Memorandum of Understanding

European Securities and Markets Authority

New Zealand Financial Markets Authority

Memorandum of Understanding between ESMA and New Zealand FMA establishing cooperation arrangements under Article 30 of Regulation (EU) 2016/1011 of the European Parliament and of the Council

On 30 October 2025, the European Commission adopted Commission Implementing Decision (EU) 2025/2197[1] (the "Equivalence Decision") under Article 30(2) of Regulation (EU) 2016/1011 of the European Parliament and of the Council[2] ("BMR") regarding New Zealand, determining that administrators licensed by the Financial Markets Authority in New Zealand comply with binding requirements which are equivalent to the requirements under BMR, and that the binding requirements are subject to effective supervision and enforcement on an on-going basis in New Zealand.

Following the adoption of the Equivalence Decision, the European Securities and Markets Authority ("ESMA") must establish cooperation arrangements with New Zealand. The minimum content of the cooperation arrangements is defined in Article 30(4) of BMR, and further specified in Commission Delegated Regulation (EU) 2018/1644[3].

ESMA and the New Zealand Financial Markets Authority ("FMA") have therefore reached this Memorandum of Understanding ("MoU") whose purpose is two-fold, namely to:

1) establish cooperation arrangements between ESMA and FMA which are operational, thereby ensuring the fulfilment of the condition set out in Article 30(1)(d) of BMR; and

2) provide ESMA and FMA with an appropriate mechanism for the exchange of information, including the mechanism for prompt notification to ESMA where FMA deems that an administrator authorised in New Zealand and covered by the equivalence decision of the European Commission is in breach of the conditions of its authorisation or other relevant national legislation in New Zealand; and with procedures concerning the coordination of supervisory activities, including on-site inspections.

This MoU is an arrangement between ESMA and FMA and not a collective arrangement with other European Union authorities. As such, it will not impact any arrangements which may be agreed directly between other European Union authorities and FMA.

[1] COMMISSION IMPLEMENTING DECISION (EU) 2025/2197 of 30.10.2025 on the equivalence of the legal and supervisory framework applicable to benchmarks in New Zealand in accordance with Regulation (EU) 2016/1011 of the European Parliament and of the Council:
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202502197

[2] Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p.1)

[3] Commission Delegated Regulation (EU) 2018/1644 of 13 July 2018 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent (OJ L 274, 5.11.2018, p.33)

Article 1

Definitions

For the purposes of this MoU:

a) "Authority" means a signatory to this Memorandum of Understanding;

b) "Covered Administrator" means an administrator referred to by Article 1 of the Equivalence Decision;

c) "Covered Benchmark" means a financial benchmark provided by a Covered Administrator and specified in the FMA licence[4];

d) "Books and Records" means documents, electronic media, books and records within the possession, custody or control of, and other information about, a Covered Administrator;

e) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Administrator, or an event of cessation of publication or material change of a Covered Benchmark;

f) "Governmental Entity" means:

   i. if the Requesting Authority is FMA, the New Zealand Ministry of Business, Innovation, and Employment, the New Zealand Treasury, and the Reserve Bank of New Zealand which have responsibilities and mandates in relation to the regulation of the New Zealand financial system and entities in the financial system, or any Minister assigned responsibility for FMA or its functions;

   ii. if the Requesting Authority is ESMA, the relevant competent authority designated by each Member State under Article 40 of BMR[5] and the European Commission.

g) "Laws and Regulations'' means, in relation to ESMA, applicable European Union legislation within ESMA's scope of action as set out in Article 1(2) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[6] and, in relation to FMA, any applicable laws and regulations in force in New Zealand.

h) "On-site Inspection" means any visit by ESMA to the premises of a Covered Administrator, including inspection of Books and Records, in connection with the Covered Administrator's administration of a Covered Benchmark;

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[4] The FMA maintains a list on its website of licensed benchmark administrators, which specifies the financial benchmarks each administrator is licensed to provide https://www.fma.govt.nz/business/licensed-providers/.

[5] https://www.esma.europa.eu/sites/default/files/bmr.pdf

[6] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84–119)

i) “Person” includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered Administrator;

j) “Requested Authority” means the Authority to whom a request is made under this MoU; and

k) “Requesting Authority” means the Authority making a request under this MoU.

Article 2

General provisions

1. Pursuant to the equivalence regime under BMR, ESMA does not have direct supervisory or enforcement powers over the Covered Administrators, with the exception of the obligation to withdraw the registration of administrators located in third countries where the conditions in Article 31 of BMR are met. ESMA therefore relies on the supervision and enforcement capabilities of FMA which supervises and enforces compliance with New Zealand’s Laws and Regulations.

2. This MoU is a statement of intent to consult, cooperate and exchange information in connection with ESMA’s prompt access on an on-going basis to all information requested by ESMA regarding the Covered Benchmarks. The cooperation and information sharing arrangements under this MoU should be interpreted and implemented in a manner that is permitted by, and consistent with, the Laws and Regulations.

3. This MoU does not create any legally binding obligations, confer any rights or supersede any domestic laws. This MoU does not confer upon any Person the right or ability, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this MoU.

4. This MoU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its responsibilities or to prejudice or affect in any way the individual responsibilities, competencies or autonomy of any Authority. This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoU does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the territory of the other Authority.

5. The Authorities should, within the framework of this MoU, provide each other with the fullest cooperation permissible under their Laws and Regulations in relation to all relevant information and supervisory activities regarding the Covered Benchmarks. Following notification, cooperation may be denied:

    a) where the cooperation would require an Authority to act in a manner that would violate its Laws and Regulations;
    b) where a request for assistance has not been made in accordance with the terms of this MoU; or

c) on the grounds of public interest for FMA and of European public interest for ESMA.

6. If a request is denied, the Requested Authority will state the reasons. 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 whether there is any assistance that could be provided.

7. The Authorities are not aware, as of the date upon which this MoU takes effect, of any domestic laws or regulations that could prevent them from providing assistance to one another as contemplated in this MoU.

8. To facilitate communication and cooperation under this MoU, the Authorities hereby designate contact points the details of which are as set out in the Appendix. Any amendments to the details of contact points will be communicated without undue delay to the other Authority.

Article 3

Scope of cooperation

1. The Authorities recognise the importance of close communication concerning the Covered Benchmarks and intend to cooperate regarding:

   a) general issues, including with respect to regulatory, supervisory or other developments concerning the Covered Benchmarks;

   b) issues relevant to the operations, activities or services of the Covered Administrators, including information on the Laws and Regulations to which the Covered Administrators are subject;

   c) information needed by ESMA with reference to the ESMA Register of benchmark administrators and the ESMA Register of third country benchmarks referred to in Article 36 of BMR[7] (the "ESMA Registers");

   d) the coordination of supervisory activities including, where appropriate, On-site Inspections; and

   e) any other areas of mutual interest.

2. Cooperation will be most useful in circumstances where issues of regulatory and supervisory concern may arise, including but not limited to:

[7] https://www.esma.europa.eu/databases-library/registers-and-data

a) the initial application for authorisation of Covered Administrator under the Laws and Regulations of New Zealand;

b) the on-going monitoring, including for instance significant risks or supervisory priorities identified by the FMA, the review or the withdrawal of the authorisation of the Covered Administrators under the Laws and Regulations of New Zealand;

c) any update of the information included in the ESMA Registers;

d) any change to a Covered Administrator's activity or internal rules, policies and procedures that could affect the way in which the Covered Administrator complies with the Laws and Regulations of New Zealand;

e) any change in the methodology or input data used for the calculation of a Covered Benchmark, or in the functioning of the oversight function overseeing the provision of a Covered Benchmark;

f) regulatory or supervisory actions taken or approvals given by FMA in relation to a Covered Benchmark, including changes to the relevant obligations and requirements to which the Covered Benchmarks are subject under the Laws and Regulations of New Zealand.

3. *Notification.* The Authorities will seek to inform each other as soon as practicable of:

a) any known material event that could adversely impact the financial or operational stability of a Covered Administrator, including where the Covered Administrator is deemed to be in breach of the conditions of any license, authorisation or any Laws and Regulations to which it is subject;

b) enforcement or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any license, authorisation concerning or related to a Covered Administrator and which may have a material effect on the Covered Administrator;

c) any material change introduced in the relevant legal, regulatory or supervisory arrangements affecting the Covered Benchmarks;

d) any material change to the relevant Laws and Regulations to which the Covered Benchmarks are subject;

e) in respect of notification by FMA to ESMA, all the information needed by ESMA to discharge its obligations concerning the ESMA Registers. FMA should notify ESMA of such information within five working days following the date referred to in Article 11. For each update of the information referred to in paragraph 2(c) FMA should notify ESMA of the said update promptly. Where there is any change to the information needed by ESMA to discharge its obligations concerning the ESMA Registers, ESMA should notify FMA of the said change promptly.

The information should be provided in writing and using a transmission procedure or electronic means that ensures that completeness, integrity and confidentiality of the information are maintained during the transmission.

The information to be provided by an Authority pursuant to this paragraph will refer to the Covered Benchmarks. The determination of what constitutes “material changes”, “material event”, “adversely impact” or “material effect” will be left to the reasonable discretion of the Authority providing the information

4. *Exchange of Written Information.*

Each Authority, upon written request, intends to provide the other Authority with assistance in endeavouring to obtain information not otherwise available to the Requesting Authority and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with the Laws and Regulations to which the Covered Benchmarks are subject, provided that the Requested Authority is authorised to collect such information. Such requests will be made pursuant to Article 4 of this MoU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimising administrative burdens.

The information covered by this paragraph include, without limitation:

a) information that would assist the Requesting Authority in verifying that a Covered Benchmark complies with the relevant obligations and requirements of the Laws and Regulations of the Requesting Authority;

b) information that would assist the Requesting Authority in understanding changes to the relevant obligations and requirements to which the Covered Benchmarks are subject under the Laws and Regulations of the Requested Authority;

c) relevant regulatory and supervisory information and filings that a Covered Administrator is required to submit to the Requested Authority; and

d) regulatory and supervisory reports and assessments, or findings or information contained therein, prepared by an Authority in respect of a Covered Benchmark.

Article 4

Execution of requests for information

1. A request for written information pursuant to Article 3(4) should be made in writing and using a transmission procedure or electronic means that ensure that completeness, integrity and confidentiality of the information are maintained during the transmission. Such request for written information should be addressed to the relevant contact person identified in the Appendix. A request generally should specify at least the following:

a) the information sought by the Requesting Authority;

b) a concise description of the matter that is the subject of the request and the purpose for which the information is sought, including the Laws and Regulations applicable to the subject of the request;

c) to whom, if anyone, including any Governmental Entity, onward disclosure of the information is likely to be necessary and the reason for such disclosure; and

d) the desired time period for reply and, where appropriate, the urgency thereof.

2. In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information between each other as deemed appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

Article 5

On-site Inspections

1. ESMA does not intend to conduct any On-site Inspection of the Covered Administrator as part of its monitoring of the ongoing compliance of the Covered Benchmarks with the requirements under BMR since the Equivalence Decision determines that the legal and supervisory arrangements of the jurisdiction of New Zealand ensure that Covered Benchmarks comply with legally binding requirements which are equivalent to the requirements of BMR, and that the binding requirements are subject to effective supervision and enforcement in New Zealand on an ongoing basis.

2. Given that ESMA, in respect of Covered Benchmarks, relies on the supervision and enforcement capabilities of FMA, which supervises and enforces compliance with New Zealand's Laws and Regulations, On-site Inspections by ESMA officers will only be considered in exceptional circumstances and subject to the prior agreement of FMA.

3. In such exceptional circumstances, the Authorities should discuss and reach an understanding on the terms regarding an On-site Inspection by ESMA officers, in particular with regard to the respective roles and responsibilities of the Authorities. ESMA will act in accordance with the following procedure before conducting an On-site Inspection:

a) ESMA will submit to FMA an initial written request with respect to the On-site Inspection. The request will include the factual and legal background to, the objective of, and an estimated time frame for, the On-site Inspection. FMA will acknowledge the receipt of the initial written request in writing within 10 working days of receipt;

b) when establishing the scope of any proposed On-site Inspection by ESMA officers, ESMA will consider the supervisory activities of FMA given ESMA's reliance on the supervision and enforcement capabilities of FMA in respect of Covered Benchmarks

and will consider any information that was made available or is capable of being made available by FMA.

4. In the event of an On-site Inspection, FMA will assist ESMA in reviewing, interpreting and analysing the contents of public and non-public Books and Records and obtaining information from directors and senior management of a Covered Administrator. FMA may, at its discretion, accompany or assist the visiting ESMA officers during the On-site Inspection.

Article 6

Data Protection

The Authorities acknowledge that the transfer of personal data will take place in accordance with the applicable data protection Laws and Regulations in the jurisdictions of the Authorities.

Article 7

Permissible uses and storage of information

1. The Requesting Authority may use information obtained under this MoU for the purpose set out by that authority in its request for the information or, if the information was provided other than by means of a request, solely for the purpose of enabling that authority to exercise its regulatory and supervisory functions.

2. Before using information obtained under this MoU for any purpose other than that stated in Article 7(1), the Requesting Authority will obtain the prior written consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will consult to 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. If an Authority ("Receiving Authority") receives, via a third party that is not a signatory to this MoU, information originally provided by the other Authority ("Disclosing Authority") that is related to the Disclosing Authority's supervision and oversight of a Covered Benchmark and that the Receiving Authority is aware was obtained by the third party from the Disclosing Authority on a confidential basis, the Receiving Authority will use and treat the information in accordance with the terms of this MoU.

4. Each Authority will store the information obtained under this MoU securely on a medium that ensure that completeness, integrity and confidentiality of the information and that allows the storage of information to be accessible for future reference.

5. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered Administrator.

Article 8

Confidentiality and onward sharing of information

1. Except as provided in paragraphs 2 and 3, or pursuant to a legally enforceable demand, each Authority will keep confidential, to the extent permitted by law, information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.

2. As required by law or authorised by law, it may become necessary for a Requesting Authority to share information obtained under this MoU with a Governmental Entity. In such circumstances and to the extent permitted by law:

    a) the Requesting Authority intends to notify the Requested Authority; and

    b) prior to the Requesting Authority sharing the information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:

        i. the Governmental Entity has confirmed that it requires the information for the purpose enabling it to fulfil its responsibilities and mandates as described in Article 1(f); and

        ii. the information will not be shared by the Governmental Entity with other parties without the Requesting Authority getting the prior written consent of the Requested Authority.

3. Except as provided in paragraph 2 or if disclosure is otherwise required by law, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing information received under this MoU to any non-signatory to this MoU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.

4. To the extent possible, the Requesting Authority should notify the Requested Authority of any legally enforceable demand for information that has been furnished under this MoU. When complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.

5. The Authorities intend that the sharing or disclosure of information, including deliberative and consultative materials, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

6. The Authorities acknowledge that nothing in this Article 8 prevents an Authority from disclosing information it receives directly from a Covered Administrator.

7. The Authorities will inform each other promptly in writing about unauthorized access or unauthorized sharing of information received under this MoU.

8. The Authorities agree to cooperate with each other in cases of unauthorized access or unauthorized sharing of information received under this MoU.

Article 10

Amendments

The Authorities will periodically review the functioning and effectiveness of these cooperation arrangements. Any changes to this MoU require written consent from all signatories.

Article 11

Taking effect of the MoU

This MoU will take effect on the date it is signed. If the signatories sign on different dates, it begins on the later of the two dates.

Article 12

Termination

1. Termination of this MoU may be undertaken by an Authority providing thirty (30) calendar days written notice to the other Authority.

2. If an Authority gives such notice, the parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MoU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance.

3. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in the manner described under Articles 6, 7 and 8.

4. If this MoU is terminated without being substituted in a reasonable timeframe by an equivalent arrangement, pursuant to Article 30 of BMR, ESMA will consider that the cooperation arrangements referred to in Article 30(4) are not operational.

Article 13

Publication

The parties agree that this MOU can be made publicly available.