

MEMORANDUM OF UNDERSTANDING



**United States Commodity Futures Trading
Commission**



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Securities and Futures Commission

**COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER COVERED ENTITIES**

21 December 2015

**MEMORANDUM OF UNDERSTANDING CONCERNING COOPERATION
AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION
OF CROSS-BORDER COVERED ENTITIES**

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the United States Commodity Futures Trading Commission and the Hong Kong Securities and Futures Commission (jointly, the "Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in both the United States and Hong Kong. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means:
 - a. In the United States, the Commodity Futures Trading Commission ("CFTC"); or
 - b. In Hong Kong, the Securities and Futures Commission ("SFC").
2. "Requesting Authority" means the Authority making a request under this MOU.
3. "Requested Authority" means the Authority to whom a request is made under this MOU.
4. "Laws and Regulations" means:
 - a. For the CFTC, the Commodity Exchange Act, Dodd-Frank Wall Street Reform and Consumer Protection Act, CFTC regulations, and other related requirements in the United States; and
 - b. For the SFC, the Securities and Futures Ordinance ("SFO") and other related requirements in Hong Kong.
5. "Person" means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Covered Entity or Cross-Border Covered Entity.
6. "Covered Entity" means a Person that is, or that has applied to be, authorized, licensed, approved, designated, recognized, qualified, registered, supervised, or overseen by one or both of the Authorities pursuant to Laws and Regulations and may include regulated markets and organized trading platforms, central counterparties, and intermediaries, dealers, or other market participants. With respect to the SFC, a collective investment scheme as a Covered Entity shall only mean a collective investment scheme that is authorized by the SFC pursuant to Section 104 of the SFO, and managed by a corporation which is licensed by or registered with the SFC to carry out type 9 (asset management) regulated activity under the SFO.

7. "Cross-Border Covered Entity" means:
 - a. A Covered Entity of both the CFTC and the SFC;
 - b. A Covered Entity of one Authority that has been exempted from authorization, licensure, approval, designation, recognition, qualification, or registration by the other Authority;
 - c. A Covered Entity in one jurisdiction that controls or is controlled by a Covered Entity located in the other jurisdiction; or
 - d. A Covered Entity in one jurisdiction that is physically located in the other jurisdiction (with respect to which any regulatory visit to its premises would not be subject to Article Five).

For purposes of this MOU, references to jurisdiction will be determined as either the jurisdiction of the CFTC or the jurisdiction of the SFC. Information sharing pursuant to this MOU relates to information already in the possession of an Authority.

8. "Books and Records" means documents, electronic media, and books and records within the possession, custody, or control of, and other information about, a Cross-Border Covered Entity.
9. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Covered Entity.
10. "On-Site Visit" means any regulatory visit to the premises of a Cross-Border Covered Entity for the purposes of ongoing supervision and oversight, including the inspection of Books and Records.
11. "Local Authority" means the Authority in whose jurisdiction a Cross-Border Covered Entity that is the subject of an On-Site Visit is physically located.
12. "Visiting Authority" means the Authority conducting an On-Site Visit.

ARTICLE TWO: GENERAL PROVISIONS

13. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Cross-Border Covered Entities. 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 requirements applicable to each Authority. With respect to cooperation pursuant to this MOU, no domestic secrecy or blocking laws or regulations should prevent an Authority from providing assistance to the other Authority. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation. The provisions of this MOU are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws.

14. 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.
15. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions, or preclude Authorities from sharing information or documents with respect to Persons that are not Cross-Border Covered Entities but may be subject to statutory and regulatory requirements in the United States or in Hong Kong. In particular, this MOU does not affect any right of any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the jurisdiction of the other Authority.
16. This MOU is intended to complement, but does not alter, the terms and conditions of the following existing arrangements:
 - a. *The Memorandum of Understanding Concerning Consultation and Cooperation in the Administration and Enforcement of Futures Laws* (October 5, 1995).
 - b. *The Declaration on Cooperation and Supervision of Cross-Border Managed Futures Activity* (October 5, 1995).
 - c. *The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“IOSCO MMOU”) to which the CFTC and the SFC are signatories, which covers primarily information sharing in the context of enforcement matters.
 - d. *The Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organizations* (as amended March 1998), to which the CFTC and SFC are signatories.
17. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information to the other Authority.

ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION

General

18. The Authorities recognize the importance of close communication concerning Cross-Border Covered Entities and intend to consult regularly, as appropriate, regarding:

- a. General supervisory issues, including regulatory, oversight, or other related developments;
 - b. Issues relevant to the operations, activities, and regulation of Cross-Border Covered Entities; and
 - c. Any other areas of mutual supervisory interest.
19. The Authorities recognize in particular the importance of close cooperation in the event that a Cross-Border Covered Entity, particularly one whose failure likely would be systemically important to an Authority, experiences, or is threatened by, a potential financial crisis or other Emergency Situation.
20. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- a. The initial application with the CFTC or the SFC for authorization, licensure, approval, designation, recognition, qualification, or registration, or exemption therefrom, by a Covered Entity that is authorized, licensed, approved, designated, recognized, qualified, or registered by an Authority in the other jurisdiction;
 - b. The ongoing supervision and oversight of a Cross-Border Covered Entity, including compliance with statutory and regulatory requirements in either jurisdiction or with international standards; and
 - c. Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Covered Entity by the CFTC or the SFC that may materially impact the operations of the entity in the jurisdiction of the other Authority.

Event-Triggered Notification

21. As appropriate in the particular circumstances, each Authority will endeavor to inform the other Authority promptly, and where practicable in advance, of:
- a. Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Covered Entity, including those that may affect the rules, policies, or procedures of a Cross-Border Covered Entity;
 - b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a Cross-Border Covered Entity. Such events include any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a Cross-Border Covered Entity, or the failure of a Cross-Border Covered Entity to satisfy any of its requirements for continued authorization, licence, approval, designation, recognition, qualification, registration, or exemption therefrom, where that failure could have a material adverse effect in the jurisdiction of the other Authority. For a Cross-Border Covered Entity that is a central counterparty, such events also include market or settlement bank difficulties that might materially and adversely affect the central counterparty or a default or potential default of a clearing member firm or participant;

- c. The status of efforts of which the Authority is aware to address any material financial or operational difficulties experienced by a Cross-Border Covered Entity as described in Subparagraph b; and
 - d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant authorization, licence, approval, designation, recognition, qualification, or registration, or exemption therefrom, concerning a Cross-Border Covered Entity.
22. The determination of what constitutes “significant impact”, “material event”, “adversely impact”, “adverse material change”, “material adverse effect”, “market or settlement bank difficulties”, “materially and adversely affect”, “material financial or operating difficulties”, or “significant regulatory actions” for the purposes of Paragraph 21 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

Request-Based Information Sharing

23. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide the Requesting Authority with the fullest possible cooperation subject to the terms in this MOU in assisting the Requesting Authority’s supervision and oversight of Cross-Border Covered Entities. Such requests shall be made pursuant to Article Four of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.
24. The assistance covered by Paragraph 23 includes but is not limited to:
- a. Information relevant to the financial and operational condition of a Cross-Border Covered Entity including, for example, financial resources, risk management, internal control procedures, and non-public corporate information, license or membership history and status, and regulatory and disciplinary records;
 - b. Relevant regulatory information and filings that a Cross-Border Covered Entity is required to submit to an Authority including, for example, interim and annual financial statements and early warning or event-specific notices; and
 - c. Regulatory reports prepared by an Authority, including, for example, examination reports, findings, or information contained in such reports regarding Cross-Border Covered Entities.
25. Where an Authority has information that it believes will assist the other Authority in the performance of its supervisory functions, the former may provide such information on a voluntary basis, or notify the other Authority of the existence of such information to enable the other Authority to determine whether to make a formal request for such information, and the terms and the conditions of this MOU will apply unless the providing Authority specifies otherwise.

Periodic Meetings

26. Representatives of the Authorities intend to meet when appropriate to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of Cross-Border Covered Entities, including: contingency planning and crisis management, systemic risk concerns, default procedures, the adequacy of existing cooperative arrangements, and the possible improvement of cooperation and coordination between the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

ARTICLE FOUR: EXECUTION OF REQUESTS FOR INFORMATION

27. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically), and addressed to the relevant contact person in Appendix A. A request generally should specify the following:
 - a. The information sought by the Requesting Authority;
 - b. A general description of the matter that is the subject of the request;
 - c. The supervisory purpose for which the information is sought; and
 - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information responsive to the request, as well as any subsequent communication among the Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

28. In an Emergency Situation, the Authorities will endeavor to notify each other as soon as possible of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, 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 FIVE: ON-SITE VISITS

29. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, its Laws and Regulations, an Authority (the "Visiting Authority") may need to conduct On-Site Visits to a Cross-Border Covered Entity physically located in the jurisdiction of the other Authority (the "Local Authority"). The Visiting Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit.
30. An On-Site Visit by a Visiting Authority will be conducted in accordance with the following procedure:

- a. The Visiting Authority intends to provide advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended timeframe for, and the purpose and scope of, the On-Site Visit. Other than in exceptional circumstances, the Visiting Authority will notify the Local Authority prior to notifying the Cross-Border Covered Entity.
- b. The Local Authority will endeavor, if so requested, to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the Cross-Border Covered Entity.
- c. The Authorities will endeavor, if so requested, to assist each other regarding On-Site Visits, including providing information that the Visiting Authority may request and that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a Cross-Border Covered Entity.
- d. The Authorities will consult with each other, and the Local Authority may in its discretion accompany or assist the Visiting Authority during the On-Site Visit, or the Authorities may conduct concurrent visits where appropriate.
- e. The Authorities will communicate with each other, including meetings as appropriate during the On-Site Visit. After concluding an On-Site Visit, the Visiting Authority will communicate any major issues to the Local Authority that may impact negatively upon the authorization, licensure, approval, designation, recognition, qualification, registration, or exemption of the Cross-Border Covered Entity.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

31. The Requesting Authority may use non-public information obtained under this MOU solely for the supervision and oversight of Cross-Border Covered Entities pursuant to, and to ensure compliance with, the Laws and Regulations of the Requesting Authority.
32. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, the Authorities subsequently may want to use the non-public information provided pursuant to this MOU for enforcement purposes. In cases where a Requesting Authority seeks to use non-public information obtained pursuant to this MOU for enforcement purposes, including in conducting investigations or taking enforcement action, the Requesting Authority will submit to the Requested Authority a separate request under the IOSCO MMOU.
33. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 31 and 32, the Requesting Authority must first consult with and obtain the 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.

34. If an Authority (“Receiving Authority”) receives, via a party that is not a signatory to this MOU, non-public information originally provided by the other Authority (“Disclosing Authority”) that is related to the Disclosing Authority’s supervision and oversight of a Cross-Border Covered Entity 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.
35. The restrictions in this Article do not apply to an Authority’s use of information it obtains directly from a Cross-Border Covered Entity, whether during an On-Site Visit or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to a provision of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

36. Except as provided in Paragraph 37, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
37. The Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public 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 following such notification. 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.
38. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. When complying with the demand, the Requesting Authority shall assist in preserving the confidentiality of the information by taking all appropriate measures including asserting all appropriate legal exemptions or privileges with respect to such information as may be available.
39. The Authorities intend that the sharing or the disclosure of non-public information, including deliberative and consultative materials, such as written analysis, opinions, or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

ARTICLE EIGHT: AMENDMENTS

40. The Authorities will periodically review the functioning and effectiveness of cooperation arrangements between them with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of the Authorities referred to in Paragraph 1.

ARTICLE NINE: EXECUTION OF MOU

41. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities.

ARTICLE TEN: TERMINATION

42. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MOU. If either Authority gives such notice, the Authorities 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. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner described under Articles Six and Seven.

This MOU is executed in duplicate, this 21 day of December 2015.



Timothy G. Massad
Chairman
U.S. Commodity Futures Trading
Commission



Ashley Alder
Chief Executive Officer
Hong Kong Securities and Futures Commission

APPENDIX A

CONTACT PERSONS

In addition to the following contact information, the CFTC and the SFC will exchange confidential emergency contact telephone information.

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