

MEMORANDUM OF UNDERSTANDING



Monetary Authority of Singapore



Securities and Futures Commission

**COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING ORGANIZATIONS**

10 November 2020

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

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 Monetary Authority of Singapore and the Securities and Futures Commission of Hong Kong (collectively, "the Authorities") have reached this Memorandum of Understanding ("MOU") regarding cooperation and the exchange of information in the supervision and oversight of clearing organizations that operate on a cross-border basis in both Singapore and Hong Kong Special Administrative Region, China ("Hong Kong"). The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates with respect to cross-border clearing organizations.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means:
 - a. In Singapore, the Monetary Authority of Singapore ("MAS"); and
 - b. In Hong Kong, the Securities and Futures Commission ("SFC").
2. "Receiving Authority" means the Authority receiving any information under this MOU.
3. "Disclosing Authority" means the Authority providing any information under this MOU.
4. "Laws and Regulations" means:
 - a. For the MAS, the Securities and Futures Act (Cap. 289) ("SFA") and regulations and other regulatory requirements issued pursuant to the SFA in Singapore or any law, regulation or requirement to which MAS is subject or administers; and
 - b. For the SFC, the Securities and Futures Ordinance (Cap. 571) ("SFO") and any other applicable domestic law, regulation or requirement to which the SFC is subject or administers.
5. "Central Counterparty (CCP)" means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.
6. "Cross-Border CCP" means a CCP established in either Singapore or Hong Kong that:
 - a. is, or that has applied to be approved or recognized as, an Approved Clearing House or Recognised Clearing House, under the SFA; and
 - b. is, or that has applied to be, a recognised clearing house or authorized as a provider of automated trading services under the SFO.

7. "Approved Clearing House" and "Recognised Clearing House" take the same meanings as they do under the SFA in Singapore.
8. "Clearing Member" means a member of a CCP that also serves as an intermediary through which market participants access the CCP's services.
9. "Clearing Participant" means a participant of a CCP that does not serve as an intermediary, but trades and clears only for its own account as principal.
10. "Books and Records" means documents, electronic media, and books and records of, and other information about, a Cross-Border CCP within its possession, custody, and control.
11. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border CCP.
12. "On-Site Visit" means any regulatory visit as described in Article Five to the premises of a Cross-Border CCP for the purposes of ongoing supervision and oversight including the inspection of Books and Records.
13. "Local Authority" means the Authority in whose jurisdiction a Cross-Border CCP that is the subject of an On-Site Visit is physically located.
14. "Visiting Authority" means the Authority conducting an On-Site Visit.
15. "Governmental Entity" means:
 - a. If the Receiving Authority is the MAS, the Singapore Prime Minister's Office and the Singapore Ministry of Finance; and
 - b. If the Receiving Authority is the SFC, the Hong Kong Monetary Authority and the Hong Kong Financial Services and the Treasury Bureau.

ARTICLE TWO: GENERAL PROVISIONS

16. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with each of the Authorities' respective functions relating to supervision and oversight of Cross-Border CCPs. The cooperation and information sharing arrangements under this MOU will be interpreted and implemented in a manner and to the extent that is permitted by, and consistent with, the laws and other legal or regulatory requirements that are applicable to each Authority. With respect to cooperation pursuant to this MOU, subject to the aforesaid, at the date this arrangement is executed, no secrecy or blocking laws or regulations relating to the regulation and supervision of Cross-Border CCPs would prevent the Authorities from providing assistance to each other. 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 and Regulations.

17. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede domestic laws or regulations. 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.
18. 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 either Authority. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions.
19. This MOU is intended to complement, but does not alter except where explicitly noted, the following existing arrangements, and any other arrangements that may be entered into between the MAS and the SFC with regard to their respective responsibilities in connection with Cross-Border CCPs:

The IOSCO Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (2016) (“IOSCO EMMoU”) to which the Authorities are signatories, which covers primarily information sharing in the context of enforcement matters.

The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (revised May 2012) (“IOSCO MMOU”) to which the Authorities are signatories, which covers primarily information sharing in the context of enforcement matters.

The Memorandum of Understanding between The Securities and Futures Commission of Hong Kong and The Monetary Authority of Singapore (signed January 1997).
20. 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 in writing to the other Authority.

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

General

21. The Authorities recognize the importance of close communication concerning their supervision of Cross-Border CCPs and intend to consult regularly, as appropriate, regarding:
 - a. General supervisory issues, including regulatory or other related developments;
 - b. Issues relevant to the operations, activities, and regulation of Cross-Border CCPs; and

- c. Any other areas of mutual supervisory interest.
22. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- a. In the event that a Cross-Border CCP experiences, or is threatened by, a potential financial crisis or other Emergency Situation;
 - b. The initial application for registration or licensure, or exemption therefrom, or authorization or recognition in the jurisdiction of an Authority, by a Cross-Border CCP that is registered, licensed, exempted, authorized, or recognized in the jurisdiction of the other Authority;
 - c. The ongoing supervision and oversight of a Cross-Border CCP including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards; and
 - d. Regulatory or supervisory actions taken by an Authority in relation to a Cross-Border CCP that may impact the operations of the Cross-Border CCP in the jurisdiction of the other Authority.

Event-Triggered Notification

23. As appropriate in the particular circumstances, MAS and the SFC will endeavor to inform each other promptly, and where practicable in advance, of:
- a. Pending changes to the Laws and Regulations that may have a material impact on the operations, activities, or reputation of a Cross-Border CCP, including those that may affect the rules or procedures of a Cross-Border CCP;
 - b. Any event of which the Authority is aware that could have adverse material impact on the financial or operational stability of a Cross-Border CCP including events such as a default or potential default of a Clearing Member or Clearing Participant of the Cross-Border CCP; market or settlement bank difficulties that might adversely impact the Cross-Border CCP; failure by a Cross-Border CCP to satisfy any of its requirements for continued registration, authorization, licensure, exemption, or recognition where that failure could have a material adverse effect on its operations in the jurisdiction of the other Authority ; major cyberattack, breach in security or major system failure;
 - c. Any known change in the ownership, operating environment, operations including risk management policies, financial resources, management, or systems and controls that may have an adverse material impact on a Cross-Border CCP ;
 - d. The status of efforts made by the Authority or taken by the Cross-Border CCP of which the Authority is aware to address the adverse impact caused by any event or material change mentioned in sub-paragraphs (b) and (c) above;
 - e. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant registration or licensure, or exemption therefrom or withdrawal of recognition under the SFO, concerning a Cross-Border CCP and which may have a material effect on the Cross-Border CCP;

- f. Any permission or approval granted by an Authority to a Cross-Border CCP to provide clearing services to Clearing Members, trading venues or clients established in the host jurisdiction; and
 - g. Any material change in the range of activities and services that a Cross-Border CCP provides with respect to current or new asset classes or current or new trading venues.
24. The determination of what constitutes “material impact”, “material event”, “adverse material impact”, “difficulties”, “material adverse effect”, “significant regulatory actions”, “material effect” or “material change” for purposes of paragraph 23 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.
25. Paragraphs 23 and 24 shall not preclude the Authorities from entering into any further arrangements relating to notification regarding specific financial or operational issues related to a CCP.

Request-Based Information Sharing

26. To supplement informal consultations, each Authority, upon receipt of a written request, intends to provide the other Authority the fullest possible cooperation, subject to the terms in this MOU and in a manner consistent with and permitted by its Laws and Regulations and its overall policies, in assisting the Receiving Authority’s supervision and oversight of a Cross-Border CCP, including assistance in obtaining and interpreting information that is relevant to ensuring compliance with the Laws and Regulations of the Receiving Authority and that is not otherwise available to the Receiving Authority. 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.
27. The cooperation covered by Paragraph 26 includes:
- a. Information that would assist the Receiving Authority in verifying that a Cross-Border CCP complies with the relevant obligations and requirements of the Laws and Regulations of the Receiving Authority;
 - b. Information that would assist the Receiving Authority in understanding changes to the relevant obligations and requirements to which a Cross-Border CCP is subject under the Laws and Regulations of the Disclosing Authority;
 - c. Information relevant to the financial and operational condition of a Cross-Border CCP including, for example, financial resources, risk management, and internal control procedures;
 - d. Relevant regulatory information and filings that a Cross-Border CCP is required to submit to an Authority including, for example, interim and annual financial statements and event-specific notices; and

- e. Regulatory reports prepared by an Authority including, for example, examination reports, findings, or information contained in such reports regarding Cross-Border CCPs

Periodic Meetings

28. Representatives of the Authorities intend to meet periodically, as 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 CCPs, including but not limited to: contingency planning and crisis management, the adequacy of existing cooperative arrangements, systemic risk concerns, default procedures, 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

29. To the extent possible, a request for information pursuant to paragraph 26 under 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 Receiving Authority;
 - b. A concise description of the matter that is the subject of the request;
 - c. The purpose for which the information is sought; and
 - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information provided in response to the request, as well as any subsequent communication between 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.

30. Each request for information will be assessed, on a case-by-case basis, by the Disclosing Authority to determine whether the information can be provided (either in part or in whole) under the terms of this MOU. In any case where the request cannot be fulfilled completely, the Disclosing Authority will consider whether part of the information may be provided or there may be other assistance that can be given and, wherever possible, will endeavor to provide this. The Disclosing Authority may set out matters that need to be fulfilled by the Receiving Authority, or seek further clarifications or information from the Receiving Authority in relation to its request, in order to satisfy itself that the sharing of the requested information is in accordance with the Laws and Regulations of the Disclosing Authority.
31. If there is an Emergency Situation in the jurisdiction of an Authority, that Authority will endeavor to notify the other Authority of the Emergency Situation and communicate information as deemed 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

32. In fulfilling its supervision and oversight responsibilities pursuant to, and to ensure compliance with, Laws and Regulations, an Authority may need to conduct On-Site Visits of a Cross-Border CCP physically located in the jurisdiction of the other Authority. The Visiting and Local Authorities will consult and work collaboratively in conducting an On-Site Visit.
33. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
 - a. The Visiting Authority will provide advance notice of at least 14 days to the Local Authority of its intent to conduct an On-Site Visit and will discuss with the Local Authority with a view to reach an understanding on the terms, the intended time frame and the scope of the On-Site Visit before conducting or notifying the Cross-Border CCP of the intended On-Site Visit;
 - b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the CCP in a manner consistent with and permitted by its Laws and Regulations and its overall policies.
 - c. The Authorities will endeavor, if so requested, to assist each other regarding On-Site Visits in a manner consistent with and permitted by its Laws and Regulations and its overall policies by 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 CCP .
 - 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 joint visits where appropriate.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

34. The Receiving Authority will use non-public information obtained under this MOU solely for the supervision and oversight of Cross-Border CCPs and to ensure compliance with the Laws and Regulations of the Receiving Authority. The Receiving Authority will comply with restrictions on the use of information, if any, that are agreed when the information is provided.
35. 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 Disclosing Authority a separate request under the IOSCO EMMoU.

36. Before using non-public information furnished under this MOU for any purpose other than those stated in paragraph 34, the Receiving Authority must first consult with and obtain the written consent of the Disclosing Authority for the intended use. The reasons for a denial by the Disclosing Authority should be discussed, and the Authorities also should discuss the circumstances under which use by the Receiving Authority might be allowed.
37. If a Receiving Authority receives, via a party that is not a signatory to this MOU, non-public information originally provided by a Disclosing Authority that is related to the Disclosing Authority's or Receiving Authority's supervision and oversight of a Cross-Border CCP 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.
38. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Cross-Border CCP, whether during an On-Site Visit or otherwise.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

39. Except as provided in Paragraphs 40 to 43, each Authority will keep confidential, to the extent permitted by Laws and Regulations, 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. However, the terms of this MOU are not confidential.
40. As required by Laws and Regulations, it may become necessary for a Receiving Authority to share non-public information obtained under this MOU with a Governmental Entity. In these circumstances and to the extent permitted by Laws and Regulations:
 - a. The Receiving Authority will notify the Disclosing Authority what non-public information it intends to share, the name of the Governmental Entity and the use it intends to make of such information; and
 - b. Prior to the Receiving Authority sharing the non-public information, the Receiving Authority will provide adequate assurances to the Disclosing Authority concerning the use and confidential treatment of the information by the Governmental Entity, including, as necessary, assurances that:
 - i. The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction;
 - ii. The Governmental Entity is subject to adequate and appropriate confidentiality protections similar to those in respect of information held by the Receiving Authority; and

- iii. The information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Disclosing Authority.
41. Except as provided in this Article, the Receiving Authority must obtain the prior written consent of the Disclosing Authority (and such consent may be subject to restrictions or with conditions which the Receiving Authority shall comply) before disclosing non-public information received under this MOU to any non-signatory to this MOU. The Disclosing Authority will take into account the level of urgency of a request for consent to disclose non-public information from the Receiving Authority and will use reasonable endeavours to respond in a timely manner. During an Emergency Situation, a request for consent may be made 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 Disclosing Authority, the Receiving and Disclosing Authorities will consult to discuss the reasons for withholding consent and the circumstances, if any, under which the intended disclosure by the Receiving Authority might be allowed.
42. To the extent permitted by Laws and Regulations, the Receiving Authority will notify the Disclosing Authority of any legally enforceable demand for non-public information furnished under this MOU. The Authorities will then discuss and determine the appropriate course of action. When complying with the demand, the Receiving Authority will assert all appropriate legal exemptions or privileges with respect to such information as may be available.
43. The Authorities intend that the sharing or the onward disclosure to a Governmental Entity or non-signatory to this MOU 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.
44. Each Authority (Authority A”) confirms that it will notify the other Authority (“Authority B”) of any changes in the confidentiality protections applying to information disclosed to Authority A within the framework of this MOU which could affect Authority B’s assessment of the adequacy and appropriateness of the confidentiality protections regime applicable to Authority A.

ARTICLE EIGHT: AMENDMENTS

45. The Authorities intend periodically to review the functioning and effectiveness of the cooperative arrangements between the MAS and the SFC with a view, *inter alia*, to expanding or altering the scope or operation of this MOU when necessary. This MOU may be amended with the written consent of both of the Authorities.

ARTICLE NINE: EXECUTION OF MOU

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

ARTICLE TEN: TERMINATION

47. Cooperation in accordance with this MOU will continue until the expiration of 30 days after an Authority gives written notice to the other Authority of its intention to terminate the MOU. If an Authority gives notice of termination, 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 this MOU before the expiration of the 30-day period until all such requests are fulfilled or the Receiving Authority withdraws such request(s) for assistance. In the event of termination of this MOU, information obtained or shared with a Governmental Entity or third party pursuant to the terms of this MOU will continue to be treated in the manner described under Articles Six and Seven notwithstanding such termination.