



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨委員會



## Memorandum of Understanding

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 Securities and Futures Commission (SFC) in Hong Kong and the Financial Industry Regulatory Authority (FINRA) have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of Regulated Entities in the jurisdictions of both Authorities. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; promoting the competence and integrity of Cross-Border Regulated Entities; fostering market and financial integrity; reducing systemic risk and maintaining financial stability.

### ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. **"Authority"** means the SFC or the FINRA:
  - (a) **"Requested Authority"** means the Authority to whom a request is made under this MOU; and
  - (b) **"Requesting Authority"** means the Authority making a request under this MOU.

Together, the SFC and the FINRA are the **"Authorities"**.

2. **"Cross-Border On-site Visit"** means any regulatory visit by one Authority to the premises of a Cross-Border Regulated Entity located in the other Authority's jurisdiction, for the purposes of ongoing supervision and oversight.

3. **“Cross-Border Regulated Entity”** means (i) a Regulated Entity that is regulated by both Authorities; or (ii) a Regulated Entity which is regulated in the jurisdiction of one Authority that is a Related Corporation of another Regulated Entity which is regulated in the jurisdiction of the other Authority.
4. **“Emergency Situation”** means where an Authority (or the Authorities) is (are) seeking urgently to manage a circumstance where a Cross-Border Regulated Entity is or can reasonably be expected to be financially impaired or the operations of the Cross-Border Regulated Entity will or is likely to be affected adversely resulting in a significant increase in systemic risk or potential damage to financial stability and the wider financial system.
5. **“Information”** means information in the public domain or publicly available and Non-Public Information as defined below.
6. **“Laws and Regulations”** means the legal and regulatory provisions that each Authority administers in its respective jurisdiction, and any other provision which is within the competence of or applicable to each Authority, including all applicable laws or regulations pertaining to privacy and data security.
7. **“Non-Public Information”** means either Authority’s confidential, proprietary or non-public information including any and all proprietary and intellectual property rights, derivative works or modifications, title, interest and Personal Data, in each case regardless of form (verbal, written, electronic, graphic, or other form) or the manner in which the Requesting Authority obtained the Non-Public Information from the Requested Authority. Non-Public Information of a Requested Authority includes all documents and materials generated by the Requested Authority to the extent those materials describe, summarize, comment on, or otherwise contain the Requested Authority’s Non-Public Information provided to the Requesting Authority under this MOU. Non-Public Information does not include Non-Public Information the Requested Authority discloses to the Requesting Authority that is: a) lawfully in the Requesting Authority’s possession prior to this MOU; b) the Requesting Authority received on an unrestricted basis from a source unrelated to either Authority; c) the Requesting Authority rightfully possessed prior to the time of disclosure; and d) at the time of disclosure was in or thereafter enters the public domain, other than as a result of the Requesting Authority’s actions or the actions of its authorized persons.

8. **“Person”** means a natural person or legal person, or an unincorporated entity or association, including partnerships, and corporations.
9. **“Personal Data”** means any Non-Public Information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural, or social identity.
10. **“Regulated Entity”** means a financial market participant or other entity that is regulated by one of the Authorities.
11. **“Related Corporation”** means two or more corporations where one of them is (i) a holding company of the other; (ii) a subsidiary of the other; or (iii) a subsidiary of the holding company of the other.

## **ARTICLE TWO: GENERAL PROVISIONS**

1. This MOU is a statement of intent to consult, cooperate and exchange Information in connection with the supervision and oversight of Cross-Border Regulated Entities in Hong Kong and the United States, in a manner consistent with, and permitted by, the respective laws and requirements that govern the Authorities in order to enhance the protection of investors and to promote the competence and integrity of Cross-Border Regulated Entities. This MOU also seeks to support high standards in Cross-Border Regulated Entities' conduct of business, including but not limited to acting honestly, fairly, in the best interests of their clients and the integrity of the market, as well as acting with due skill, care and diligence. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc formal cooperation. The provisions of this MOU are intended to support such informal and oral communication as well as to facilitate the written exchange of Non-Public Information where necessary and regular/periodic liaison to discuss, inter alia, issues of common interest concerning Cross-Border Regulated Entities.
2. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic Laws and 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. However, the provisions set forth in Articles Six and Seven shall be binding upon the Authorities and survive the termination of the MOU.

3. This MOU does not limit an Authority to taking solely those measures described herein in fulfillment of its supervisory functions. In particular, this MOU does not affect any right of an Authority to communicate with or to obtain Information or documents from any Person subject to its jurisdiction that is located in the jurisdiction of the other Authority. However, an Authority should communicate with the other Authority prior to carrying out any Cross-Border On-site Visit in the jurisdiction of the other Authority.
4. Each Authority will, within the framework of this MOU and subject to its Laws and Regulations, use reasonable endeavors to provide the other Authority with the fullest cooperation permissible in relation to the supervision and oversight of Cross-Border Regulated Entities. Nevertheless, cooperation may be denied in the following circumstances:
  - (a) Where the cooperation would require an Authority to act in a manner that would violate domestic Laws and Regulations;
  - (b) Where a request for assistance is not made in accordance with the terms of this MOU; or
  - (c) On the grounds that it would be contrary to the public interest.
5. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements under this MOU with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary.
6. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

### **ARTICLE THREE: SCOPE OF SUPERVISORY COOPERATION**

1. The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult and update regularly at the staff level regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities; and (iii) any other areas of mutual supervisory interest.

2. This MOU is also a statement to support the Authorities' participation in supervisory colleges for the purpose of coordinating the supervision and oversight of Cross-Border Regulated Entities. While the Authorities anticipate that cooperation with respect to Cross-Border Regulated Entities will also be achieved through such supervisory colleges, this MOU may facilitate the exchange of supervisory Non-Public Information in the context of supervisory colleges of which both Authorities are members.
3. 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 one Authority for authorization, licensure, approval, designation, recognition, qualification, or registration, or exemption therefrom, by a Regulated Entity that is regulated by the other Authority;
  - (b) The ongoing supervision and oversight of a Cross-Border Regulated Entity;
  - (c) Regulatory approvals or supervisory actions taken in relation to a Cross-Border Regulated Entity by one Authority that may impact the operations of the Cross-Border Regulated Entity in the other jurisdiction;
  - (d) Any updates on their respective functions, and regulatory oversight programs;  
or
  - (e) General supervisory developments where considered necessary.
4. **Advance Notification.** Each Authority will inform the other Authority in advance, where practicable, or as soon as possible of:
  - (a) Any known Information that may, in its reasonable opinion, have a material adverse impact on a Cross-Border Regulated Entity. Such Information includes known material changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity; and
  - (b) The status of efforts to address any material financial or operational difficulties experienced by a Cross-Border Regulated Entity as described in subparagraph (a) above.
5. Where an Authority considers it appropriate and necessary, it may inform the other Authority in advance, where practicable, or as soon as possible thereafter of

pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity.

6. **Provision of Unsolicited Information.** Where an Authority has Information which will assist or enable the other Authority in the performance of its supervisory functions, the former may provide such Information, or arrange for such Information to be provided, on a voluntary basis even though no request has been made by the other Authority, and the terms and the conditions of this MOU will apply if the providing Authority specifies that the Information is provided under the MOU.
7. **Exchange of Information.** To supplement informal consultations, each Authority intends to provide the other Authority, upon written request and as far as its Laws and Regulations permit, with assistance in obtaining Information not otherwise available to the Requesting Authority with a view to assisting the Requesting Authority to perform its supervisory functions (including but not limited to assessing compliance by a Cross-Border Regulated Entity with the Laws and Regulations it administers and identifying whether or not a Cross-Border Regulated Entity constitutes a risk to or may affect the financial stability of its jurisdiction). The Information covered by this paragraph includes, without limitation:
  - (a) Information relevant to the financial and operational condition of a Cross-Border Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, internal controls procedures, corporate Information, license or membership history and status, and regulatory and disciplinary records;
  - (b) Relevant regulatory Information and filings that a Cross-Border Regulated Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices;
  - (c) Information impugning the competence and integrity of a Cross-Border Regulated Entity, such as regulatory reports prepared by an Authority, including for example: examination reports, compliance review reports on investor complaints, self-reported breaches or sundry referrals from other regulators, and findings or Information drawn from such reports; and
  - (d) Group-level Information of Cross-Border Regulated Entities, including (without limitation) group-wide organizational charts, board and management committee

minutes, senior management responsibility maps, business model analysis and risk profiles.

8. **Regular/ Periodic Liaison.** To facilitate each Authority in performing its respective supervisory functions, the Authorities intend to liaise with each other concerning the following matters from time to time as far as their Laws and Regulations permit, including, but not limited to, supervisory colleges.
  - (a) Representatives of the Authorities intend to discuss with each other:
    - i. Any updates on their respective functions, and regulatory oversight programs, including supervisory priorities and 'best practices' on a regular basis. This may also include, but is not limited to, discussions on conduct risk and control culture, risk trends, thematic and/or cross-sector issues, contingency planning/ crisis management and systemic risk concerns; and
    - ii. General supervisory developments where considered necessary.
  - (b) Staff contacts from each Authority responsible for particular Cross-Border Regulated Entities (please see Appendix B which may be revised from time to time if both Authorities so agree) intend to engage in regular or periodic liaison for the purpose of discussing issues of common interest concerning these Cross-Border Regulated Entities.
9. **Training/ Learning and Development.** The Authorities agree to regularly liaise and exchange learning and development programs on topics of mutual supervisory interest and each Authority agrees to notify or make papers available to the other of its own learning and development programs which might be of relevance and interest to the officers in the other Authority.

#### **ARTICLE FOUR: CROSS-BORDER ON-SITE VISITS**

1. An Authority should communicate with the other Authority prior to carrying out any Cross-Border On-site Visits. Authorities should also discuss and reach understanding on the terms regarding Cross-Border On-site Visits, 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. Generally, the Authorities will act in accordance with the following procedure before conducting a Cross-Border On-site Visit.

- (a) When establishing the scope of any proposed visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any Information that was made available or is capable of being made available by that Authority.
  - (b) If so requested, the Requested Authority will endeavor to explain or elaborate on the contents of written Information to the Requesting Authority with a view to assisting the Requesting Authority to perform its supervisory functions as outlined in paragraph 7 of Article Three of this MOU; and assist the Requesting Authority to obtain Information from a Cross-Border Regulated Entity.
  - (c) The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any Cross-Border On-site Visit. The Authority seeking to conduct the visit will notify the other Authority in advance of its intent to conduct an on-site visit, by itself or by a third party commissioned by it, the intended timeframe for and the scope of the Cross-Border On-site Visit.
2. The Authorities will consult, and, where desired, may conduct concurrent visits with a view to possibly leveraging resources in the oversight of the Cross-Border Regulated Entity, in which case these will be carried out under the control of the Authority in whose jurisdiction the visit takes place.
3. The local Authority will endeavor to share with the Authority conducting the Cross-Border On-site Visit any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity.
4. The Authorities will communicate with each other, including meetings as appropriate during the Cross-Border On-site Visit. After concluding a Cross-Border On-site Visit, the Authority conducting the visit will communicate any major issues to the other Authority that may impact negatively upon the regulatory status of the Cross-Border Regulated Entity in its jurisdiction.

#### **ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE**

1. A request for written Information pursuant to paragraphs 7 of Article Three and 1(b) of Article Four should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:



- (a) The Information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request.
  - (b) A concise description of the facts underlying the request and the supervisory purpose for which the Information is sought, including the applicable Laws and Regulations and relevant provisions behind the supervisory activity; and
  - (c) The desired time period for reply and, where appropriate, the urgency thereof.
2. In Emergency Situations, the Authorities will endeavor to notify each other of the Emergency Situation and communicate Information to the other as would be 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.

#### **ARTICLE SIX: PERMISSIBLE USES OF INFORMATION**

1. The Requesting Authority may use Non-Public Information obtained under this MOU solely for the purposes of supervising Cross-Border Regulated Entities and seeking to ensure compliance with the Laws and Regulations of the Requesting Authority or perform its supervisory functions (including but not limited to assessing compliance by a Cross-Border Regulated Entity with its Laws and Regulations it administers and identifying whether or not a Cross-Border Regulated Entity constitutes a risk to or may affect the financial stability of its jurisdiction).
2. The Authorities recognize that Non-Public Information is not to be gathered under the auspices of this MOU for enforcement purposes. No Non-Public Information received under this MOU will be used in any judicial or other proceedings.

#### **ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

1.
  - (a) Each Authority will keep confidential 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 and not disclose Non-Public Information

received under this MOU to any third party for any purpose unless it has obtained the prior consent of the other Authority.

- (b) In the event FINRA requests any Non-Public Information which is not already in the possession of the SFC and is obtained by the SFC for FINRA, then:
- i. FINRA agrees to provide a written statement to the SFC under Section 186(2D) of the Securities and Futures Ordinance ("SFO") confirming that FINRA has not and will not be able to:
    - a. obtain the requested Non-Public Information by any other reasonable means; and
    - b. fully ascertain the matters described in Section 186(2B) of the SFO without the Non-Public Information.
  - ii. FINRA agrees to provide a written undertaking under Section 186(2E) of the SFO to the effect that FINRA:
    - a. will use the Non-Public Information obtained from the SFC because of the request for assistance solely for ascertaining the matters described in Section 186(2B) of the SFO;
    - b. will not use any of the Non-Public Information in any proceedings, in the jurisdiction of FINRA or elsewhere, unless FINRA has made a separate request under Section 186(1) of the SFO (investigation request), and the SFC has decided to provide assistance under Section 186(1); and FINRA has obtained the same Non-Public Information from the SFC because of the investigation request;
    - c. will treat the Non-Public Information as confidential and will not disclose it to any other person, in the jurisdiction of FINRA or elsewhere, for any purpose without the consent of the SFC;
    - d. will, on receiving a demand legally enforceable under the laws of the jurisdiction of FINRA, for the disclosure of any of the Non-Public Information:

1. inform the SFC as soon as reasonably practicable; and
    2. assist in preserving the confidentiality of the Non-Public Information by taking all appropriate measures as may be available (including but not limited to asserting legal exemptions or privileges under the laws of the jurisdiction of FINRA); and
  - e. will cooperate with the SFC in any action or proceedings, in the jurisdiction of FINRA or elsewhere, that seek to safeguard the confidentiality of any of the Non-Public Information.
2. At the Requested Authority's request and direction, the Requesting Authority will:-
    - (a) stop using and copying the Requested Authority's Non-Public Information;
    - (b) return to the Requested Authority all of the Requested Authority's Non-Public Information in the Requesting Authority's possession or control, or destroy that Non-Public Information, in all forms and media; and
    - (c) provide the Requested Authority with a certificate of return or destruction (as applicable) that includes the date(s), manner and facts concerning the return or destruction of the Requested Authority's Non-Public Information and is signed under oath by an officer of the Requesting Authority.
  3. The Requesting Authority will notify the Requested Authority immediately upon discovery of any actual or threatened unauthorized use, loss or disclosure of the Requested Authority's Non-Public Information, and will cooperate with the Requested Authority to help regain possession of that Non-Public Information and to prevent any further unauthorized use, loss or disclosure.
  4. The Requesting Authority will notify the Requested Authority of any legally enforceable demand for Non-Public Information furnished under this MOU as soon as reasonably practicable, assist in preserving the confidentiality of the Non-Public Information by taking all appropriate measures and co-operate with the Requested Authority in any actions or proceedings which seek to safeguard the confidentiality of the Non-Public Information. Where FINRA is the Requesting Authority, Non-Public Information will only be onward disclosed to U.S. Securities and

Exchange Commission (SEC) if it is covered under a legally enforceable request and there is a written request by the SEC to FINRA in respect of the same.

5. The Authorities intend that the sharing or disclosure of Non-Public Information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such Non-Public Information.
6. In the event of any actual or threatened unauthorized use, loss or disclosure of a Requested Authority's Non-Public Information, the Requested Authority will be entitled, without waiving any other rights or remedies at law or in equity, to seek immediate injunctive or equitable relief from a court of competent jurisdiction.
7. The Authorities acknowledge that all Information shared or exchanged pursuant to this MOU is provided "as is".

#### **ARTICLE EIGHT: TERMINATION**

1. 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, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of termination. In the event of termination of this MOU, Information obtained under this MOU will continue to be treated in a manner prescribed under Articles Six and Seven.

#### **ARTICLE NINE: VALIDITY AND MODIFICATIONS**

1. This MOU shall take effect as of the date of the latest signature by the Authorities and, subject to Article Eight, shall remain valid indefinitely.
2. This MOU may be modified by mutual agreement of the Authorities. The amendments shall be formalized in writing, specifying the date in which they shall enter into force.

#### **ARTICLE TEN: PUBLICITY**

1. Neither Authority may use the other Authority's trademarks, service marks, or trade names or otherwise refer to or identify the other Authority in promotional materials,


press releases, statements to the news media or other public announcements, without the other Authority's prior written consent.

2. The Authorities agree to this MoU being made publicly available.


#### **ARTICLE ELEVEN: ENTIRE UNDERSTANDING**

This MOU constitutes the entire understanding between the Authorities with respect to its subject matter.

#### **The Securities and Futures Commission**

By:   
Name: Ashley Alder  
Title: Chief Executive Officer  
Date: 9<sup>th</sup> May 2016

#### **Financial Industry Regulatory Authority, Inc.**

By:   
Name: Daniel M. Sibears  
Title: Executive Vice President, Regulatory Operations/Shared Services  
Date: MAY 9, 2016



## Appendix A

### Contact Persons

#### **The Securities and Futures Commission**

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Securities and Futures Commission

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## Appendix B

### List of Cross-Border Regulated Entities – Regular Liaison

For each named Cross-Border Regulated Entity or group of Cross-Border Regulated Entities:

#### **The Securities and Futures Commission**

[Name]

[Title, Division/ Department]

[Regulator]

[Address]

(Tel): [ ]

(Fax): [ ]

#### **Financial Industry Regulatory Authority, Inc.**

[Name]

[Title, Division/ Department]

[Regulator]

[Address]

(Tel): [ ]

(Fax): [ ]