

Memorandum of Understanding between the Office of Financial Sanctions (OFSI) and the Financial Conduct Authority (FCA)

Purpose and scope

1. This Memorandum of Understanding ("**MoU**") replaces the MOU between OFSI and FCA dated April 2019. This MoU is effective from the date of signature by both Parties. It sets out the arrangements for co-operation and the exchange of relevant information between the Office of Financial Sanctions Implementation ("**OFSI**"), which is part of His Majesty's Treasury ("**HM Treasury**" or "**HMT**") and the Financial Conduct Authority ("**FCA**") (separately, the "**Party**", together, the "**Parties**") in carrying out their respective functions (as set out further in the 'Roles and responsibilities of HM Treasury and the FCA' section below).

Legal status and effect

2. This MoU is not a contract, nor legally binding. Nothing in this MoU shall, or is intended to:
 - (a) create any legal obligation which is enforceable by either Party against the other;
 - (b) create any legal obligation which is enforceable by any third party against either or both Parties, or against any other third party;
 - (c) prevent either Party from complying with any legal requirement which applies to them;
 - (d) restrict the exercise of any discretion which the law requires or allows the Party to exercise; or
 - (e) create any legitimate expectation on the part of any person that either Party will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Roles and responsibilities of HM Treasury and the FCA

3. HM Treasury is the competent authority for financial sanctions and trade sanctions relating to maritime transportation of certain oil and oil products (the "**relevant maritime services sanctions**") for the UK. OFSI is part of HM Treasury and helps to ensure that:
 - (a) financial sanctions, and
 - (b) relevant maritime services sanctions— are properly understood, implemented and enforced in the UK. This contributes to maintaining

the integrity of the financial system and supports the UK's foreign policy and national security goals.

4. OFSI's statutory information sharing powers are set out in each of the Sanctions and Anti-Money Laundering Act (2018) ("**SAMLA**") regulations. Provision for information sharing was also made in previous EU financial sanctions regulations.
5. These powers provide that information of a type specified in the regulation may be disclosed for a specific purpose and to a person listed in the regulations ("**the information sharing gateway**"). OFSI has the power to share information with the FCA under the information sharing gateway, provided that one or more purposes listed in the applicable regulation is met.
6. SAMLA regulations also contain provision to permit "relevant public authorities", including the FCA, to share information with OFSI to enable or assist HM Treasury to discharge its functions in connection with sanctions (See Annex 1 on information sharing gateways).
7. The FCA is responsible under the Financial Services and Markets Act 2000 ("**FSMA**") and other financial services legislation for making rules in relation to the financial sector, and supervising the conduct of regulated entities, such as firms authorised or supervised by the FCA ("**FCA-supervised firms**"), regulating standards of conduct in retail and wholesale markets and for supervising the trading infrastructures that support those markets. The FCA is responsible for the prudential supervision of firms that are not regulated by the Prudential Regulation Authority ("**PRA**") and is also responsible for the regulation of primary securities markets, including via monitoring market disclosures, reviewing and approving prospectuses and operating the UK listing regime.
8. In addition to the FCA's FSMA responsibilities it also authorises and supervises financial services firms under other legislation such as Payment Service Regulations and Electronic Money Regulations.
9. In relation to its FSMA functions, the FCA's single strategic objective is to ensure that relevant markets (as defined in section 1F of FSMA 2000) function well. Three operational objectives support this strategic objective: securing an appropriate degree of protection for consumers (including wholesale consumers); protecting and enhancing the integrity of the financial system; and promoting effective competition in the interest of consumers in the markets for financial services. The FCA also has a secondary objective (which comes into force on 29 August 2023) to facilitate the international competitiveness of the economy of the UK and its growth in the medium to long term.
10. The FCA Handbook sets out the FCA's rules and guidance. All firms authorised by the FCA under FSMA are required under their overall requirements to have Senior Management Arrangements, Systems and Controls ("**SYSC**"), to have appropriate systems and controls to counter the risk that they are misused for the purposes of financial crime of all types. Section 1H(3) of FSMA 2000 states that financial crime includes any offence involving; (a) fraud or

dishonesty, (b) misconduct in, or misuse of information relating to, a financial market (c) handling the proceeds of crime, or (d) the financing of terrorism. As such those systems and controls must include reducing the risk that they breach applicable sanctions legislation. The FCA supervises the extent to which firms comply with this requirement by assessing the quality of their overall systems and controls. Most of this work is proactive but information about sanctions breaches can indicate a broader systems issue within a firm.

11. The FCA's functions and OFSI's sanctions functions may interact. The FCA obtains information and intelligence from its supervisory and other activities which may be relevant to the work of OFSI. OFSI obtains information and intelligence from performing its functions which may be relevant to the work of the FCA.
12. As set out elsewhere in this MoU and in Annex 1, applicable laws and procedures may:
 - (a) restrict the Parties' handling of information received in the course the Parties' functions, and/or
 - (b) provide 'gateways' for sharing such information in others.

Information sharing and co-operation

13. To the extent permitted under applicable laws and policies, the Parties intend to share relevant information that enables effective co-operation and the discharge of the Parties' functions.
14. The Parties may share relevant information proactively or on request. When sharing such information, the Parties will agree the frequency and mechanism for doing so.
15. For the purposes of this MoU, relevant information includes, but is not limited to:
 - (a) information relating to suspected or actual sanctions breaches identified by OFSI, that fall within OFSI's competencies, which suggest weaknesses in the FCA-supervised firm's systems and controls;
 - (b) information relating to suspected or actual sanctions breaches identified by the FCA that fall within OFSI's competencies, which the FCA has reasons to believe that OFSI may not be aware of;
 - (c) information relating to suspected or actual breaches of financial sanctions or relevant maritime services sanctions identified by either Party, where there is reason to believe that joint investigations would benefit enforcement of those sanctions;
 - (d) any information the FCA discloses to OFSI under the provisions of relevant legislation, including, but not limited to, FSMA and The Money

Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the “**MLRs**”);

- (e) personal data, which may include information relating to individuals who have been involved in a suspected or actual breach of sanctions that fall within OFSI’s competencies;
 - (f) asset freeze notifications submitted to OFSI and designated persons reports submitted to OFSI in each case which relate to or were submitted by an FCA-supervised firm; and
 - (g) any information that could be used for intelligence purposes.
16. Where disclosure to the other Party is constrained by agreements with third parties, the Party seeking to make the disclosure will endeavour to take reasonable steps to secure necessary consents to disclose the relevant information.
17. The Parties will have regard to the information sharing gateways set out in Annex 1.

Information requests and disclosures

18. The Parties intend to share information pursuant to this MoU with each other on a regular basis. The frequency and format of information shared will be agreed by the Parties. The Parties may also request information on an ad hoc basis.
19. If making a request for information pursuant to this MoU, the requesting Parties shall:
- (a) identify the information sought and the format in which it is to be shared;
 - (b) identify the legal basis under which the information is requested or provided;
 - (c) identify the intended use or purpose of the information requested; and
 - (d) treat the disclosed information in accordance with all applicable legal or procedural disclosure restrictions which may attach to that information.
20. When responding to a request for information from the other Party, the receiving Party will:
- (a) confirm receipt of the request as soon as reasonably practicable and agree the timetable for a response, where possible;
 - (b) notify the requesting Party of any anticipated delays to the timetable for a response; and

- (c) provide a reply and supporting documentation (where appropriate) within the time period agreed between the Parties.
21. When the FCA discloses (confidential or otherwise) information to OFSI, then such disclosure will include:
- (a) which legislation (and/or gateway) the information is disclosed under;
 - (b) whether, pursuant to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001/2188, the information is specified confidential EU law information and/or subject to any of retained EU law restrictions ; and
 - (c) whether the information is inside information.

Permissible uses of information

22. The FCA may use information which is not available in the public domain obtained under this MoU in discharge of functions concerning the authorisation, supervision and market oversight of FCA-supervised firms (and individuals connected to such firms) and for enforcement purposes (including conducting investigations or taking enforcement action). Treatment of the information will be in accordance with paragraph 24 and the use and confidentiality provisions in paragraphs 25-31 and paragraphs 32-33.
23. OFSI may use information which is not available in the public domain obtained under this MoU for any civil investigation undertaken by OFSI and for any criminal investigations undertaken by other law enforcement agencies. OFSI may use information obtained under this MoU in order to facilitate compliance with financial sanctions legislation or relevant maritime services sanctions legislation, or for any other purpose agreed between the Parties (including conducting investigations or taking enforcement action). Treatment of the information will be in accordance with paragraph 24 and the use and confidentiality provisions in paragraphs 25-31 and paragraphs 32-33.
24. The Parties will only use information and documents provided to them for the purpose contemplated at the time of disclosure or (where the information was provided pursuant to a request made by one Party to the other) as set out in the request, unless otherwise agreed between them in writing and in accordance with any applicable law.

Confidentiality and Data Protection

25. Each Party will protect the confidentiality and sensitivity of all information received from the other Party, and maintain effective controls designed to minimise the risk of inappropriate disclosures. The Parties undertake to transport and store any physical documents shared under this MoU securely and confidentially.

26. The Parties acknowledge the legal requirements that may apply to the processing of personal data, including but not limited to UK General Data Protection Regulation ("**UK GDPR**"), the Data Protection Act 2018 ("**DPA**") and the Human Rights Act 1998.
27. The Party disclosing personal data to the other under this MoU shall ensure that it has a lawful basis under applicable data protection legislation to share personal data with the other, and that the personal data shared is accurate.
28. The Party receiving personal data under this MoU is responsible for ensuring that the data continues to be held and used in accordance with the applicable data protection legislation.
29. The Parties to this agreement will only retain the information shared under this agreement for the period necessary and for the purpose for which the information was shared. Where there is no longer a need for a Party to retain information shared, they will destroy it or dispose of it in a secure manner.
30. The Parties will maintain effective technical and organisational controls to prevent unauthorised or unlawful processing, and against any accidental disclosure, loss, destruction or damage of information received under this MoU.
31. The Parties will promptly inform the other in the event of a Personal Data Breach relating to personal data processed pursuant to this MoU and will provide reasonable assistance as is necessary to each other to facilitate the handling of any personal data breach in an expeditious and compliant manner. At a minimum and where required, after becoming aware of the breach, the Party in breach shall notify the Information Commissioner's Office within the time period required under UK GDPR (without undue delay and normally not later than 72 hours), and, where applicable, the data subjects.

Onward disclosure to third parties

32. Information shared under this MoU may only be disclosed to a third party where the law allows. Each Party will obtain consent of the other before disclosing information it has received under the MoU to a third party, save in respect of disclosure that is pursuant to a legal obligation. In the latter such cases, then the disclosing Party will notify the other Party prior to any such disclosure.
33. The Parties understand that notifying the other Party in such cases, and only if possible and where appropriate, may assist with identifying any legal exemptions or privileges that may apply to the information.

Data Subjects' Rights

34. The Parties agree to provide such assistance as is reasonably practicable to enable the other Party to comply with requests from data subjects that may relate to, or may be in connection with, information that has been shared under this MoU.
35. Each Party shall notify the other as soon as reasonably practicable after becoming aware if they:
 - (a) Receive a data subject access request or a request that they deem be a data subject access request;
 - (b) Receive a request to rectify, block or erase any personal data;
 - (c) Receive any other request, complaint or communication relating to either Party's obligations under the UK GDPR or the DPA;
 - (d) Receive any communication from the Information Commissioner or any other regulatory authority, or;
 - (e) Receive a request for disclosure of personal data—

Where such requests or communications (as applicable) relate to, or are in connection with, information that has been shared under this MoU.

Operation

36. The terms of this MoU shall commence at the date of signature by both Parties and cease when either OFSI or the FCA gives notice in writing.
37. The Parties will keep the effectiveness and efficiency of co-operation under this MoU under regular review. The terms of this MoU may be amended at any time by agreement of both Parties in writing.
38. This MoU includes an operational agreement at Annex 2. The Parties agree that this operational agreement will be kept under review and revised as and when necessary or expedient. The Parties agree that the operational agreement may be revised without updating or re-executing this MoU.
39. Parties will update each other of regulatory and/or legislative changes that will impact on the information that may be shared under the MoU. In accordance with paragraph 38, the operational agreement (Annex 2) may be updated to reflect any such changes.
40. In the event that OFSI becomes the competent authority for sanctions functions not already captured by paragraph 3 of this MoU, then this MoU will apply to any relevant information held by OFSI or the FCA in relation to such sanctions functions. The Parties may update the operational agreement (Annex 2) to reflect any such changes in accordance with paragraphs 38-39.

41. In the event of termination of this MoU, the Parties will continue to observe such confidentiality and information handling arrangements in connection with information already received under the MoU in accordance with this MoU, Annex 1 and any relevant legal obligations (including under data protection legislation).

Dated: 21st November 2023

Signed by:

For the Office of Financial Sanctions Implementation

Name: Giles Thomson

Position: Director – OFSI and Economic Crime

Signed by:

For the Financial Conduct Authority

Name: Emad Aladhal

Position: Director of Specialists – Supervision, Policy & Competition