

Memorandum of Understanding on FinTech Cooperation

Between

The Autorité de contrôle prudentiel et de résolution (“ACPR”)

and

The New York State Department of Financial Services (“NYDFS”)



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Article 1 Definitions

For the purpose of this Memorandum of Understanding:

- a) **“Authorization”** means the process of licensing, registering, approving, authorizing or otherwise bringing an entity under either Authority’s supervisory remit so that it is authorized to carry on business in providing a financial service or issuing a financial product in the relevant Authority’s jurisdiction, and **“Authorized”** has a corresponding meaning.
- b) **“Authority”** means the *Autorité de contrôle prudentiel et de résolution* (“ACPR”) or the New York State Department of Financial Services (“NYDFS”), and collectively will be referred to as the **“Authorities”**.
- c) **“Confidential Information”** means any non-public information obtained by an Authority pursuant to this Memorandum of Understanding.
- d) **“Financial Innovator”** means any entity, which provides or intends to provide Innovative Financial Services in either of the Authorities’ jurisdictions.
- e) **“FinTech”** means any innovative financial technology that will be used or is intended to be used by Financial Innovators.
- f) **“Innovation Function”** means the function in an Authority expected to provide support to Financial Innovators in their respective markets.
- g) **“Innovative Financial Services”** means any services that are provided by means of FinTech.
- h) **“Receiving Authority”** means the Authority that is receiving a Financial Innovator from the Referring Authority; and
- i) **“Referring Authority”** means the Authority that is referring a Financial Innovator to the Receiving Authority; and
- j) **“Regulations”** means any regulation or regulatory requirement applicable in the jurisdiction of an Authority.

Article 2 Purpose of the Memorandum of Understanding

1. The Authorities intend to cooperate with the aim of encouraging and enabling innovation in their respective financial services industries and of supporting Financial Innovators in meeting the Regulations in each other's jurisdictions as may be required to offer Innovative Financial Services in the respective financial markets. To this end, they have established or will establish a specific FinTech-focused environment and designate FinTech functions, as set forth below.
2. The Authorities believe that by cooperating with each other, innovation in financial services, consumer or investor protection, and consequently competitiveness, will be enhanced in their respective markets.
3. Enhanced cooperation between the Authorities is intended to facilitate Financial Innovators to enter and provide Innovative Financial Services in the other jurisdiction.

Article 3 FinTech functions provided by the Authorities

1. The NYDFS regulates and supervises a wide variety of financial services institutions, including all New York state-chartered and state-licensed banking organizations, insurance companies, and other financial service providers such as money transmitters, licensed lenders, and check cashers. NYDFS encourages financial innovation across all financial services products and sectors, with a goal of improving consumer access and market resiliency. NYDFS is a leader in responsible growth and sound regulation in New York's FinTech industry, including through its establishment of a process to license virtual currency platforms operating in New York State.
2. In June 2016, the ACPR formed a Fintech Innovation Unit ("FIU") within ACPR. The FIU is the point of entry of Financial Innovators at the ACPR, aiming at facilitating their understanding of Regulations and, therefore, of the licensing process. It also analyzes the impact of technological innovations on banking and insurance activities as well as on payment services. The FIU evaluates the opportunities as well as the risks related to innovations in the financial industry. The FIU gives recommendations as to where adjustments need to be made in current Regulations and in supervision practices. Since 2018, the FIU is also in charge of SupTech (supervisory technology) coordination and implementation within the ACPR.

Article 4 Principles for cooperation

1. The Authorities agree to cooperate for the purpose and within the scope of this Memorandum of Understanding.

2. This Memorandum of Understanding is a statement of intent of the Authorities and accordingly does not create or intend to create any enforceable rights or binding legal obligations; neither does it limit the discretion of the Authorities in any way in the discharge of their functions. This Memorandum of Understanding is subject to the domestic laws and Regulations of each Authority and does not modify or supersede any laws, Regulations or other legal requirements in force or applicable in the United States of America, New York State, or France, whether existing now or in the future.
3. This Memorandum of Understanding is intended to complement, but not affect or alter, the terms and conditions of any other multilateral or bilateral arrangements concluded between the Authorities or between the Authorities and third parties, or between the respective governments of both countries.

Article 5 Scope of cooperation

5.1. Referral mechanism

- a) When a Financial Innovator makes a written request to one Authority to operate in another Authority's jurisdiction, the Authority that received the request (the Referring Authority) may refer the Financial Innovator to the other Authority (the Receiving Authority). Any such referral will be made subject to any applicable law.
- b) Referrals will be made in writing, and may include descriptive information about the Financial Innovator seeking to operate in the Receiving Authority's jurisdiction.
- c) Following the referral, the Receiving Authority's Innovation Function may offer support to the Financial Innovator in accordance with paragraph 5.3 of this Memorandum of Understanding, if such support is deemed appropriate by the Receiving Authority and subject to the availability of resources.
- d) The Receiving Authority may receive additional information from the Financial Innovator prior to offering support in accordance with paragraph 5.3 of this Memorandum of Understanding. This information may include, but is not limited to, information demonstrating that:
 - i) The Financial Innovator offers innovative financial products or services that benefit the consumer, investor and/or industry;
 - ii) The Financial Innovator conducted sufficient background research on the laws and Regulations of the jurisdiction of the Receiving Authority that may apply to it.

- e) The Referring Authority acknowledges that a Financial Innovator benefiting from the Receiving Authority's Innovation Function's assistance during the pre- Authorization phase may or may not meet the requirements for Authorization by the Receiving Authority, and that in providing assistance through the Innovation Function, the Receiving Authority is not expressing an opinion about whether a Financial Innovator will ultimately meet the requirements for Authorization in its jurisdiction.

5.2. Information sharing

The Authorities intend, as appropriate, to exchange information about:

- a) Regulatory, supervisory, and policy issues on innovation in financial services;
- b) Emerging market trends and developments;
- c) Any other relevant issues with respect to FinTech.

5.3. Support to Financial Innovators

Each Authority will endeavor to provide Financial Innovators originating from the other jurisdiction with the same level of support that it provides to Financial Innovators originating from its own jurisdiction, subject to availability of resources. The support offered by the Authorities to Financial Innovators includes:

- a) A contact person for Financial Innovators;
- b) Availability of information for Financial Innovators to understand the regulatory and supervisory framework in the relevant Authority's jurisdiction, and how it applies to them;
- c) Assistance, which may be provided by the relevant Authority, subject to availability of resources, during the Authorization application phase to:
 - i) Describe the Authorization application process and any relevant regulatory issues that the Financial Innovator has identified; and
 - ii) Help the Financial Innovator to understand the relevant Authority's regulatory and supervisory regime and what it means for them.
- d) Support which, subject to availability of resources, may be provided by the relevant Authority within the powers of that Authority, during the Authorization process, including the allocation of Authorization staff to consider the application that are knowledgeable about financial innovation in their respective markets.

5.4. Dialogue on FinTech and Innovative Financial Services

Representatives of the Authorities intend to meet or hold conference calls, where necessary or appropriate, to discuss issues of common interest and share their experience in FinTech and Innovative Financial Services.

Representatives of Financial Innovators may be invited to such meetings or conference calls provided each Authority participating in the relevant discussion agrees to the invitation being extended to the representatives of Financial Innovators.

5.5. Expertise sharing

To share expertise and knowledge, each Authority may allow its staff, as appropriate, to give presentations and conduct training sessions for the other Authority.

Article 6 Permissible use of information and confidentiality

1. The Authorities confirm that all their members and employees dealing with, or having access to, Confidential Information provided under this Memorandum of Understanding are bound by an obligation of professional secrecy and shall treat the information as confidential and will not disclose the Confidential Information to any third party.
2. Under this Memorandum of Understanding, Confidential Information about the Financial Innovator will only be disclosed and shared between both Authorities, if the Financial Innovator consents to such disclosure and sharing in writing.
3. Transfer of Confidential Information about the Financial Innovator under this Memorandum of Understanding remains subject to the provisions of any law applicable to the Authorities from both jurisdictions.
4. Each Authority agrees to use Confidential Information received from the other Authority under this Memorandum of Understanding solely to carry out its regulatory and supervisory tasks and for the purposes for which the Confidential Information was disclosed.
5. If an Authority intends to use any Confidential Information provided under this Memorandum of Understanding by the other Authority for purposes other than those for which such Confidential Information was provided, or to disclose it to a third party, the Authority intending to so use or disclose the Confidential Information shall seek prior written consent from the other Authority that provided the information.

6. If an Authority is legally compelled to disclose any Confidential Information provided under this Memorandum of Understanding, it shall fully cooperate with the other Authority that provided the information without delay. The Authority forced to disclose shall consult the other Authority before transmitting confidential information to the requesting authority. Where the Authority that provided the information does not consent with passing on the information, the Authority forced to disclose confidential information shall assert the appropriate legal exemptions or privileges with respect to the information, as may be available, to protect confidentiality and resist disclosure.

Article 7 Contact points

To facilitate cooperation under this Memorandum of Understanding, each Authority will designate a contact point as specified in Appendix - which may be amended from time to time by an Authority by transmitting revised contact information in writing to the other Authority.

Article 8 Entry into effect, modification and termination

1. This Memorandum of Understanding will enter into effect on the date when it is signed by both Authorities.
2. The Authorities will review the impact of this Memorandum of Understanding and update its terms if necessary.
3. This Memorandum of Understanding may be modified in writing if both Authorities agree in writing to do so.
4. Any Authority may terminate this Memorandum of Understanding by giving 30 days' advance written notice to the other Authority.
5. In the event of termination, Confidential Information obtained under this Memorandum of Understanding will continue to be treated in accordance with Article 6.
6. This Memorandum of Understanding is made in two copies in English and two copies in French. Each Authority will hold one English copy and one French copy.
7. The Authorities agree that any entity becoming successor, or assuming the functions, powers and duties of an Authority shall become part of this Memorandum of Understanding.

Executed by the Authorities:

For ACPR (France)



François Villeroy de Galhau
Chairman
Autorité de contrôle prudentiel et de résolution

Date: 3 April 2020

For NYSDFS (New York State)



Linda A. Lacewell
Superintendent of Financial Services
Department of Financial Services

Date: May 26, 2020

Appendix : Contact Details

NYSDFS

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