

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE SECURITIES AND FUTURES COMMISSION

AND

THE MONETARY AUTHORITY OF HONG KONG

1. INTRODUCTION

This Memorandum of Understanding sets out the mutually understood framework between the Securities and Futures Commission and the Monetary Authority of Hong Kong for the exchange of relevant information and cooperation to facilitate the discharge of their respective regulatory responsibilities or statutory functions in relation to

“**EFO**” means the Exchange Fund Ordinance (Chapter 66 of the Laws of Hong Kong);

“**FIRO**” means the Financial Institutions (Resolution) Ordinance (Chapter 628 of the Laws of Hong Kong), and where the context permits, includes references to applicable rules or other subsidiary legislation made thereunder, in each case as amended or re-enacted from time to time;

“**FMI**s” or “**financial market infrastructures**”, in relation to the SFC, means the financial market infrastructures as listed in Part 1 of Appendix I, and in relation to the MA, means the financial market infrastructures as listed in Part 2 of Appendix I. A reference in this MoU to an FMI that is a designated clearing and settlement system, includes a settlement institution and/or system operator (as defined in the PSSVFO) in relation to such FMI;

“**IOSCO**” means the International Organization of Securities Commissions;

“**MA**” means the Monetary Authority appointed under section 5A(1) of the EFO;

“**MoU**” means this Memorandum of Understanding and includes the appendices;

“PFMI” means the Principles for financial market infrastructures published in April 2012 by the CPMI and the IOSCO, and where the context permits, includes guidance thereon published by CPMI and IOSCO;

“PSSVFO

3. **REGULATORY FUNCTIONS OF EACH AUTHORITY**

MA

- (c) The effective functioning of the FMIs in Hong Kong within the MA's purview is essential to the financial and/or monetary stability of Hong Kong.

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oversight of the MA as a matter of policy³. The SFO imposes a reporting obligation on prescribed persons⁴ to report OTC derivative transactions to which section 101B(2) of the SFO applies to the MA in accordance with the reporting rules⁵, and such transaction information is currently reported to the HKTR. The MA may disclose information which has come to his knowledge in the performance of his functions under the SFO to the SFC pursuant to the applicable disclosure gateways under the Relevant Laws.

4. GENERAL PRINCIPLES aw

or functions under the Relevant Laws as supervisor or overseer of FMIs under their respective purview.

- (b) For the purposes of this MoU, the FMIs that are subject to the supervision and oversight of the SFC are set out in Part 1 of Appendix I, and the FMIs that are subject to the oversight of the MA are set out in Part 2 of Appendix I. Each Authority may amend the list of FMIs set out in Appendix I that are within its purview by written notice to the other Authority.
- (c) In cooperation between the Authorities under this MoU, subject to compliance with the Relevant Laws, the SFC and the MA will take into account the applicable requirements under the PFMI, in particular Responsibility E, which emphasises the importance of cooperation among relevant authorities as appropriate in promoting the safety and efficiency of FMIs.
- (d) This MoU does not create any legally enforceable rights nor impose any legally binding obligations on either Authority. This MoU does not modify or supersede, and operates subject to, the Relevant Laws. This MoU does not detract from the regulatory responsibilities or statutory functions of the Authorities.
- (e) This MoU replaces the Memorandum of Understanding signed between the Authorities dated 4 November 2004 that set out the scope and arrangements of the consultation between them in relation to the oversight regime

implemented under the Clearing and Settlement Systems Ordinance⁶ to certain recognized clearing houses referred to in that Memorandum of Understanding. Apart from the aforesaid, this MoU complements and does not alter the terms and conditions of any arrangements under any other memorandum of understanding or similar arrangements made between or applicable to the Authorities.

5. **COOPERATION AND COMMUNICATION ARRANGEMENT**

I. Consultative Arrangements

(a) The

PSSVFO and the operating rules of such designated clearing and settlement system, or any incompatibility between the obligations of the designated clearing and settlement systems under the PSSVFO and their obligations as participants in a recognized clearing house under the SFO and the rules of such recognized clearing house, the Authorities intend to consult each other as follows:

- (i) the SFC intends to consult the MA, where appropriate, prior to requesting a recognized clearing house to make or amend its rules, or approving any rules or amendments to rules proposed by a recognized clearing house that the SFC considers (A) may have implications on the recognized clearing house's obligations as a participant in a designated clearing and settlement system set out in Part 2 of Appendix I, (B) may have significant impact on a designated clearing and settlement system set out in Part 2 of Appendix I, or (C) may have significant impact on the MA's oversight of designated clearing and settlement systems set out in Part 2 of Appendix I; or
- (ii) the MA intends to consult the SFC, where appropriate, prior to directing that the operating rules of a designated clearing and settlement system be amended so as to bring them into compliance with the PSSVFO, or approving any changes to the operating rules of a designated clearing and settlement system that the MA considers (A) may have implications on the

(d) The Authorities intend to provide to each other at staff level, where appropriate and practicable, relevant information concerning any of the FMIs within their purview considered likely to be of assistance to the other Authority's discharge of its regulatory responsibilities or functions under the Relevant Laws with respect to supervision or oversight of FMIs, in particular maintaining the financial and/or monetary stability of Hong Kong in that regard under the following circumstances:

(i) during a period of market stress or crisis that could have an adverse impact on the operations, functions or activities of an FMI within its purview or could affect the operations, functions or activities of an FMI within the other Authority's purview. Such events include but are not limited to a default of a recognized clearing house's participant which may cause major liquidity stress or a credit loss to the clearing house; or

(ii) in the event of an FMI activating its recovery plan; or

(iii) in the event resolution of an FMI has been initiated (Tj 0.002ap5E9:2ed oion

communication between the Authorities in their respective capacity as resolution authority under the FIRO.

III. Principal Contact Points

- (f) The Authorities' respective designated principal contact persons for the purposes of cooperation between the Authorities under this MoU (including that under paragraphs 5(a) and (d) above) are set out in Appendix II. Each Authority may amend its designated contact persons as set out in Appendix II by written notice to the other Authority.

6. CONFIDENTIALITY AND USE OF INFORMATION

Any information provided by an Authority to the other Authority under this MoU should be used by the receiving Authority only for the purposes of performing its regulatory responsibilities or functions under the Relevant Laws and, except as otherwise required by law, should not be disclosed to any third party without the prior written consent of the Authority that provided the information. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

7. AMENDMENTS

Each Authority may at any time request to make a specific amendment, whether by supplement or otherwise, to this MoU or may consult with the other Authority regarding the need of any amendment or supplement to this MoU. An amendment to this MoU takes effect only by written agreement of the Authorities. For the

avoidance of doubt, changes to Appendix I and Appendix II can be made pursuant to the procedure in paragraphs 4(b) and 5(f) above respectively.

8. ENTRY INTO EFFECT

This MoU will become effective on the date by which it has been signed by both the SFC and the MA.

Dated 3rd day of September 2019.

Signed for and on behalf of the
Securities and Futures Commission

Signed by the Monetary Authority

Mr. Ashley Alder
Chief Executive Officer

Mr. Norman T.L. Chan
Monetary Authority

Appendix I

Financial Market Infrastructures subject to the supervision or oversight of the respective Authorities that are within the scope of this MoU

Part 1

FMIIs subject to the supervision and oversight of the SFC:

Recognized clearing houses

Appendix II

Principal contact persons

SFC

Ryan Ko
Poh Hiang Tan
Colin Lau

MA

Daniel Leong
Stephen Pang
Yuki Chan