

Memorandum of Cooperation



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

Securities and Futures Commission



Financial Services Agency of Japan

Memorandum of Cooperation Related to Covered CCPs

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of central counterparties (CCPs), the Financial Services Agency of Japan ("FSA") and the Securities and Futures Commission ("SFC") of Hong Kong have reached this Memorandum of Cooperation ("MoC").

This MoC expresses the authorities' willingness to consult, cooperate and exchange information with one another in the interest of fulfilling their respective responsibilities and mandates in relation to Covered CCPs.

Item 1

Definitions

For the purpose of this MoC:

- a) "Authority" means a signatory to this MoC or any successor thereto;
- b) "Authorized ATS provider" means a person who has been authorized by the SFC under section 95(2) of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) ("SFO") to provide automated trading services;
- c) "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;
- d) "Conditions" means the conditions imposed by the SFC on a Covered CCP pursuant to the Covered CCP's application to be an Authorized ATS provider or a Designated Person;
- e) "Covered CCP" means:
 - i. a CCP which is established in Japan and which has been licensed or approved as a "Financial Instruments Clearing Organization" under the Financial Instruments and Exchange Act ("FIEA") of Japan (Act. No. 25 of the 1948) and which has applied to the SFC to be an Authorized ATS provider together with any Authorized ATS provider which also applies to be a Designated Person; and
 - ii. a CCP which is (i) established in Hong Kong and is a clearing house recognised under section 37 of the SFO or (ii) an Authorised ATS provider, and has applied for a license to the FSA pursuant to Article 156-20-2 of FIEA.
- f) "Designated Person" means a person who has been designated by the SFC under section 101J(1) of the SFO as a CCP for the purposes of Part IIIA of the SFO;

- g) “Emergency Situation” means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP;
- h) “Home Authority” means the Authority in whose jurisdiction a Covered CCP that is the subject of an On-Site Visit is physically located;
- i) “License Criteria” means the criteria on which the FSA examines the application for licence set out in Article 156-20-4 of FIEA;
- j) “Laws and Regulations” means in relation to the SFC any domestic laws and regulations relating to securities and [futures] markets in force in Hong Kong and administered by the SFC, and in relation to the FSA, any laws, regulations, and regulatory requirements relating and applicable to the FSA in force in Japan;
- k) “MoC” means this Memorandum of Cooperation;
- l) “On-site Visit” means any regulatory visit by the Requesting Authority to the premises of a Covered CCP located in the jurisdiction of the other Authority, in line with Item 5 of this MoC;
- m) “Other Authority” means:
 - i. if the Requesting Authority is the SFC, the Hong Kong Monetary Authority; and
 - ii. If the Requesting Authority is FSA, the Ministry of Finance and the Bank of Japan;
- n) “Person” includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered CCP;
- o) “Requested Authority” means the Authority to whom a request is made under this MoC;
- p) “Requesting Authority” means the Authority making a request under this MoC; and
- q) “Visiting Authority” means the Authority conducting an On-Site Visit;

Item 2

General provisions

1. This MoC is a statement of intent to consult, cooperate and exchange information in connection with responsibilities and mandates of each Authority relating to Covered CCPs. The cooperation and information sharing arrangements under this MoC should be interpreted and implemented in a manner that is permitted by, and consistent with, the Laws and Regulations applicable to each Authority.

2. This MoC does not create any legally binding obligations, confer any rights, or supersede any Laws and Regulations. This MoC 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 information under this MoC.
3. This MoC does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates. In particular, this MoC does not affect any right of any Authority to communicate with or obtain information or documents from any Person subject to its jurisdiction that is established in the country or the region where the other Authority is located. This MoC does not prejudice or affect in any other way the respective competencies of the Authorities.
4. Each Authority should, within the framework of this MoC, provide each other with the fullest cooperation applicable to each Authority. Following notification, cooperation may be denied:
 - a) where cooperation would require an Authority to act in a manner that would violate the Laws and Regulations applicable to the Authority; or
 - b) where a request for assistance has not been made in line with the terms of this MoC; or
 - c) on the grounds of public interest.
5. The Authorities represent that as of the date of this MoC no domestic laws or regulations applicable to each Authority should prevent it from providing assistance to one another, unless the request falls under any of the situation described in Item 2(4).
6. To facilitate communication and cooperation under this MoC, the Authorities hereby designate contact persons the details of which are set out in the Appendix. Any modifications to the details of contact persons should be communicated without undue delay to the other Authority.

Item 3

Scope of cooperation

1. The Authorities recognise the importance of close communication concerning the Covered CCPs and intend to cooperate regarding:
 - a) general issues, including with respect to regulatory, supervisory or other developments concerning the Covered CCPs;
 - b) issues relevant to the operations, activities and services of the Covered CCPs; and
 - c) any other areas of mutual interest.

2. The Authorities recognise in particular the importance of close cooperation in the event that a Covered CCP, 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.
3. Cooperation will be most useful in circumstances where issues of regulatory concern may arise, including but not limited to:
 - a) the initial application of a Covered CCP to the SFC to be an Authorized ATS provider or a Designated Person;
 - b) the initial application of a Covered CCP for a license from the FSA pursuant to Article 156-20-2 of FIEA;
 - c) changes in Covered CCP internal rules administered by the relevant Authority, policies and procedures that could affect the way in which the Covered CCP complies with any Conditions or License Criteria; or
 - d) regulatory or supervisory actions or approvals taken by the SFC or the FSA in relation to a Covered CCP and including changes to the relevant obligations and requirements to which the Covered CCPs are subject that may impact the Covered CCPs' continued compliance with any Conditions or License Criteria.
4. *Notification.* The Authorities should seek to inform each other as soon as practicable of:
 - a) any known material event that could adversely impact on the operations, functions or activities of a Covered CCP, including where the Covered CCP is deemed to be in breach of the conditions of any license, registration, authorisation or recognition, or of any Laws and Regulations to which it is subject;
 - b) enforcement or regulatory actions or sanctions, including the withdrawal, revocation, suspension or modification of any license, registration, authorisation or recognition concerning or related to a Covered CCP and which may have a material effect on the Covered CCP;
 - c) any permission, approval, authorisation or designation granted to a Covered CCP to provide clearing services to clearing members or trading venues;
 - d) any significant proposed changes to the ownership or risk management of a Covered CCP or any material extension of the range of activities and services that a Covered CCP provides;
 - e) any material modification to Covered CCP's internal rules administered by the relevant Authority or to Laws and Regulations applicable to the Covered CCP that will impact the legal or supervisory arrangements, operations, functions, activities or reputation of the Covered CCP;
 - f) any material regulatory change relating to any resolution measure that may have a significant impact on the operations, functions or activities of a Covered CCP; and

- g) any material change in the Authorities' respective professional secrecy legislation.

The information to be provided by an Authority pursuant to this paragraph 4(a) to (g) will identify the affected Covered CCP. The determination of what constitutes "material event," "adversely impact," "material effect", "material extension", "material modification", "material change", "material regulatory change", "significant impact" or "significant proposed changes" will be left to the reasonable discretion of the Authority providing the information.

5. *Exchange of Written Information.* Each Authority, upon written request, intends to provide the other Authority with assistance in endeavouring to obtain 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 the Laws and Regulations administered by the Requested Authority to which a Covered CCP is subject, provided that the Requested Authority is authorised to collect such information. Such requests should be made pursuant to Item 4 of this MoC, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimising administrative burdens.

The information covered by this paragraph includes:

- a) information that would assist the Requesting Authority in verifying that a Covered CCP complies with the relevant obligations and requirements of the Laws and Regulations administered by the Requesting Authority and under the Laws and Regulations administered by the Requested Authority;
- b) information that would assist the Requesting Authority in verifying compliance with its request to a Covered CCP to observe a measure that such Covered CCP or the Requesting Authority has adopted to ensure compliance with the Conditions or the License Criteria or to cease a practice that the Requesting Authority determines is contrary to the Conditions or the License Criteria;
- c) information that would assist the Requesting Authority in understanding changes to the relevant obligations and requirements to which the Covered CCPs are subject under the Laws and Regulations of the Requested Authority;
- d) information relevant to the financial and operational condition of a Covered CCP, which might include periodic reports submitted directly by a Covered CCP to the Requested Authority;
- e) relevant regulatory information and filings that a Covered CCP is required to submit to the Requested Authority; and
- f) regulatory reports and assessments, or findings or information contained therein, prepared by a Requested Authority relating to a Covered CCP.

The information to be provided by an Authority pursuant to this paragraph will be limited to the information referring to the Covered CCP licensed, registered, authorised, or recognised, by that Authority.

Item 4

Execution of requests for Information

1. To the extent possible, a request for written information pursuant to Item 3(5) should be made in writing (which may be transmitted electronically) and addressed to the relevant contact person identified in the Appendix. A request should specify at least the following:
 - a) the information sought by the Requesting Authority;
 - b) a concise description of the matter that is the subject of the request and the purpose for which the information is sought, including the Laws and Regulations applicable to the activity; and
 - c) the desired time period for reply and, where appropriate, the urgency thereof.
2. In Emergency Situations, the Authorities should endeavour to notify each other of the Emergency Situation and communicate information between each other as deemed 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.

Item 5

On-Site Visits

1. When an Authority seeks to conduct an On-Site Visit to the premises of a Covered CCP, the Authorities should discuss and reach a common view on the terms on which the On-Site Visit will take place, taking into full account each other's jurisdiction, legal framework and statutory obligations, in particular in determining the respective roles and responsibilities of the Authorities.
2. An On-Site Visit will be conducted with the following procedure:
 - a) the Visiting Authority will consult the Home Authority with a view to reaching an a common view on the intended timeframe for, and the purpose and scope of, any On-site Visit. The Home Authority may accompany or assist the Visiting Authority officers during the On-site Visit.
 - b) when establishing the scope of any proposed On-site Visit by the Visiting Authority officers, the Visiting Authority should give due and full consideration to the supervisory activities of the Home Authority given the Visiting Authority's reliance

on the supervision and enforcement capabilities of the Home Authority in respect of Covered CCPs and will consider any information that was made available or is capable of being made available by the Home Authority.

- c) the Home Authority intends to assist the Visiting Authority in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining information from directors and senior management of the Covered CCPs.

Item 6

Permissible uses of Information

1. The Requesting Authority shall use non-public information obtained under this MoC solely for the purpose of ensuring, monitoring or assessing compliance by Covered CCPs with the Laws and Regulations applicable to the Requesting Authority that are relevant to and within the limits of this MoC.
2. Before using non-public information furnished under this MoC for any purpose other than that stated in Item 6(1), the Requesting Authority must obtain 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.
3. Information received will not be presented to a court or to a judge or a magistrate in criminal proceedings. In the case that such use is needed, an additional request must be made following procedures:
 - a) where the Requested Authority is the FSA for the provision of mutual legal assistance in criminal matters to foreign countries, which are set out in the Law for International Assistance in Investigation and Other Related Matters of Japan (Act No. 69 of 1980) and
 - b) where the Requested Authority is the SFC under the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.
4. If an Authority receives, via a party that is not a signatory to this MoC, non-public information originally provided by the other Authority that is related to the latter Authority's supervision and oversight of a Covered CCP and that the former Authority is aware was obtained by the third party from the latter Authority on a confidential basis, the former Authority will use and treat the information in line with the terms of this MoC.
5. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a Covered CCP.

Item 7

Confidentiality and onward sharing of information

1. Except as stated in Item 7(2) or (3), or pursuant to a legally enforceable demand as referred to in Item 7(4), each Authority should keep confidential, to the extent permitted by law, non-public information shared under this MoC, requests made under this MoC, the contents of such requests, and any other matters arising under this MoC. The terms of this MoC are not confidential.
2. As required by law or authorised by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MoC with the Other Authority in its jurisdiction. In such circumstances and to the extent permitted by law:
 - a) the Requesting Authority shall notify the Requested Authority about what information it intends to share, which Other Authority will receive it and why the Other Authority needs the information; and
 - b) prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Other Authority's use and confidential treatment of the information, including, as necessary, assurances that:
 - i. the Other Authority has confirmed that it requires the information to enable it to fulfil its responsibilities and mandates;
 - ii. the Other Authority will maintain a level of confidentiality in respect of the information it has received at least equivalent to that which the Requesting Authority is subject to (including, where relevant, restrictions or conditions imposed on it by the Requested Authority); and
 - iii. the information will not be shared by the Other Authority with any third party without getting the prior written consent of the Requested Authority.
3. Except as stated in Item 7(2) and without prejudice to Item 6(3) if disclosure is needed, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MoC to any non-signatory to this MoC. 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.
4. To the extent possible, the Requesting Authority should notify the Requested Authority of any legally enforceable demand for non-public information that has been furnished under this MoC. When complying with the demand, the Requesting Authority intends to

assert all appropriate legal exemptions or privileges with respect to such information as may be available.

5. The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, pursuant to the terms of this MoC, will not constitute a waiver of privilege or confidentiality of such information.
6. The Authorities acknowledge that nothing in this Item 7 prevents an Authority from disclosing information it receives directly from a Covered CCP.

Item 8

Successor authorities

Where the relevant functions of an Authority are transferred or assigned to another authority or authorities, the terms of this MoC should apply to the successor authority or authorities performing those relevant functions, such successor authority or authorities should become a signatory or signatories to this MoC without the need for any further modification to this MoC and notice should be provided to the other Authority. This should not affect the right of the successor authority or authorities or the other Authority to give written notice as provided in Item 11(2) that it no longer wishes to be a signatory to this MoC if it wishes to do so.

Item 9

Amendments and Publication

1. The Authorities intend periodically to review the functioning and effectiveness of the arrangements between the Authorities set out in this MoC. This MoC may be modified with the written consent of both signatories.
2. The signatories understand that this MoC may be made publicly available.

Item 10

Execution of the MoC

This MoC will commence on the date that it is signed by the Authorities.

Item 11

Termination

Appendix

Contact Persons

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