

**MEMORANDUM OF UNDERSTANDING
CONCERNING CONSULTATION, COOPERATION AND
THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF
CROSS-BORDER REGULATED ENTITIES**

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 United States Securities and Exchange Commission (SEC) and the Hong Kong Securities and Futures Commission (SFC) have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States of America and Hong Kong. The SEC and SFC 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 compliance culture of regulated entities that operate on a cross-border basis; fostering the integrity of and maintaining confidence in capital and financial markets; and reducing systemic risk.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means:
 - a) the United States Securities and Exchange Commission (SEC); or
 - b) the Hong Kong Securities and Futures Commission (SFC).
2. "Books and Records" means documents, books, and records of, and other information about, a Cross-Border Regulated Entity.
3. (a) "Cross-Border Regulated Entity" means a: (i) Regulated Entity of the SEC and the SFC; (ii) Regulated Entity of one Authority that has been exempted from registration by the other Authority; (iii) Regulated Entity of one Authority that controls, is controlled by, or is under common control with a Regulated Entity of the other Authority; (iv) Regulated Entity of one Authority that is physically located in the territory of the other Authority; (v) Regulated Entity of one Authority that manages, advises, operates or sponsors an investment vehicle regulated or authorized by the other Authority; or (vi) Regulated Entity's Service Provider that is physically located in the territory of an Authority.

(b) Cross-Border Regulated Entities may include, but are not limited to, exchanges and other trading venues; brokers or dealers; investment advisers; investment fund managers; investment funds or investment companies; clearing agencies or houses; and credit rating agencies. For purposes of clarity, the list of Cross-Border Regulated Entities set forth above is meant to be illustrative of the types of Regulated Entities providing cross-border

services in the United States and Hong Kong as of the effective date of this MOU, and does not limit the Authorities' ability to cooperate under this MOU with regard to the supervision of other Regulated Entities providing cross-border services that may come under their respective jurisdictions in the future.¹

4. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Cross-Border Regulated Entity.
5. "Governmental Entity" means:
 - a) The U.S. Department of the Treasury, the U.S. Board of Governors of the Federal Reserve System, or the Financial Stability Oversight Council, if the Requesting Authority is the SEC; and
 - b) The Hong Kong Monetary Authority and the Hong Kong Financial Services and the Treasury Bureau, if the Requesting Authority is the SFC.
6. "Local Authority" means the Authority in whose territory a Cross-Border Regulated Entity is physically located.
7. "On-Site Visit" means any routine, sweep, review, examination or for-cause regulatory visit to or inspection of the Books and Records and premises of a Cross-Border Regulated Entity for the purposes of ongoing supervision and oversight.
8. "Person" means a natural person, unincorporated association, partnership, trust, investment company, corporation or other legal entity.
9. "Regulated Entity" means a Person that is authorized, designated, qualified, registered, or otherwise regulated and supervised or overseen by an Authority.
10. "Requested Authority" means the Authority to which a request is made under this MOU.
11. "Requesting Authority" means the Authority making a request under this MOU.
12. "Service Provider" means a Person to which a Regulated Entity's functions that are regulated by an Authority have been outsourced.

¹ This MOU does not cover cross-border consultation or cooperation with regard to companies that register offerings or file periodic reports with the SEC, but are not subject to SEC registration and examination based on their business activities.

ARTICLE TWO: GENERAL PROVISIONS

13. 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 a manner consistent with, and permitted by, the laws and requirements that govern the Authorities. This MOU provides for consultation, cooperation and exchange of information related to the supervision and oversight of Cross-Border Regulated Entities between the Authorities. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal consultations, supplemented, when necessary, by more in-depth cooperation, including through mutual assistance in obtaining written information from Cross-Border Regulated Entities. The provisions of this MOU are intended to support such informal communication as well as to facilitate the written exchange of non-public information where necessary in accordance with applicable laws.
14. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. 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.
15. 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 either Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Four), or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.
16. This MOU complements, but does not alter the terms and conditions of the following existing arrangements concerning cooperation in securities matters:
 - a) The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of information, to which the Authorities are signatories;
 - b) The Memorandum of Understanding Concerning Consultation and Cooperation in the Administration and Enforcement of Securities Laws, signed on 5 October 1995; and
 - c) Declaration on Cooperation and Supervision of Cross-Border Investment Management Activity, signed on 5 October 1995.
17. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Cross-Border Regulated Entities. Following consultation, cooperation may be denied:

- a) Where the cooperation would require an Authority to act in a manner that would violate domestic law;
 - b) Where a request for assistance is not made in accordance with the terms of this MOU; or
 - c) On the grounds of the public interest.
18. To facilitate cooperation under this MOU, the Authorities hereby designate the following contact persons:
- a) For the SEC, Director of the Office of International Affairs;
 - b) For SFC,
 - i. Senior Director, International Affairs;
 - ii. Senior Director, Intermediaries Supervision;
 - iii. Senior Director, Licensing; and
 - iv. Director, Investment Products.

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

19. **Consultation.** The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult regularly at the staff level regarding: (i) general supervisory issues, including regulatory, oversight or other related developments; (ii) issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities; and (iii) any other areas of mutual supervisory interest. Such consultation may include participation in supervisory colleges as resources allow.
20. 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 an Authority for authorization, designation, qualification, registration or exemption therefrom by a Regulated Entity that is authorized, designated, qualified, registered or otherwise regulated by the other Authority;
 - b) The ongoing supervision and oversight of a Cross-Border Regulated Entity; and

- c) Regulatory or supervisory actions or approvals taken in relation to a Cross-Border Regulated Entity by an Authority that may impact the operations of the entity in the territory of the other Authority.
21. **Advance Notification.** Each Authority will, where practicable and reasonable, seek to inform the other Authority in advance of, or as soon as possible thereafter of:
- a) Pending regulatory changes that may have a significant impact on the operations or activities of a Cross-Border Regulated Entity;
 - b) Any material event of which the Authority is aware that could adversely and directly impact a Cross-Border Regulated Entity. Such events include known changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity;
 - c) Enforcement or regulatory actions or sanctions, including but not limited to the revocation, suspension or modification of relevant authorization, designation, qualification, registration or exemption therefrom, concerning or related to Cross-Border Regulated Entity; and
 - d) Significant changes in the Authority's rules and regulations or the laws and/or regulations applicable to the Authority that may negatively impact its ability to provide assistance under this MOU.
22. **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 this MOU.
23. **Exchange of Information.** To supplement informal consultations, upon written request, each Authority intends to provide the Requesting Authority with assistance in obtaining information relevant to ensuring compliance with the laws and regulations and carrying out other supervisory functions of the Requesting Authority that is not otherwise available to the Requesting Authority. The information covered by this paragraph includes, but is not limited to, the following, where appropriate and not otherwise available:
- 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 control procedures, and corporate information;

- 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; and
- c) Regulatory reports prepared by an Authority, including for example: examination reports, and findings or information drawn from such reports.

ARTICLE FOUR: ON-SITE VISITS

24. Where necessary in order to fulfill its supervision and oversight responsibilities and to ensure compliance with its laws and regulations, an Authority seeking to examine a Cross-Border Regulated Entity located in the other Authority's territory will consult and work collaboratively with the Local Authority in conducting an On-Site Visit. The Authorities will comply with the following procedures before conducting an On-Site Visit:

- a) The Authority seeking to conduct an On-Site visit will provide advance notice to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it, and will consult with the Local Authority on the intended timeframe and scope of the On-Site Visit.
- b) The Local Authority will endeavor to share any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity with the Requesting Authority.
- c) The Authorities intend to assist each other regarding On-Site Visits, including cooperation and consultation in reviewing, interpreting and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management and other personnel of a Cross-Border Regulated Entity.
- d) The Authorities will consult and, where desired, conduct concurrent visits with a view to possibly leveraging resources in the oversight of a Cross-Border Regulated Entity.

ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE

25. To the extent possible, a request for information pursuant to Article Three will be made in writing, and addressed to the relevant contact persons identified in Paragraph 18. A request for information generally should specify the following:

- a) The information sought by the Requesting Authority and an indication of any sensitivity about the request;

- b) A concise description of the matter which is the subject of the request and the purpose for which the information is sought; and
 - c) The desired time period for reply and, where appropriate, the urgency thereof.
26. In an Emergency Situation, 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 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 SIX: PERMISSIBLE USES OF INFORMATION

27. Subject to Paragraph 28 the Requesting Authority may use non-public information obtained under this MOU solely for the purpose of performing its supervisory functions, including but not limited to assessing compliance by a Cross-Border Regulated Entity with the laws and regulations it administers.
28. This MOU is intended to complement, but does not alter the terms and conditions of the existing arrangements between the Authorities concerning cooperation in securities matters, as set forth in Paragraph 16. The Authorities recognize that information is not to be gathered under the auspices of this MOU for enforcement purposes. In cases where an Authority seeks to use information obtained under this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, prior consent must be sought from the other Authority. Such use will be subject to the terms and conditions of the enforcement cooperation arrangements referred to in subsections (a) or (b) of Paragraph 16.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

29. Each Authority will keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU and, except as provided in Paragraphs 31 and 32 not disclose non-public information received under this MOU to any third party for any purpose unless it has obtained the prior written consent of the Requested Authority.
30. 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 not obtained from the Requested Authority, the Requesting and Requested 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.

31. In certain circumstances, as required by law, it may become necessary for the Requesting Authority to share non-public information obtained under this MOU with Governmental Entities. In these circumstances and to the extent permitted by law:
 - a) The Requesting Authority will notify the Requested Authority about what non-public information it intends to share, which Governmental Entity will receive the information and the Governmental Entity's intended use of the information.
 - b) Prior to passing on the information, the Requested Authority will receive adequate assurances concerning the Governmental Entity's use and confidential treatment of the non-public information, including, as necessary, assurances that:
 - i. the Governmental Entity has confirmed that it performs a function similar to a function of the Requested Authority or regulates, supervises or investigates banking, insurance or other financial services;
 - ii. the Governmental Entity will maintain a level of confidentiality in respect of the non-public 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);
 - iii. the non-public information will be used for supervisory purposes in a manner consistent with Articles Six and Seven; and
 - iv. the non-public information will not be shared by the Governmental Entity with other parties without getting the prior written consent of the Requested Authority.
32. To the extent possible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority shall assist in preserving the confidentiality of the information by taking all appropriate measures including asserting all appropriate legal exemptions or privileges with respect to such information as may be available and, where possible, will consult with the Requested Authority in any actions or proceedings which seek to safeguard the confidentiality of the information.
33. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to 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.

ARTICLE EIGHT: AMENDMENTS

34. The Authorities will periodically review the functioning and effectiveness of cooperation arrangements with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of both Authorities.

ARTICLE NINE: EXECUTION OF MOU

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

ARTICLE TEN: TERMINATION

36. 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 this MOU. If an Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under this MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. 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.

Signed:

Mary Jo White
Chair
United States Securities and Exchange Commission

Ashley Alder
Chief Executive Officer
Hong Kong Securities and Futures
Commission

Date:

Date: 18 JANUARY 2017