

Cooperation Arrangement for BME Clearing's CMG

CROSS-BORDER COOPERATION ARRANGEMENT AMONG THE MEMBERS OF THE CRISIS MANAGEMENT GROUP IN RESPECT OF BME CLEARING

This arrangement, including all Annexes (together, **Arrangement**), is entered into by the CMG Members with effect as of the signing date by the latter of its signature parties.

Unless explicitly indicated otherwise, throughout this Arrangement capitalized terms shall have the meaning ascribed thereto in Art. 1 (*Definitions*) below and references to Comisión Nacional del Mercado de Valores (**CNMV**) shall be deemed to be solely to CNMV acting as Home Authority in its capacity of as competent authority responsible for the authorisation and supervision of the CCP, until a CCP resolution framework is developed in Spain and a CCP resolution authority is designated.

Preambles

1. **Background.** In order to establish a crisis management group (**CMG**) and provide a dedicated framework for information exchange, coordination and cooperation among the CMG Members in the context of the planning of any resolution actions, in respect of BME Clearing (**CCP**), the CMG Members wish to enter into this Arrangement.

2. **Basis.** This Arrangement is based on (i) the Key Attributes, particularly KA 9 (*Institution-specific cross-border cooperation agreements*) thereof, (ii) *FSB Guidance on Central Counterparty Resolution and Resolution Planning, Section 9 (Crisis Management Groups)*, (iii) Appendix I-Annex 1 (*Information Sharing for Resolution Purposes*), Appendix I-Annex 2 (*Essential Elements of Institution-Specific Cross-border Cooperation Agreements*) and Appendix II-Annex 1 (*Resolution of FMIs and FMI Participants*) thereto, and (iv) on Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 (hereinafter, Regulation (EU) 2021/23). Regulation (EU) 2021/23 entered into force on 11 February 2021 and the majority of its provisions apply from 12 August 2022. Consequently, this Arrangement may need to be amended to the extent required to comply therewith.

3. Scope. This CMG will focus on resolution planning in relation to the CCP, while those crisis management aspects relating to recovery or early intervention in respect of the CCP will be dealt with by the college established under Art. 18 of Regulation (EU) No 648/2012 (European Market Infrastructures Regulation, **EMIR**) (**EMIR College**) as well as by CNMV in its capacity as competent authority and each CMG Member individually, within the scope of their respective mandates, roles, responsibilities and powers and to the extent permitted under their respective laws and regulations. The scope of Article 10 of this Arrangement also includes information sharing for purposes of resolution.

4. Status. This Arrangement is neither legally binding nor legally enforceable and its provisions do not give rise to any legal claim by or on behalf of CNMV or any other CMG Member, CMG Attendant or third party.

5. No prejudice. The provisions of this Arrangement are without prejudice to the provisions of (i) other cross-border cooperation arrangements, including those governing the EMIR College, and (ii) any legislation or authoritative guidance dealing with the resolution framework for central counterparties.

Article 1: Definitions

1) In this Arrangement, unless otherwise specified:

a. **Annex** means an annex to this Arrangement;

b. **Arrangement** has the meaning ascribed thereto in the opening paragraph of this document;

c. **CCP** has the meaning ascribed thereto in preamble 1 above;

d. **CMG** has the meaning ascribed thereto in preamble 1 above;

e. **CMG Attendant** means any relevant authority or legal person admitted by CNMV to the CMG as an attendant in accordance with Art. 3(3)(b) below;

f. **CMG Member** means CNMV and any authority admitted by CNMV to the CMG as a member in accordance with Art. 3(3)(a) below;

g. **Confidential Information** means all non-public information;

h. **CNMV** has the meaning ascribed thereto in the opening paragraph of this Arrangement;

i. **DoC** means the declaration of confidentiality in the form set out in **Annex 3**;

j. **EMIR** has the meaning ascribed thereto in preamble 3 above;

k. **EMIR College** has the meaning ascribed thereto in preamble 3 above;

l. **ESMA** means the European Securities and Markets Authority;

m. **FMI**s have the meaning ascribed thereto in Art. 3(1) below;

n. **FSB** means the Financial Stability Board;

o. **Home Authority** means CNMV in its capacity as competent authority responsible for the authorisation and supervision of the CCP until a CCP resolution framework is developed in Spain and a CCP resolution authority is designated, and unless otherwise specified in this Arrangement;

p. **Key Attributes** means the FSB standards and guidance presented in the Key Attributes of Effective Resolution Regimes for Financial Institutions and **KA** means an individual key attribute;

q. **PFMI** means CPMI-IOSCO's Principles for Financial Market Infrastructures;

r. **Recovery Guidance** means CPMI-IOSCO's Recovery of Financial Market Infrastructures guidance;

s. **Recovery Plan** means the CCP's recovery plan prepared in accordance with, amongst others, (i) the PFMI, (ii) the Recovery Guidance, (iii) relevant technical standards or guidance published by relevant European authorities, such as ESMA, all to the extent in force at the

relevant time, (iv) Regulation (EU) 2021/23 and (v) other applicable EU or national laws and regulations;

t. **Relevant Regulatory Framework** has the meaning ascribed thereto in Art. 5(3)(b) below; and

u. **Resolution Plan** means the CCP's resolution plan to be prepared by CNMV in accordance with, amongst others, (i) the Key Attributes, (ii) the FSB Guidance on Central Counterparty Resolution and Resolution Planning, (iii) Regulation (EU) 2021/23, (iv) any relevant technical standards or guidance published by relevant European authorities, such as ESMA, all to the extent in force at the relevant time, and (v) other applicable EU or national laws and regulations.

Article 2: The CCP

1) **Classification.** The CCP is a central counterparty incorporated in Spain. It has been authorised as a central counterparty pursuant to EMIR since September 2014.

2) **Regulatory status.** The CCP is subject to relevant EU and Spanish regulatory framework.

Article 3: CMG composition

1) **Parameters and review.** Given the ongoing regulatory developments on global and European level regarding the composition of crisis management groups for financial market infrastructures (FMIs), this CMG's composition has initially been determined in accordance with Art. 9.2 of the FSB Guidance on Central Counterparty Resolution and Resolution Planning (version of 5 July 2017) and the college established under Art. 18 of Regulation (EU) No 648/2012 (European Market Infrastructures Regulation, EMIR) (EMIR College) and shall be reviewed periodically by CNMV in light of such regulatory and any other relevant developments, such as the new framework resulting from the application of Regulation (EU) 2021/23.

2) **Initial composition.** The CMG's initial composition consists of the CMG Members listed in **Annex I**.

3) **Changes.** CNMV may from time to time and without creating any precedent:

a. **Admission of CMG Member.** Subject to subparagraph (e) below, invite any relevant authority to join this CMG on a standing basis, subject to such authority initialling, and returning by e-mail to CNMV at resolucion@cnmv.es a full copy of (a) the DoC and (b) the then current version of this Arrangement to indicate its acceptance thereof, after which such authority shall be deemed to be a CMG Member and designated as such by CNMV in writing.

b. **Ad hoc invitation of CMG Attendant.** Subject to subparagraph (e) below, invite any relevant authority or legal entity to attend meetings of this CMG on an ad hoc basis, subject to such authority or legal entity initialling and returning by e-mail to CNMV at resolucion@cnmv.es a full copy of the DoC, after which such authority or legal entity shall be designated by CNMV in writing as CMG Attendant. For the avoidance of doubt, the confidentiality provisions set forth in the relevant DoC will survive any such ad hoc attendance.

c. **Removal by CNMV.** Remove any CMG Member which in the reasonable opinion of CNMV (i) no longer meets the membership criteria for this CMG, in light for instance of Article 3(1) above, or (ii) is in breach of any one or more provisions of the DoC executed by it or of any one or more of the provisions of this Arrangement and such breach has not been remedied by the relevant CMG Member to the satisfaction of CNMV within a reasonable period to be determined at the discretion of CNMV considering the relevant circumstances. CNMV shall inform all other CMG Members of such removal. For the avoidance of doubt, the confidentiality provisions set forth in this Arrangement and the relevant DoC will survive any such removal by CNMV.

d. **Removal upon request.** Should a CMG Member wish to discontinue its participation in this CMG and in this Arrangement, it must give at least three months prior written notice thereof to CNMV before such removal shall become effective. CNMV shall inform all other CMG Members of such removal in writing. For the avoidance of doubt, the confidentiality

provisions set forth in this Arrangement and the relevant DoC will survive any such termination in accordance with the laws and regulations applicable to the relevant CMG Member.

e. **Consultation.** Prior to inviting any authority or legal entity to participate in the CMG as CMG Attendant, CNMV will consult in writing all then current CMG Members with a view to ascertaining that each is permitted to exchange information in line with applicable EU or national laws and regulations, including Confidential Information, with such authority or legal entity¹. If a CMG Member does not inform CNMV via resolucion@cnmv.es within 20 (twenty) working days of such consultation of any objections to participation and/or exchange of information, including Confidential Information, with the authority or legal person, such CMG Member shall be deemed to accept such authority's or legal persons' participation in the CMG. In case a CMG Member objects to the proposed participation and/or the exchange of information, CNMV will undertake to mediate a solution.

4) **CMG Member.** Without prejudice to any other provision of this Arrangement, the role of a CMG Member within the CMG is as set out in Art. 6 (*CMG roles - CNMV*) or 7 (*CMG roles - CMG Members (other than CNMV)*) as well as 8 (*Joint CMG roles*), 9 (*Cooperation and coordination during business as usual*) and 10 (*Cooperation and coordination in crisis times*) below.

5) **CMG Attendant.** Without prejudice to any other provision of this Arrangement, the role of a CMG Attendant within the CMG is to participate in CMG meetings solely in an informational capacity and on an ad hoc basis.

6) **Representatives.** Each CMG Member and CMG Attendant role shall be fulfilled by one representative attending the CMG meeting, unless explicitly otherwise agreed in writing by CNMV prior to the relevant event. For the avoidance of doubt, this requirement does not preclude a CMG Member from fulfilling its role through more than one representative attending the CMG meeting on a rotating basis nor does

¹ In this regard, the SRB will share confidential information concerning the clearing members under its direct remit, as foreseen by Articles 11 and 12, only with those third-country authorities whose confidentiality and professional secrecy regime is considered either by the European Banking Authority or by the SRB as equivalent to that required by the bank recovery and resolution directive (BRRD).

it apply to CNMV. Those CMG members with several roles will have one representative for each role.

7) **Contact details²**. CNMV will maintain a document with the contact details of all representatives as well as those of key senior and working-level staff per CMG Member. Each CMG Member shall at least yearly verify the completeness and correctness of the information and provide CNMV forthwith with any changes by e-mail at resolucion@cnmv.es.

Article 4: CMG functioning

1) **Annual meetings**. CMG meetings shall take place at least annually.

2) **Ad hoc meetings**. Upon proposal of any CMG Member or on its own initiative, CNMV may decide to organize an ad hoc CMG meeting. If CNMV organizes such a meeting, it may, depending on the circumstances, such as the urgency or the relevance to other CMG Members, decide that such CMG meeting shall take place via tele- or video conference.

3) **Chair and organization**. CNMV will chair all CMG meetings, at a sufficiently senior level. CNMV will organize the practical procedures for all CMG meetings.

4) **Means of communication outside of CMG meetings**. All CMG Members hereby irrevocably undertake to use secured methods of communication (including, but not limited to, e-mail, tele- and video conference) to facilitate rapid and effective information sharing and communication between and amongst each of them whilst simultaneously ensuring appropriate levels of confidentiality.

5) **Working language**. To ensure all CMG Members can benefit from any information exchange, the working language to be used in any CMG meeting, as well as all related communications shall be English.

² This information will be managed according to Annex 2

Article 5: CMG framework

1) **Framework.** The CMG's functioning aims to achieve the objectives set out in Art. 5(2) below, subject to the principles set out in Art. 5(3) below and in accordance with the provisions of this Arrangement.

2) **Objectives:** This Arrangement sets out how the CMG Members will communicate, coordinate, cooperate and share information, both during business-as-usual periods and in times of crisis, with a view to facilitating an orderly resolution of the CCP.

3) **Principles.** In pursuing the CMG's objectives, CMG Members shall in all instances take into consideration the following principles, within the scope of their respective mandates, roles, responsibilities and powers and to the extent permitted under their respective laws and regulations:

a. **Minimize the impact of failure.** Resolution aims to (i) ensure the continuity of the CCP's critical functions, its links to other FMIs, including the timely settlement of its obligations to its participants and the and the continuous access of its participants to securities or cash posted to the CCP, (ii) avoid adverse effects on financial stability, minimising adverse contagion to the CCP participants and the wider financial system, and (iii) protect public funds by minimizing the reliance on extraordinary public financial support.

b. **Alignment with applicable guidance and legislation.** The Relevant Regulatory Framework should shape the approach of each CMG Member to crisis management (including resolution) of the CCP.

The Relevant Regulatory Framework consists of but is not limited to:

- the PFMI,
- the Key Attributes,
- the FSB Guidance on Central Counterparty Resolution and Resolution Planning,
- Regulation (EU) 2021/23,
- any other relevant European legislation, including the EMIR and legislative acts based thereon (or for non EU/EEA CMG members their national equivalent, if applicable),

- any relevant treaty to which the jurisdiction of the relevant CMG Member is a party,
- the respective relevant national laws and regulations of each CMG Member, and
- any such other guidance as the CMG Members may agree from time to time in writing.

Each CMG Member undertakes to inform all other CMG Members in writing of any material change to their respective crisis management (including resolution) frameworks, if in place and, to the extent relevant to this Arrangement, including any applicable final opinions rendered by a court of competent jurisdiction, as soon as practicable upon any such change becoming reasonably foreseeable to the relevant CMG Member.

c. No resolution or other powers of CMG. This CMG as such does not have, nor does it intend to create at any point in time after the date of this Arrangement, any formal resolution, supervisory or other regulatory powers. Any and all such powers are exclusively entrusted to CNMV in its various capacities and the other CMG Members by the relevant applicable laws and regulations.

d. No binding decisions by CMG. This CMG does not have decision-making powers which could legally bind CNMV or any CMG Member.

e. No separate legal status of CMG. This CMG does not have, nor does it intend to create at any point in time after the date of this Arrangement, any legal personality for itself, any two or more CMG Members.

f. No limitation by Arrangement. This Arrangement is not intended to amend or supersede any arrangement existing as at the date this Arrangement enters into force to which CNMV or any other CMG Member is a party or limit the terms of any future arrangement to be entered into by CNMV or any other CMG Member.

g. Right to inform third party public authorities. CNMV may, in line with the Relevant Regulatory Framework and if need be, keep any relevant authority which is not a CMG Member, such as for example the FSB or the Spanish Ministry of Finance, informed of developments regarding the CMG's activities, in accordance with Articles 11 and 12.

h. General public disclosure. The existence of this Arrangement may be publicly disclosed. If, and to the extent required by EU or national laws or regulations, court order or in the proper exercise of its statutory functions, powers or obligations, any CMG Member may publicly disclose an outline of this Arrangement or all or portions thereof. If a CMG Member intends to disclose any outline or part of this Arrangement to the general public, it should, in accordance with EU or national laws and regulations, give prior written notice to CNMV, which will as soon as reasonably practicable thereafter inform all CMG Members accordingly in writing of the scope of the intended publication.

Article 6: CMG roles - CNMV

In its capacity as Home Authority, CNMV will at a minimum, in line with the respective EU or national laws, regulations and any guidance declared applicable in or pursuant to this Arrangement:

1) **Recovery Plan.** Promote discussion in the CMG of the CCP's current Recovery Plan as well as any proposed material amendments thereto, taking into account the input of the CMG Members as well as the relevant guidance set out in the PFMI, the Recovery Guidance, Regulation (EU) 2021/23, EMIR, any other guidance CNMV and the CMG Members may agree upon in writing prior to or during the relevant CMG meeting.

2) **Resolvability Assessment.** Assess the CCP's resolvability by considering the input of CMG Members as well as the relevant FSB standards/Key Attributes and guidance, Regulation (EU) 2021/23, including relevant technical standards, guidelines and recommendations and any such other guidance as CNMV, the other CMG Members may agree upon in writing prior to or during the relevant CMG meeting.

3) **Resolution Plan.** Draft and periodically update the Resolution Plan for the CCP, which considers, amongst others, resolution of the CCP as a whole or in part as well as the financial stability impact thereof in all relevant jurisdictions. In accordance with Articles 11 and 12 and to the extent permitted by applicable law, CNMV will share the draft Resolution Plan (and any update thereto) with the CMG Members and, where possible, take into account their comments.

4) **Actions to enhance and ensure resolvability.** Identify potential actions it and/or the CCP may need to take to enhance and ultimately ensure the CCP's resolvability.

5) **Monitor resolvability enhancement and assurance monitoring.** Monitor the implementation of any actions set out in the Resolution Plan or covered by paragraph (4) above and provide the CMG with related periodic progress updates.

6) **Resolvability simulations.** Arrange periodic table top simulations or other scenario exercises in order to assess the CCP's general resolvability or, once available, the execution readiness of the Resolution Plan and to help facilitate resolution planning.

7) **Provide feedback to the CCP.** Periodically may inform the CCP as appropriate about the CMG's work, including the main findings of the resolvability assessment and resolvability simulations and any agreed views, without prejudice to Articles 11 and 12.

8) **Information sharing in context of CNMV intervention.** As soon as CNMV, in whatever capacity, can reasonably foresee that either the CCP will take recovery measures or CNMV could or will exercise any supervisory, recovery action or resolvability action in respect of the CCP, that is relevant for the purposes of this Arrangement, CNMV shall inform all other CMG Members thereof in writing (which may be by email).

9) **Crisis management.** Coordinate the activities and sharing of information amongst CMG Members in crisis time in accordance with Art. 10 (*Cooperation and coordination in crisis time*) below.

Article 7: CMG roles - CMG Members (other than CNMV)

Each CMG Member (other than CNMV), should, at a minimum, as applicable and within the scope of their respective mandates, roles, responsibilities and powers and to the extent permitted under their respective laws and regulations:

1) **Meaningful participation and actions.** Participate, at a sufficiently senior level, in CMG meetings and should take forward the actions determined therein in accordance with the Relevant Regulatory Framework, which it hereby acknowledges will require close and continuous working-level cooperation.

2) **Recovery Plan.** Provide input to the discussion of the Recovery Plan in the context set out in Art. 6(1) above.

3) **Resolution Plan.** Provide input to the preparation and updating of the Resolution Plan in the context set out in Art. 6(3) above. Where a CMG Member has material concerns regarding the Resolution Plan, it should submit such concerns in writing to CNMV as well as the other CMG Members as soon as reasonably possible, also setting out proposed remedies.

4) **Information sharing to enable resolvability enhancement and assurance monitoring.** Provide input to CNMV in the context set out in Art. 6(5) above, subject to Art. 11 and Art. 12 and to the extent permitted under applicable laws and regulations.

5) **Information sharing to ensure compliance with Arrangement.** Subject to Art. 12 (*Confidentiality of information*) below and the relevant DoC and to the extent permitted under applicable laws and regulations, at all times share information with CNMV and all other CMG Members as may be required to comply with this Arrangement.

6) **Information sharing in context of non-CNMV intervention.** As soon as any CMG Member can reasonably foresee that it might or will exercise its right set out in Art. 10(3)(a) below by taking action which directly impacts the CCP, such CMG Member should, without undue delay, and to the extent permitted by their respective laws and regulations, forthwith inform CNMV and the other CMG Members thereof in writing to the extent permitted by applicable laws and regulations.

Article 8: Joint CMG roles

Implement and coordinate actions to enhance and ensure resolvability and removal of impediments. In addition to their respective minimum undertakings set out in Art. 6 (*CMG roles - CNMV*) and 7 (*CMG roles - CMG Members (other than CNMV)*) above, all CMG Members should, as applicable, to the extent practical, and within the scope of their respective mandates, roles, responsibilities and powers, and to the extent permitted under their respective laws and regulation, provide reasonable assistance to implement, or reasonable efforts to coordinate with any other relevant CMG Member(s) the implementation of the actions:

(i) set out in the Resolution Plan;

(ii) determined in accordance with Art. 6(4) above to enhance and ensure resolvability; and

(iii) necessary to identify critical systems and services provided to the CCP or its affiliated entities by entities within their respective jurisdiction. Where critical systems and services would be required in resolution, the Resolution Plan should provide for the continuation thereof.

To the extent this requires coordination with an authority which is not already a CMG Member, the relevant CMG Member may request CNMV forthwith in writing to apply the provisions of Art. 3(3)(a) above.

Article 9: Cooperation and coordination during business as usual

In addition to the respective minimum undertakings set out in Art. 6 (*CMG roles - CNMV*), 7 (*CMG roles - CMG Members (other than CNMV)*) and 8 (*Joint CMG roles*), all CMG Members should within the scope of their respective mandates, roles, responsibilities and powers, and to the extent permitted under their respective laws and regulations:

1) **Cooperation during business as usual.** In case of divergent views regarding the application of (any part of) the Relevant Regulatory Framework in respect of the CCP, strive to reach a common view through the CMG.

2) **Coordination during business as usual.** Endeavour to work together, subject to the relevant CMG Member's legal and regulatory remit and as practical and proportionate, to:

- a. assess during the resolution planning process the impact of various resolution options in the relevant jurisdictions;
- b. identify the actions that may be taken by CMG Members to mitigate such impact; and
- c. identify procedural requirements for the cross-border recognition of resolution measures.

Article 10: Cooperation and coordination in crisis time

1) **Notification.** In addition to Art. 6(8) above, CNMV will, to the extent permitted under applicable laws and regulations applicable to it, also alert all CMG Members without undue delay upon it becoming aware of (i) the CCP encountering material financial or operational difficulties, (ii) significant supervisory action or early intervention measures being likely to be or will be taken, (iii) recovery actions being likely to be or being taken, whether or not set out in its Recovery Plan, or (iv) the CCP being reasonably likely to enter into resolution.

2) **Cooperation in crisis times.** All CMG Members should cooperate towards the coordinated and orderly resolution of the CCP within the scope of their respective mandates, roles, responsibilities and powers, and to the extent permitted under their respective laws and regulations.

3) **Coordination in crisis times.** In taking resolution actions, all CMG Members (other than CNMV) should, within the scope of their respective mandates, roles, responsibilities and powers, and to the extent permitted under their respective laws and regulations:

- a. Endeavour not to pre-empt any resolution actions (to be) taken by CNMV, whilst reserving their respective right to act at all times on their own initiative in the exercise of their respective domestic financial stability, central banking, supervisory, oversight, recovery or resolution competences under EU or national laws or regulations; and

b. notify CNMV and all other CMG Members prior to taking any resolution actions in relation to the CCP, to the extent practicable and permitted by their respective laws and regulations.

All CMG Members (other than CNMV) will inform CNMV as soon as reasonably possible after becoming aware of any respective applicable legal or regulatory requirements which present a material and manifest impediment to the resolvability of the CCP with a view to jointly resolving such possible constraints through the CMG as soon as reasonably possible, to the extent practical.

4) Communication in resolution. In the event of resolution, the CMG Members will maintain an open communication channel at all times and endeavour to coordinate with each other, to the extent permitted by their respective laws and regulations, to ensure consistency of external communications both leading up to, at the time of, and for whatever period of time is necessary following resolution.

Article 11: Procedures for sharing Confidential Information

To facilitate information exchange for the purposes of this Arrangement, the following procedure applies to the extent permitted under the respective laws and regulations of any CMG Member.

1) Request for Confidential Information. To the extent that the EU or national laws and regulations of any CMG Member permit the sharing of Confidential Information only upon request, any requests for Confidential Information to such CMG Member will be made in writing, to the extent practicable. The requesting CMG Member should specify the information sought as well as the purpose and the urgency of the request.

2) Response to request for Confidential Information. Any CMG Member receiving a request for Confidential Information should, to the extent permitted under laws and regulations applicable to it, make reasonable efforts, as practical at the time and within applicable laws and policies, to provide the requested Confidential Information in a timely manner, taking into consideration the urgency of the request.

3) Sharing of Confidential Information. For the avoidance of doubt, Art. 4(4) above applies to the sharing of all Confidential Information.

Article 12: Confidentiality of information

1) **Use.** Confidential Information obtained by a CMG Member under this Arrangement should be used solely for lawful supervisory, central banking, oversight, resolution and financial stability purposes, in regard to the CCP (and its clearing members) and in accordance with: i) the purpose(s) identified in the request for information, ii) their respective applicable laws or regulations, iii) any limitations placed upon the use of such Confidential Information by the providing CMG Member, iv) the relevant CMG Member's DoC and v) the provisions of this Art. 12, provided that in the event that any of these conditions or limitations is incompatible with the EU or national laws and regulations of a receiving CMG Member, the receiving CMG Member must obtain the consent of the providing CMG Member before using the Confidential Information.

2) **Applicable framework.** All CMG Members (other than CNMV) will inform CNMV as soon as possible after becoming aware of any changes to any respective legal or regulatory requirements governing the confidentiality of information to be shared pursuant to this Arrangement that would have a material impact on the handling of Confidential Information to be shared pursuant to this Arrangement, particularly when these changes may affect the handling of Confidential Information already provided under this Arrangement and to the extent permitted under their respective laws and regulations.

3) **Additional confidentiality requirements.** All CMG Members agree that any Confidential Information shared under this Arrangement will be subject to the confidentiality requirements set out in this Art. 12, the Arrangement generally and the DoC. In case of a conflict between this Arrangement and the various provisions of the DoC, the provisions of this Arrangement shall prevail.

4) **Restricted access.** Without prejudice to paragraph 6 of this section, all CMG Members will hold confidential all Confidential Information, and confirm that:

- i. all persons dealing with or having access to any Confidential Information are subject to an obligation of professional or official secrecy and therefore any passing of Confidential Information in

breach of professional or official secrecy is unlawful in their respective jurisdiction;

- ii. the professional or official secrecy requirements apply to any person currently or previously employed by or acting on behalf of them; and all CMG Members hereby acknowledge that all information, including Confidential Information, in the broadest sense pertaining to recovery planning, including any versions of the Recovery Plan, and resolution planning, including any versions of the Resolution Plan, and the assessment of resolvability, is commercially and/or market sensitive. Therefore, any access thereto should be restricted to those persons who have a direct and genuine need for such access. Such data and information should be handled carefully and appropriately in the same manner applicable to similar information in each CMG Member respective jurisdiction.

5) Request consent to share Confidential Information. Except as provided in paragraph (6) below, each time before a CMG Member discloses any Confidential Information obtained pursuant to this Arrangement to any person other than another CMG Member, including another relevant authority that is not a signatory to this Arrangement, the CMG Member seeking to disclose such Confidential Information should request and obtain prior written consent from the CMG Member which originally provided the relevant Confidential Information to the extent permitted under their respective laws and regulations (**Producing Party**). The disclosing CMG Member will ensure that the disclosed Confidential Information remains subject to secrecy obligations substantially equivalent to those set out in this Arrangement.

6) Mandatory sharing of Confidential Information. In the event that a CMG Member is required by law or legal process, including a legally enforceable demand, to disclose Confidential Information, it should, to the extent permitted by laws and regulations applicable to it, inform the Producing Party in writing at the earliest possible opportunity. The CMG Member ordered to disclose should make its best efforts to protect confidentiality of the Confidential Information, including advising the

third party of the possible negative consequences for the future exchange of information between the CMG Members.

7) The SRB represents that it has an ongoing legal obligation to share certain Confidential Information with: i) the European Commission, in its capacity as permanent observer in the SRB's decision making bodies, and together with the Council of the European Union, for the performance of their role under Article 18 SRMR³; and ii) the European Central Bank, in its capacity as permanent observer in the SRB's decision making bodies. The nature of this ongoing obligation to share is such that there are no reasonable steps that the SRB could take to prevent the disclosure

8) Furthermore, under the SRMR, the SRB is required to disclose on an ongoing basis, during business-as-usual, confidential information with national resolution authorities ("Onward Sharing Recipients"). In light of the ongoing nature of this requirement to disclose, which would make obtaining consent of or providing notice to the Producing Parties of such disclosure to the Onward Sharing Recipients burdensome, it is acknowledged that the SRB may disclose Confidential Information to the Onward Sharing Recipients on a need-to-know basis pursuant to the mentioned requirement, subject to the following conditions:

a. Before disclosing Confidential Information to the Onward Sharing Recipients, the SRB will obtain assurance from each Onward Sharing Recipient receiving such Confidential Information, that, in addition to professional secrecy requirements as may be required by law, the Confidential Information will be used solely to the extent and within the limits of the statutory role of the Onward Sharing Recipient in the operation of the resolution regime in accordance with that Onward Sharing Recipient's jurisdiction applicable laws and regulations;

b. The SRB will inform the Producing Parties on a regular basis of any information shared with any of the Onward Sharing Recipients as a result thereof;

³ Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010

c. The Onward Sharing Recipients will ensure to the SRB that the Confidential Information will not be further disclosed, except to other national resolution authorities on a need-to-know basis. In such cases the Onward Sharing Recipient will inform the SRB in advance of and justify the need for the further disclosure.

9) **Breach.** In the event of a breach of the provisions set out in this Art. 12, the Producing Party and the CMG Member in breach (**Breaching Party**) will seek to resolve such breach as soon as possible. If this is not possible within a reasonable timeframe, the Producing Party may temporarily suspend the sharing of information with the Breaching Party under this Arrangement. Such suspension will not, however, affect the Breaching Party's confidentiality obligations arising from or under the Arrangement or its DoC.

10) **Scope.** The protection of confidentiality extends to all kinds of analyses, evaluations and work products derived from Confidential Information shared under the Arrangement.

11) **No waiver.** No privileges or confidentiality associated with information provided by any CMG Member are waived as a result of sharing or disclosing information as contemplated by this Arrangement.

12) **Exemption.** The provision of, or request for, information under this Arrangement may be denied on grounds of public interest or national security, or when disclosure would interfere with an ongoing investigation or applicable EU or national laws and regulations.

Article 13: Final Provisions

1) **Amendments only in writing.** Any modification of this Arrangement (excluding any amendment to the Annex setting out the CMG Members which have executed a copy of this Arrangement) should be explicitly agreed in writing by all CMG Members .

2) **Amendment to reflect material changes.** The CMG Members will revise and update this Arrangement from time to time to reflect any material changes within the scope of their respective mandates, roles, responsibilities and powers, and to the extent permitted under their respective laws and regulations.

3) **Interpretation.** This Arrangement should be interpreted and implemented in a manner that is permitted by, and consistent with, the laws and regulations applicable to the CMG Members. If a part of this Arrangement is or becomes invalid, the remainder shall continue to be effective as between the CMG Members and the CMG Members shall replace the invalid part by provisions which are valid and the effect of which, given the contents and purpose of this Arrangement, is, to the greatest extent possible, similar to that of the invalid part. Nothing in this Arrangement affects the competence of the supervisory, oversight, central banking, resolution or regulatory authority of the CMG Members under their respective laws and regulations. In the event of disagreement regarding the interpretation of this Arrangement, the CMG Members should venture to discuss the differing interpretations and seek to find a common interpretation.

4) **Term.** This Arrangement will come into force from the effective date set out in the first paragraph of this Arrangement and remain so in respect of any CMG Member until it terminates its participation in the CMG and this Arrangement in accordance with Art. 3(3)(d) above.

Signed for and on behalf of:

Comisión Nacional del Mercado de Valores (CNMV)	FROB
Banco de España (BdE)	Autorité de Contrôle Prudentiel et de Résolution (ACPR)
Autorité des Marchés Financiers (AMF)	Bank of England (BoE)
Financial Conduct Authority (FCA)	Prudential Regulation Authority (PRA)
European Securities and Markets Authority (ESMA)	Single Resolution Board (SRB)

Annex 1: Initial composition of the CMG for BME Clearing

FRANCE

- **Autorité de Contrôle Prudentiel et de Résolution (ACPR)**
 - The competent authority responsible for the supervision and the resolution of the clearing members (2 roles)
- **Autorité des Marchés Financiers (AMF)**
 - The competent authority responsible for the supervision of the clearing members
 - The competent authority responsible for the supervision of trading venues served by the CCP

UK

- **Financial Conduct Authority (FCA)**
 - The competent authority responsible for the supervision of clearing members (alongside the Prudential Regulation Authority)
 - The competent authority responsible for the supervision of trading venues served by the CCP
- **Prudential Regulation Authority (PRA):**
 - The competent authority responsible for the supervision of the UK clearing members (alongside the Financial Conduct Authority)
- **Bank of England (BoE):**
 - The resolution authority of the UK

SPAIN

- **Comisión Nacional del Mercado de Valores (CNMV)**
 - The BME Clearing's competent authority and acting as resolution authority, in its capacity as competent authority responsible for the authorisation and supervision of the CCP, until a CCP resolution framework is developed in Spain and a CCP resolution authority is designated (2 roles)
 - The competent authority responsible for the supervision of the Spanish clearing members and the competent preventive resolution authority responsible for the resolution planning of Spanish clearing members (investment firms) (2 roles).
 - The competent authority responsible for the supervision of trading venues served by the CCP
 - The competent authority supervising central securities depositories to which the CCP is linked
- **Banco de España (BdE)**
 - The competent authority responsible for the supervision of the Spanish less significant credit institutions, and the competent preventive resolution authority responsible for the resolution planning of Spanish clearing members, when they are less significant credit institutions (2 roles).
 - The relevant member of the ESCB responsible for the oversight of the CCP.

- Representing the Eurosystem as central bank of issue of the euro.
- **FROB**
 - The resolution authority responsible for the resolution of the clearing members when they are either credit institutions or investment firms.

EUROPEAN AUTHORITIES

- **European Securities and Markets Authority (ESMA)**
- **Single Resolution Board (SRB)**
 - The resolution authority responsible for the resolution of the clearing members according to EU regulation 806/2014.

BME Clearing CMG – Composition

BME Clearing college members (EMIR)					
EMIR	Type of authority	Market Infrastructure	Member State	Competent Authorities	Resolution Authorities
18(2)(a)	ESMA	-	-	• ESMA	N/A
18(2)(b)	CA of the CCP	-	ES	• CNMV (DGM-Secondary Markets Dpt)	CNMV (DGPIA-RFEIUnit) (*)
18(2)(c)	CAs of clearing members	-	ES, UK, FR	• CNMV • Banco de España (ES) • FCA (UK) • PRA (UK) • AMF (FR) • ACPR(FR)	• CNMV • Banco de España (ES) • FROB (ES) • ACPR (FR) • BoE (UK) • SRB (EU)
18.2.ca	CAs of Clearing members participating as non-voting members			N/A	N/A
18(2)(d)	CAs of trading venues	SENAF; Stock Exchanges; MAB, LATIBEX, MEFF; TP ICAP Europe; CME Amsterdam; Brokertec Europe, ICAP Energy, Tullet Prebon Europe	ES, NL, FR, UK	• CNMV (ES) • AMF (FR) • FCA (UK)	N/A
18(2)(e)	CA of interoperable CCP	-	-	N/A	N/A
18(2)(f)	CAs of CSD	Iberclear	ES	• CNMV (ES)	N/A
18(2)(g)	Oversight of CCP	-	ES	• Banco de España (ES)	N/A
18(2)(h)	Central bank of issue	-	Countries of the Eurosystem	• Eurosystem represented by the Banco de España	N/A
18(2)(i)	Central bank of issue participating as non-voting members	-	-	-	N/A

(*) In its capacity as competent authority responsible for the authorisation and supervision of the CCP, until a CCP resolution framework is developed in Spain and a CCP resolution authority is designated

Annex 2: Processing of personal data

Personal data shall be processed in accordance with the applicable regulations on personal data protection and, in particular, with the General Data Protection Regulation (Regulation (EU) 2016/679) and Regulation (EU) 2018/1725⁴). Any personal data provided by a CMG Member shall be solely processed for the purposes and on the basis of the performance of this arrangement. In the event of a transfer of personal data between the CMG Members, the transfer shall comply with the applicable personal data protection regulations and be based on the purposes referred to above.

Once the personal data are no longer necessary for the purposes referred to above, or in the event a data subject exercises a right of erasure, the personal data will remain stored solely for the purposes of addressing potential liabilities arising from the processing during the statute of limitations period. Once such period expires, personal data shall be erased. Data subjects may request from the CMG Members to exercise rights of access, rectification, erasure, restriction, portability, objection, restriction as well as any other rights which might be applicable under the GDPR, properly evidencing their identity, in the following manner:

FRANCE

- **Autorité de Contrôle Prudentiel et de Résolution (ACPR)**
 - TBD
- **Autorité des Marchés Financiers (AMF)**
 - TBD

UK

- **Financial Conduct Authority (FCA)**
 - TBD
- **Bank of England (BoE) /Prudential Regulation Authority (PRA)**
 - TBD

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

SPAIN

- **Comisión Nacional del Mercado de Valores (CNMV)**
 - In person or by ordinary post to Calle de Edison, 4 - 28006 Madrid.
- **Banco de España (BdE)**
 - In person, by ordinary post to Calle Alcalá 48, 28014 Madrid (To the DPO) or, electronically, through the procedure referred to in Banco de España's Privacy Policy.
- **FROB**
 - In person or by ordinary post to Avenida General Perón, 38, Masters'II building, 16th floor, 28020 Madrid or by email at dpd@frob.es.

EUROPEAN AUTHORITIES

- European Securities and Markets Authority (ESMA)
 - TBD
- The Single Resolution Board (SRB)
 - In person or by ordinary post to Treurenberg 22, B-1049, Bruxelles or by email at SRB-DPO@srb.europa.eu

Additionally, the CMG Members shall ensure that their employees comply with the applicable data protection regulations.

Annex 3: Declaration of Confidentiality regarding “BME Clearing’s Crisis Management Group”

The following authorities:

FRANCE

- Autorité de Contrôle Prudentiel et de Résolution (ACPR)
- Autorité des Marchés Financiers (AMF)

UK

- Financial Conduct Authority (FCA)
- Prudential Regulation Authority (PRA) / Bank of England (BoE)

SPAIN

- Comisión Nacional del Mercado de Valores (CNMV)
- Banco de España (BdE)
- FROB

EUROPEAN AUTHORITIES

- European Securities and Markets Authority (ESMA)
- Single Resolution Board (SRB)

Hereinafter: each “the Authority” or together “the Authorities”; participating in the Crisis Management Group for BME Clearing, declare the following:

1. The Authorities shall participate in the Crisis Management Group for BME Clearing and contribute to its work. Participation is subject to signing this Declaration.
2. The Authorities shall keep confidential all non-public information received and shared amongst them, both on a bilateral and multilateral basis (hereinafter: “confidential information”). This obligation applies to all confidential information irrespective of the type of carrier of the information, the way or format in which this information is shared.
3. Confidential information shall only be used and further transmitted necessary to the performance of the duties of the Authorities regarding resolution concerning BME Clearing, and in circumstances permitted under law.
4. The Authorities may provide persons who work for the Authorities (i.e. officers, employees) access to confidential information only on a “need-to-know” basis. The

Authorities confirm that all persons having access to confidential information are bound by the obligation of professional secrecy provided for in Article 83 of the EMIR, 84 of the BRRD, or equivalent obligations.

5. Except as provided in paragraph 6) below, where further transmission of the confidential information is permitted under law, the Authorities shall not, to the extent possible under law, disclose such information without first obtaining the prior written consent of the relevant Authority that provided the information concerned.

6. Where the Authority is required by law or legal process to disclose confidential information, it should, to the extent permitted by laws and regulations applicable to it, endeavour to inform the relevant Authority that provided the information concerned. The Authority ordered to disclose should, if possible, take reasonable steps, to the extent permitted by the laws and regulations applicable to it, to assert legal exceptions or privileges from disclosure

7. In case an authority intends to participate in the CMG and signs this Declaration or in case an Authority withdraws its participation and revokes this Declaration, the other Authorities will be informed in writing by CNMV.

8. This Declaration remains in force and effect indefinitely, unless and until a new declaration between the Authorities is signed, revoking or modifying this Declaration, or unless terminated by written notification of one Authority to the CMG.

9. The provisions of this Declaration will remain applicable after the termination of this Declaration, the termination of the participation of an Authority to the CMG, and the termination of the CMG.

10. This Declaration will enter into force when signed by the Authority.