



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



HONG KONG MONETARY AUTHORITY
香港金融管理局

Memorandum of Understanding

between

the Securities and Futures Commission

and

the Hong Kong Monetary Authority

Memorandum of Understanding

between

the Securities and Futures Commission and the Hong Kong Monetary Authority

I PURPOSE

1. This Memorandum of Understanding (“MoU”) aims to set out the scope and arrangements of the consultation between the Securities and Futures Commission (“SFC”) and the Hong Kong Monetary Authority (“HKMA”) (each referred to as a “party”, together as “parties”) in view of the new oversight regime to be implemented under the Clearing and Settlement Systems Ordinance (Ordinance No. 20 of 2004) (“CSSO”) as it applies to Hong Kong Securities Clearing Company Limited (“HKSCC”), HKFE Clearing Corporation Limited (“HKCC”) and The SEHK Options Clearing House Limited (“SEOCH”) (collectively referred to as “the Clearing Houses”).

II DEFINITION OF TERMS

2. Unless otherwise specified, terms defined in the CSSO and the Securities and Futures Ordinance (Cap. 571) (“SFO”) bear the same meaning when used in this MoU.

III PRINCIPLES

3. The parties will use their best endeavours to meet the terms of this MoU. Also, each party will make reasonable efforts to ensure that the other party is provided with all relevant information to enable consultation under this MoU between the parties to be effective.
4. Notwithstanding, the parties recognise the following overriding principles:-
 - (a) this MoU does not modify or supersede any law or regulation;
 - (b) this MoU does not detract from the statutory functions of the parties;

- (c) this MoU does not amount to a delegation of any of the powers, duties and obligations of the parties;
- (d) this MoU does not create any rights, obligations or liabilities enforceable by either party against the other or by any third party against either or both of the parties; and
- (e) this MoU does not affect any arrangements under any other MoU that either party has entered into, or may enter into, with any party,

and this MoU shall be construed accordingly.

IV APPLICATION OF THE SFO AND THE CSSO TO THE CLEARING HOUSES

- 5. Each of HKSCC, HKCC and SEOCH is recognized as a clearing house under section 37(1) of the SFO. The provisions of the SFO relating to recognized clearing houses apply to HKSCC, HKCC and SEOCH.
- 6. HKSCC operates the Central Clearing and Settlement System (“CCASS”). HKCC and SEOCH operate the Derivatives Clearing and Settlement System (“DCASS”). By virtue of section 4(2) of the CSSO, CCASS and DCASS are not clearing and settlement systems that may be designated by the HKMA under the CSSO. However, HKSCC, HKCC and SEOCH are participants of the Central Moneymarkets Unit of the HKMA which is deemed to be a designated system pursuant to section 55 of the CSSO. The provisions of the CSSO, where applicable, apply to each of HKSCC, HKCC and SEOCH as a participant in a designated system.

V CONSULTATION ARRANGEMENTS

- 7. SFC consultation with HKMA
 - 7.1 Under the SFO, the SFC may request a recognized clearing house to make rules or amend its rules as specified in the request. The SFC may also approve any rules or amendments to rules proposed by a recognized clearing house.
 - 7.2 The SFC will, before requesting or approving any rules or amendments as described in clause 7.1, consult the HKMA where the SFC considers the rules or amendments, as the case may be, might have implications on the relevant Clearing House’s obligations as a participant in a designated system.

8. HKMA consultation with SFC
 - 8.1 Under the CSSO, the HKMA may direct a system operator or settlement institution of a designated system to amend the operating rules of the system so as to bring them into compliance with the CSSO. The HKMA may also approve any amendments to the operating rules proposed by the system operator or settlement institution of a designated system.
 - 8.2 The HKMA will, before directing a system operator or settlement institution of a designated system to amend the operating rules of the designated system or approving any amendments to such rules, consult the SFC where the HKMA considers the amendments might have implications on any of the Clearing Houses' obligations as a recognized clearing house.
9. The consultation referred to in Part V of this MoU will be in writing and, where appropriate, will include the issues on which the HKMA or the SFC, as the case may be, particularly wishes to seek the other party's views. The parties may decide to hold meetings or otherwise additionally consult.
10. Having regard to their respective statutory functions under the SFO and the CSSO, the parties will endeavour to ensure that there is no incompatibility between the rules imposed by the SFC under the SFO on recognized clearing houses and the rules imposed by the HKMA under the CSSO on designated systems, as they apply to each of the Clearing Houses being a recognized clearing house and a participant in a designated system.
11. The parties will each appoint a person or persons to be the principal point of contact between the parties for the consultation arrangements herein. Either party may change its principal point of contact by giving notice to each other.

VI CONFIDENTIALITY AND USE OF INFORMATION

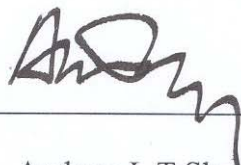
12. Any information exchanged between the parties under this MoU will be used by the recipient only for the purposes of consultation under this MoU, and, except as otherwise required by law, cannot be disclosed to any third party without the prior consent of the party providing the information.
13. Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

VII AMENDMENTS

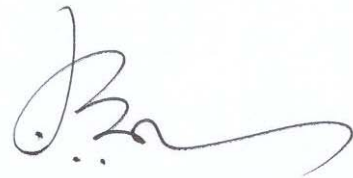
14. Either party may at any time request the other party to agree to make any amendment, whether by supplementary memorandum or otherwise, to this MoU, or may invite consultation with the other party regarding the need for any amendment to this MoU.
15. An amendment to this MoU takes effect only by written agreement of the parties.

SECURITIES AND FUTURES COMMISSION

HONG KONG MONETARY AUTHORITY



Andrew L T Sheng
Chairman



Joseph C K Yam
Chief Executive

Date: 04 November 2004