) above, the Authorities could apply the procedure referred in paragraphs b) to d), of section 1 of this Article, *mutatis mutandis*, in the event that both Authorities held competences on the fitness and properness assessment or on the by-laws approval or amendments.

## **ARTICLE 14: MEETINGS**

To enhance the quality of cooperation and assistance, the Authorities hereby agree to:

1. Convene ad hoc meetings to discuss material issues of common concern and/or coordinate actions, if deemed appropriate; and
2. Conduct meetings that concern Regulated Entities relevant to their jurisdictions.

## **ARTICLE 15. COOPERATION ON ENFORCEMENT**

1. This MoU complements but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“**IOSCO MMoU**”), to which both Authorities are signatories. As such, assistance for enforcement purposes should be provided in accordance with the provisions of the IOSCO MMoU where applicable.
2. The Requested Authority should, as far as its applicable legislation permits, assist the Requesting Authority where it is necessary to enforce the Laws and Regulations breached or suspected to have been breached by a Regulated Entity established or performing activities in the jurisdiction of the Requested Authority.
3. In the cases referred to in paragraph (2) above, the safeguards on the sharing, confidentiality, and permissible use of information provided in the IOSCO MMoU apply.

## **ARTICLE 16. DATA PROTECTION**

The Authorities acknowledge that the transfer of personal data will take place in accordance with the conditions laid down in the relevant data protection legislation applicable to the CNMV and FINMA.

## **ARTICLE 17. PERMISSIBLE USES OF INFORMATION**

1. The Requesting Authority may use Confidential Information solely in accordance with their supervisory and enforcement tasks for the purpose of implementing and ensuring compliance with the Laws and Regulations, protecting investors, assessing and identifying systemic risk in the financial markets or the risk of disorderly markets;
2. Without prejudice to article 19 below, the Authorities acknowledge that CNMV could be required to share or may share certain information collected under this MoU with Public Entities. The information will be shared in compliance with article 18 of this MoU.

## **ARTICLE 18. CONFIDENTIALITY AND ONWARD SHARING OF INFORMATION.**

1. Except for disclosures in accordance with articles 17 and 19 of this MoU, each Authority will keep Confidential Information, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU confidential. The terms of this MoU are not confidential.
2. The Authorities confirm that Confidential Information may solely be disclosed to a Public Entity with the prior written consent of the other Authority and only for the purpose of implementing the Laws and Regulations. 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.

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 Public Entities in its jurisdiction where competent for supervision and enforcement pursuant to the relevant Laws and Regulations. 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 Public Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without the prior consent of the Requested Authority.

In the event that prior notification is not permitted by the applicable law, the disclosing Authority will inform the other Authority as soon as permitted about the disclosure.

4. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for Confidential Information that has been furnished under this MoU. Prior to compliance with a third party demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.
5. The Requesting Authority may share confidential information with the Public Entity in accordance with this paragraph and paragraph (2) and (3) of this Article on the condition that such disclosure as well as its scope and purpose were indicated in the request for assistance in response to which the information was obtained. If the Requesting Authority intends to share Confidential Information with the relevant Public Entity for any purpose other than that stated in the initial request for assistance, it must obtain the prior consent of the Requested Authority. X
6. The Authorities acknowledge that the sharing or disclosure of Confidential 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 19. SPECIAL RULES ON ONWARD SHARING OF INFORMATION WITH EU PUBLIC AUTHORITIES OR AGENCIES**

1. Article 18 paragraph 5 does not apply where CNMV is required to share information with the ESRB (European Systemic Risk Board), European Central Bank (ECB), European System of Central Banks (ESCB), ESMA (European Securities and Markets Authority), EBA (European Banking Authority) or EIOPA (European Insurance and Occupational Pensions Authority), under applicable European Union legislation (including domestic implementation) within the remit of the CNMV. Ç
2. In such cases, the following conditions would apply:
  - a. All the information exchanged between the CNMV, ESRB, ECB, ESCB, ESMA, EBA, or EIOPA, will 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 relating to the implementation of financial services law;

- b. The ESRB, ECB, ESCB, ESMA, EBA and EIOPA will only use the information for the purposes of implementing the Laws and Regulations and in accordance with their respective founding regulations.
3. CNMV will inform FINMA if any of the information shared by FINMA pursuant to this MoU has been shared with any of the entities referred in this Article 19.

#### **ARTICLE 20: AMENDMENTS**

The Authorities will review the functioning and effectiveness of the MoU every year with a view, inter alia, to altering the scope or operation of this MoU should that be judged necessary.

Amendments to this MoU shall be made by mutual consent in writing by the Authorities.

#### **ARTICLE 21: TERMINATION**

1. The Authorities endeavour to consult with each other before terminating this MoU.
2. Each Authority may terminate this MoU by giving three (3) months written notice to the other Authority. Upon request of the other Authority the cause of termination will be communicated.
3. If either Authority receives such notice, cooperation will continue with respect to all requests that have been made under the MoU before the notification has been received.
4. In the event of termination, the Authorities should continue to treat Confidential Information already received in accordance with this MoU.

#### **ARTICLE 22: SUCCESSOR AUTHORITIES AND CONTACT PERSONS**

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of this MoU will 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.

To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Annex I, for each relevant issue.

Amendments to the relevant contact point listed in Annex I can be made by each Authority giving written notice to the other Authority.

**ARTICLE 23. APPLICABILITY**

This MoU shall be applicable from 25 May 2022.

Signed in two original copies each in the English language and signed by the Authorities' duly authorised representatives.

\*

**For the FINMA:**

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**For the CNMV:**

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