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СКОПЈЕ - SHKUP

MoU concerning consultation, cooperation and the exchange of information related to the supervision of covered entities in the alternative investment fund industry between the Securities and Exchange Commission of the Republic of North Macedonia and the Financial Conduct Authority (FCA) in the United Kingdom.

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of Managers of alternative investment funds, the Securities and Exchange Commission of the Republic of North Macedonia and the Financial Conduct Authority in the United Kingdom have reached this Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of Managers of alternative investment funds, their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories of these MoU. The Authorities express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering market and financial integrity, and maintaining confidence and systemic stability.

Article 1. Definitions

For the purpose of this MoU:

a) "Authority" means a signatory to this MoU or any successor.

b) "Requested Authority" means the Authority to whom a request is made under this MoU; and

c) "Requesting Authority" means the Authority making a request under this MoU.

d) "UK AIFM regime": means the UK legislation which, when made, implemented Directive 2011/61/EU in the UK, including (but not limited to) FCA rules and the Alternative Investment Fund Managers Regulations 2013 (as amended), and any EU laws made under or in relation to Directive 2011/61/EU which are incorporated in UK law by or under the European Union (Withdrawal) Act 2018 (subject to any amendments made to those EU laws as they apply to the UK).

e) "AIFM" means a legal person whose regular business is managing one or more AIFs in accordance with the UK AIFM regime or in accordance with the Law on investment funds (Official Gazette of the RM no.12/2009, 67/2010 24/2011, 188/2013, 145/2015 and 23/2016).

f) "AIF" means a collective investment undertaking, including investment compartments thereof, which: (i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) is not a UK UCITS, as defined in section 237(3) of the Financial Services and Markets Act 2000 (FSMA), as amended;

g) "Delegate" means an entity to which a AIFM delegates the tasks of carrying out the portfolio management or risk management of one or more AIFs under its management in accordance with section 3.10 of the Investment Funds sourcebook in the FCA's handbook rules and guidance or in accordance with the Law on investment funds (Official Gazette of the RM no.12/2009, 67/2010 24/2011188/2013, 145/2015 and 23/2016).

h) "Depositary" means an entity appointed to perform the depositary functions of an AIF in accordance with the UK AIFM regime or in accordance with the Law on investment funds (Official Gazette of the RM no.12/2009, 67/2010 24/2011, 188/2013, 145/2015 and 23/2016).

i) "Operate on a cross-border basis" means the following situations: when a) UK AIFMs manage AIFs established in the Republic of North Macedonia, b) UK AIFMs market UK and/or non-UK AIFs in the Republic of North Macedonia, c) Republic of North Macedonia AIFMs market UK and/ or non-UK AIFs in the UK, d) Republic of North Macedonia AIFMs managing AIFs established the UK. Insofar as there is a link to the activity of the AIFMs and the AIFs, the MoU also covers delegates and depositaries as defined in letters g) and h) of this Article.

j) "Covered Entity" means a AIFM, AIF where applicable, and, insofar as there is a link to the AIFM and the AIF, delegates and depositaries as defined in letters g) and h) of this Article, including the persons employed by such entities.

k) "Cross-border on-site visit" means any regulatory visit by one Authority to the premises of a Covered Entity located in the other Authority's jurisdiction, for the purposes of on-going supervision.

l) "Governmental Entity" means the Ministry of Finance, the Central Bank and any other national prudential authority in the jurisdiction of the relevant Authority.

m) "Local Authority" means the Authority in whose jurisdiction a Covered Entity operates.

n) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered Entity, AIF investors, or the markets.

Article 2. General provisions

1) This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Covered Entities that operate on a cross-border basis in the jurisdictions of the signatories, and the depositories of such AIFs, in a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through on-going, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.

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

3) This MoU does not intend to limit an Authority to taking solely those measures described herein in fulfilment of its supervisory or oversight functions. In particular, this MoU does not affect any right of any Authority to communicate with, or obtain information or documents from, any person or Covered Entity subject to its jurisdiction that is established in the territory of the other Authority.

4) This MoU complements, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU), to which the Authorities are signatories, which also covers information-sharing in the context of enforcement investigations; and any of the existing arrangements concerning cooperation insecurities matters between the signatories. This MOU supersedes the *MoU concerning consultation, cooperation and the exchange of information related to the supervision of AIFMD entities* between the Authorities (July 22, 2013).

5) The Authorities will, within the framework of this MoU, provide one another with the fullest cooperation permissible under the law in relation to the supervision and oversight of Covered Entities. Following consultation, cooperation may be denied:

    a) Where the cooperation would require an authority to act in a manner that would violate domestic law;

    b) Where a request for assistance is not made in accordance with the terms of the MoU; or

    c) On the grounds of the national public interest.

6) No domestic banking secrecy, blocking laws or regulations should prevent an Authority from providing assistance to the other Authority.

7) The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the Authorities with a view, inter alia, to expanding or altering the scope or operation of this MoU should that be judged necessary.

8) To facilitate cooperation under this MoU, the Authorities hereby designate contact persons as set forth in Appendix A.

Article 3. Scope of cooperation

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

2. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of regulatory concern may arise:

    a) The initial application of a Covered Entity for authorization, registration or exemption from registration in another jurisdiction;

    b) The on-going oversight of a Covered Entity; or

    c) Regulatory approvals or supervisory actions taken in relation to a Covered Entity by one Authority that may impact the operations of the entity in the other jurisdiction.

    d) Enforcement actions taken against a Covered Entity

3. *Notification.* Each Authority will inform the other Authority as soon as practicable of:

a) Any known material event that could adversely impact a Covered Entity; and

b) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration, concerning or related to a Covered Entity which may have, in its reasonable opinion, material effect on the Covered Entity.

2) *Exchange of Information.* To supplement informal consultations, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining information not otherwise available to the Requesting Authority, and, where needed, interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation, information such as:

a) Information that would permit the Requesting Authority to verify that the Covered Entities covered by this MoU comply with the relevant obligations and requirements of the national law of the Requesting Authority.

b) Information relevant for monitoring and responding to the potential implications of the activities of an individual AIFM, or AIFMs collectively, for the stability of systemically relevant financial institutions and the orderly functioning of markets in which AIFMs are active.

c) Information relevant to the financial and operational condition of a Covered Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal control procedures;

d) Relevant regulatory information and filings that a Covered Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices;

e) Regulatory reports prepared by an Authority, including for example: examination reports, findings, or information drawn from such reports regarding Covered Entities.

Article 4. Cross-border on-site visits

1) Authorities should discuss and reach understanding on the terms regarding cross-border on-site visits, taking into full account each other's sovereignty, legal framework and statutory obligations, in particular, in determining the respective roles and responsibilities of the Authorities. The Authorities will act in accordance with the following procedure before conducting a cross-border on-site visit.

a) The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any cross-border on-site visit. The local authority shall decide whether the visiting officials shall be accompanied by its officials during the visit.

b) When establishing the scope of any proposed visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available or is capable of being made available by that Authority.

c) The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from directors and senior management of Covered Entities or any other relevant person.

Article 5. Execution of requests for assistance

1) To the extent possible, a request for written information pursuant to Article 3.4 should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:

   a) The information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request;

   b) A concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions behind the supervisory activity; and

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

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

Article 6. Cooperation on enforcement

1) The Requested Authority should, as far as its national law permits, assist the requesting Authority where it is necessary to enforce the UK AIFM regime, or the Law on investment funds (Official Gazette of the RM no.12/2009, 67/2010 24/2011, 188/2013, 145/2015 and 23/2016) breached by a Covered Entity established in its jurisdiction. In particular, this assistance should be provided by the Requested Authority in at least the following situations:

   (a) when the Requesting Authority has required a Covered Entity established in the jurisdiction of the Requested Authority to cease any practice that is contrary to the provisions adopted in the implementation of the UK AIFM regime or the Law on investment funds (Official Gazette of the RM no.12/2009, 67/2010 and 24/2011). In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify the compliance of the request by the Covered Entity;

   (b) when the Requesting Authority has requested the freezing or the sequestration of assets of an AIF that is established in the jurisdiction of the Requested Authority. In this situation, the Requested Authority should either order the freeze or sequestration of the assets of the AIF located in its jurisdiction, or inform and assist to the extent possible the Requesting Authority on the legal procedures that leads to that result;

   (c) when the Requesting Authority has requested the temporary prohibition of professional activity in relation to a Covered Entity established in the jurisdiction of

the Requested Authority. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify whether the temporary prohibition is being observed by the addressee of the measure;

(d) when the Requesting Authority has adopted any type of measure to ensure that Covered Entities established in the jurisdiction of the Requested Authority continue to comply with the requirements of the UK AIFM regime or the Law on investment funds (Official Gazette of the RM no.12/ 2009, 67/2010 and 24/2011). In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting to verify whether the addressee observes the measure adopted by the Requesting Authority;

(e) when, in the interest of the investors or of the public, the Requesting Authority has required the suspension of the issue, repurchase or redemption of units or shares of AIFs established in the jurisdiction of the Requested Authority. In this situation, and at the request of the Requesting Authority, the Requested Authority should provide information that would allow the Requesting Authority to verify that the AIF complies with the request of suspension.

2) The assistance referred to in this Article should be provided in accordance with the provisions of the IOSCO MMoU concerning consultation and cooperation and the exchange of information of 2002.

Article 7. Permissible uses of information.

1) The Requesting Authority may use non-public information obtained under this MoU solely for the purpose of supervising Covered Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority, including assessing and identifying systemic risk in the financial markets or the risk of disorderly markets.

2) This MoU is intended to complement, but should not alter the terms and conditions of the existing arrangements between Authorities concerning cooperation in securities matters, including the IOSCO MMoU. The Authorities recognize that while information is not to be gathered under this MoU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement purposes. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMoU or another MoU providing an equivalent degree of cooperation in enforcement matters.

Article 8. Confidentiality and onward sharing of information.

1) Except for disclosures in accordance with the MoU, including permissible uses of information under the previous points, each Authority will keep confidential to the extent permitted by law information shared under this MoU, requests made under this MoU, the contents of such requests, and any other matters arising under this MoU. The terms of this MoU are not confidential.

2) To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand from a third party for non-public information that has been furnished under this MoU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.

3) In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MoU with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:

   a) The Requesting Authority will notify the Requested Authority.

   b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior consent of the Requested Authority.

4) Except as provided in paragraph 2, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoU to any non-signatory to this MoU. If consent is not obtained from the Requested Authority, the Authorities will discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.

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

Article 9. Termination of the MoU; Successor authorities

1) If an Authority wishes to terminate the MoU, it shall give written notice to the counterparty. Cooperation in accordance with this MoU will continue until the expiration of 30 days after an Authority gives written notice to the others. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MoU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under Article 7 to 8.

2) Where the relevant functions of a signatory to this MoU are transferred or assigned to another authority or authorities, the terms of this MoU shall apply to the successor authority or authorities performing those relevant functions without the need for any further amendment to this MoU or for the successor to become a signatory to the MoU. This shall not affect the right of the successor authority and its counterparty to terminate the MOU as provided hereunder if it wishes to do so.

Article 10. Entry into force

This MoU enters into force on the date European Union legislation ceases to have direct effect in the United Kingdom.

Signatures

Financial Conduct Authority United Kingdom

Andrew Bailey

Securities and Exchange Commission of the Republic of North Macedonia

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Appendix A of the MoU – List of contact persons	
Financial Conduct Authority (United Kingdom)	Manager, Investment Funds Policy Address: 12 Endeavour Square, Stratford, London, E20 1JN Phone: +44 (0)20 7 066 1000 Fax: Email: aifmdsupervisorycooperation@fca.org.uk
Securities and Exchange Commission of the Republic of North Macedonia	Jasna Smileva, Coordinator of the Department for supervision of the capital market, Securities and Exchange Commission of the Republic of North Macedonia Address: Makedonija 25 1000 Skopje Tel +38923244670 E-Mail: jasna@sec.gov.mk khv@sec.gov.mk Ivana Boljat Senior Advisor Capital market analysis and development and International Cooperator Department Securities and Exchange Commission of the Republic of North Macedonia Address: Makedonija 25 1000 Skopje Tel +38923244670 E-Mail: ivana@sec.gov.mk khv@sec.gov.mk