

**MEMORANDUM  
OF  
UNDERSTANDING**

**HONG KONG**

**Securities and Futures  
Commission of Hong Kong**

**UNITED KINGDOM**

**Bank of England**

## MEMORANDUM OF UNDERSTANDING

---

### Recitals

- A. The Hong Kong Securities and Futures Commission (SFC) was established by section 3 of the repealed Securities and Futures Commission Ordinance and continues in existence under section 3 of the Securities and Futures Ordinance (SFO)). The SFC's regulatory objectives set out in section 4 of the SFO include maintaining and promoting the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry and reducing systemic risks in the securities and futures industry. In furtherance of its regulatory objectives, section 5 of the SFO sets out the functions of the SFC which include to supervise, monitor and regulate the activities carried on by recognized exchange controllers, recognized exchange companies and recognized clearing houses, and the activities carried on by institutions which are authorised under the SFO to provide Automated Trading Services (ATS).
- B. The Bank of England (Bank) has an objective to protect and enhance the stability of the UK financial system. The Bank has particular responsibilities to supervise certain market infrastructure (recognised payment systems, securities settlement systems and central counterparties) and act as the UK's resolution authority. A statutory Financial Policy Committee has been established as a sub-committee of the Court of Directors of the Bank to act as a macroprudential body, charged with contributing to the Bank's financial stability objective.
- C. The Hong Kong Exchanges and Clearing Limited (HKEx) is the holding company of the group that includes two recognized exchange companies and four recognized clearing houses under the SFO. It was deemed recognized as an exchange controller pursuant to Part 1 of Schedule 10 to the SFO. As a recognized exchange controller, it has a duty under section 63(1) of the SFO to ensure that risks associated with its business and operations are managed prudently. Pursuant to section 63(2) of the SFO, in discharging this statutory duty, it has to act in the interest of the public, having particular regard to the interest of the investing public; and ensure that the interest of the public prevails where this conflicts with its own interest.
- On 6 December 2012, HKEx acquired the London Metal Exchange (LME) which has become a key operating wholly owned subsidiary of HKEx.
- D. LME Clear Limited (LME Clear) is a wholly owned subsidiary of HKEx established to act as the CCP in relation to transactions effected on LME. LME Clear is a recognised clearing house under UK legislation.
- E. The SFC and the Bank wish to enter into this MoU to provide a formal basis for co-operation, including for the exchange of information and enforcement-related assistance. The SFC and the Bank believe such co-operation will enable them to perform their functions more effectively.

- F. The SFC and Bank of England have a particular interest in co-operation as regards financial market infrastructure supervision and, specifically, HKEx and LME Clear. The Bank and the SFC acknowledge that a Cross-Border Regulated Entity which is principally regulated by one Authority may offer its services in, or be materially important to, the other jurisdiction. The SFC and the Bank express their willingness to cooperate with each other to facilitate the discharge of their respective regulatory responsibilities in the supervision and oversight of such Cross Border Regulated Entities. The SFC and the Bank believe such cooperation will also enable them to perform their regulatory functions with regards to HKEx and LME Clear more effectively.

## Definitions

In this MoU unless the context requires otherwise:

- i. **“Applicable Laws and Requirements”** means any law, regulation or requirement to which an Authority is subject or which it administers, and where the context permits, includes:
  - (a) relevant European Economic Area (*EEA*) legislation (whether or not transposed into UK domestic law); and
  - (b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority.
- ii. **“Authority”** means either the Bank or the SFC, and **“Authorities”** means the Bank and the SFC.
- iii. **“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.
- iv. **“College Agreement”** means the documentation underpinning each EMIR College as set out in EMIR article 18(5) and detailed in the ESMA Guidelines and Recommendations regarding written agreements between members of CCP colleges.
- v. **“College RTS”** means Commission delegated Regulation 876/2013 supplementing EMIR with regard to regulatory technical standards on colleges for central counterparties.
- vi. **“Covered Person”** means any Cross-Border Regulated Entity, HKEx and LME Clear.
- vii. **“Cross-Border Regulated Entity”** means a Person that is authorized, designated, recognised, qualified, registered or otherwise regulated as a CCP and supervised or overseen by an Authority that offers its services in the UK and Hong Kong.
- viii. **“Emergency Situation”** means the occurrence of an event that could materially impair the financial or operational condition of a Covered Person.
- ix. **“EMIR”** means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.
- x. **“EMIR College”** means the body constituted according to article 18 of EMIR (as above) for the purposes defined in EMIR.
- xi. **“ESCB”** means the European System of Central Banks.

- xii. “*ESMA*” means the European Securities and Markets Authority.
- xiii. “*ESMA Guidelines and Recommendations*” means guidelines issued to competent authorities using the power afforded to ESMA (Article 16 ESMA Regulation 1095/2010) to which the competent authority must report to ESMA whether they comply or explain their non-compliance.
- xiv. “*Local Authority*” means, in respect of an On-Site Visit, the Authority in whose jurisdiction the On-Site Visit takes place.
- xv. “*MoU*” means Memorandum of Understanding.
- xvi. “*On-Site Visit*” means any regulatory visit to the premises of a Covered Person by an Authority for the purposes of that Authority’s ongoing supervision and oversight in accordance with paragraphs 14 and 15.
- xvii. “*Onward Receiving Authority*” means an authority listed on Appendix 1.
- xviii. “*Person*” means a natural or legal person, unincorporated association, partnership, trust, company or corporation.
- xix. “*Providing Authority*” means the Authority that has provided information under this MoU.
- xx. “*Receiving Authority*” means the Authority that has received information under this MoU.
- xxi. “*Requested Authority*” means the Authority that receives a request pursuant to this MoU.
- xxii. “*Requesting Authority*” means an Authority making a request under this MoU.
- xxiii. “*UK*” means the United Kingdom of Great Britain and Northern Ireland.

### **Purpose and Principles**

1. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information, in connection with the supervision and oversight of Covered Persons and enforcement-related assistance to facilitate timely and effective supervision and to identify regulatory risks or issues that may have significant impact on any Covered Person, in a manner consistent with, and permitted by, Applicable Laws and Requirements.
2. This MoU does not create any legally binding obligations, confer any rights, modify or supersede Applicable Laws and Requirements or fetter the discretion of the Authorities.
3. The Authorities acknowledge that they may provide information under this MoU only if permitted or not prevented under Applicable Laws and Requirements.
4. The Authorities acknowledge that this MoU complements and does not alter the terms and conditions of the arrangements between the Authorities under the Memorandum of Understanding signed on 28 October 1992 between The Treasury and the Securities & Investments Board of the UK and the SFC as supplemented by the letter dated 3 August 2012 from the UK Financial Services Authority (predecessor of the UK Financial Conduct Authority), the Bank (on its own behalf and that of the UK Prudential Regulation Authority) signed and confirmed by the SFC on 30 August 2012. The

Authorities will make clear in requests for assistance which MoU the request is made under.

### **Requests for Assistance**

5. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, in a manner consistent with, and permitted by Applicable Laws and Requirements and its overall policy.
6. Requests for the provision of information or other assistance will be made in writing to the nominated contact points in Appendix 2 (including by email). In an Emergency Situation, requests for information may be made in any form, including orally, provided that such communication is confirmed in writing as promptly as possible following such notification.
7. To facilitate assistance, the Requesting Authority should specify in each request the information or other assistance requested, the purpose for which the information or assistance is sought and the desired time for receipt of the information or assistance. The Requested Authority may request further clarification prior to responding to the request.

### **Assessing Requests**

8. Each request for information or assistance will be assessed, on a case-by-case basis, by the Requested Authority to determine whether the information or assistance 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 Requested Authority will consider whether part of the information or assistance may be provided or there may be other assistance that can be given and, wherever possible, will endeavour to provide this.

### **Scope of Cooperation**

9. To the extent permitted by Applicable Laws and Requirements, each Authority will use reasonable efforts as far as practicable to proactively provide the other Authority, on a timely basis, with information about a Covered Person concerning:
  - (a) the Covered Person's serious financial and operational difficulties (including any participant's default in payment, where applicable), that could have a significant impact on the operations, functions or activities of the Covered Person;
  - (b) a breach by the Covered Person of its Applicable Laws and Requirements;
  - (c) any other matter that that could have a significant adverse impact on the operations, functions or activities of the Covered Person; or
  - (d) any Emergency Situation that may affect the operations, functions or activities of the Covered Person.
10. Each Authority intends, to the extent practicable and as appropriate in the particular circumstances, to endeavour 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, functions, activities or reputation of a Covered Person;
  - (b) significant proposed changes to the ownership, risk management or service offerings of a Covered Person, whichever is applicable;
  - (c) enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant authorization, designation, recognition, qualification or registration or exemption therefrom (as appropriate), concerning or related to a Covered Person;
  - (d) Material changes in the Authorities' respective professional secrecy legislation; and
  - (e) Material regulatory changes relating to resolution measures that may have a significant impact on the operations, functions or activities of a Covered Person.
11. The determination of what constitutes "significant impact", "significant proposed changes" or "material change" shall be left to the reasonable discretion of the Authority making the notification.
12. Requests for additional information should be made using the process outlined in paragraphs 6-8. The Authorities may mutually agree to amend this MoU to provide each other with additional information on a regular basis.
13. In an Emergency Situation, the Authorities will endeavour to communicate and cooperate with one another to the extent appropriate under Applicable Laws and Requirements, including on the status of efforts to address the Emergency Situation in question. To the extent possible, the Authorities will co-operate in seeking potential solutions, especially in instances where the Covered Person involved is systemically important in the jurisdiction of an Authority.
14. An Authority seeking to conduct an On-Site Visit in the jurisdiction of the other Authority will notify, consult and work collaboratively with the Local Authority, where such an examination is permitted and necessary in order to fulfil its supervision and oversight responsibilities. In this regard, the Authorities should discuss and reach an understanding on the terms regarding such an On-Site Visit, taking into account each other's jurisdiction, legal framework and statutory obligations in particular in determining the respective roles and responsibilities of the Authorities.
15. The Authorities agree to act in accordance with the following procedure before conducting an On-Site Visit :
- (a) the Authority seeking to conduct an On-Site Visit will provide advance notice of at least 14 days to the Local Authority of its intent to conduct an On-Site Visit, by itself or by a third party commissioned by it in accordance with Applicable Laws and Requirements, and will consult with the Local Authority with a view to reaching an understanding on the intended timeframe and scope of the On-Site Visit;
  - (b) 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;
  - (c) the Authorities will consult on and, where desired and permitted by Applicable Laws and Requirements, may agree to conduct an On-Site Visit jointly; and

- (d) the Authority seeking to conduct an On-Site Visit will share the findings of the on-site examination in a timely manner with the Local Authority.
16. The Authorities intend to meet periodically and at least annually to update each other on their respective functions, regulatory supervision and oversight programmes and to discuss issues of common interest relating to the supervision and oversight of Covered Persons including: contingency planning and crisis management, the adequacy of existing co-operative arrangements, any systemic risk concerns, 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 judged appropriate by the Authorities.

### **Enforcement**

17. The Authorities agree to provide each other with the fullest enforcement assistance. The Authorities recognise that there may be circumstances where they should coordinate their enforcement efforts and resources to effectively protect the integrity of the market, promote high standards of regulatory behaviour and deter future misconduct.
18. Appendix 3 sets out in detail the procedures for handling requests concerning enforcement-related matters. For the avoidance of doubt, paragraphs 23 to 26 do not apply to information obtained pursuant to enforcement-related requests which cannot be disclosed to any third party unless with the express consent of the Requested Authority. The parties acknowledge that certain requests for assistance made in the context of criminal investigations or proceedings may better be made as formal requests for mutual legal assistance in criminal matters.

### **Confidentiality and treatment of information received**

19. Information received under this MoU may be used only in connection with: the Authorities' regulatory functions which may include monitoring, assessing and enforcing compliance by Covered Persons with the Applicable Laws and Requirements of the Requesting Authority; and identifying whether or not any Covered Person constitutes a risk to the orderly functioning of the financial markets or the financial stability of its jurisdiction. The Requesting Authority will comply with any restrictions on the use of information that are agreed when the information is provided.
20. Subject to paragraph 18 above, an Authority that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted under its Applicable Laws and Requirements.
21. If there is a legally enforceable demand for information supplied under this MoU, the Receiving Authority will, to the extent permitted by its Applicable Laws and Requirements, notify the Providing Authority of the demand. The Authorities will then discuss and determine the appropriate course of action.
22. The Receiving Authority will consult with the Providing Authority if it proposes to pass on non-public information to another person and obtain the prior written consent of the Providing Authority (and such consent may be subject to restrictions or conditions with which the Receiving Authority shall comply) before passing on the

information.

23. Notwithstanding paragraph 22, the Receiving Authority may share non-public information without the prior consent of the Providing Authority, with an Onward Receiving Authority where this is necessary for the Receiving Authority or the Onward Receiving Authority to perform its regulatory functions, provided that:
  - (i) Each time information is shared, the Receiving Authority notifies the Providing Authority about what non-public information it has shared as soon as possible after the event;
  - (ii) The relevant Onward Receiving Authority is required to maintain a level of confidentiality in respect of the non-public information that is at least equivalent to that which the Receiving Authority is subject to (including, where relevant, restrictions or conditions imposed on it by the Providing Authority); and
  - (iii) The relevant Onward Receiving Authority undertakes to use the information only for the purposes of performing its regulatory functions and not to further disclose the information to any third party without the prior consent of the Providing Authority.
24. The Onward Receiving Authorities listed in Appendix 1 may be updated by agreement of both parties.
25. Articles 83 and 84 of EMIR imposes an obligation of professional secrecy on the Bank and requires it to share information with EU regulators without delay for the purposes of carrying out their duties. Consequently, paragraphs 21 and 22 do not apply where the Bank is required to share information with other EU competent authorities, the ESCB and ESMA under EMIR. In particular, paragraph 22 does not apply where the Bank is obliged to share information received from the SFC:
  - (i) with members of a Covered Person's EMIR College, when it shares information under Articles 17, 19, 21 and 49 of EMIR, the College RTS, or College Agreement; and
  - (ii) with ESMA, EMIR College members, members of the ESCB and other authorities responsible for supervising a defaulting clearing member, in emergency situations under Article 24 or on a clearing member default under Articles 48.3 of EMIR.
26. In accordance with Articles 83 and 84 of EMIR, all the information exchanged between the EU competent authorities, the ESRB and ESMA shall be considered confidential, except where the SFC states at the time of communication that such information may be disclosed. The EU competent authorities, ESMA and the ESCB shall only use the information for the purposes envisaged in EMIR and in accordance with the founding regulations of ESMA and the ESCB.
27. The Authorities intend that the sharing or disclosure of non-public information will not constitute a waiver of privilege or confidentiality of such information.

#### **Contact Points**

28. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MOU should be directed. This is detailed in



Appendix 2 and each Authority may amend its list by written notice to the other Authority.

### **Commencement**

29. This MoU will take effect when both Authorities have signed this document. It may be amended by agreement in writing.

### **Publication and review of MoU**

30. The parties agree to this MoU being made publicly available.
31. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters, where they arise, that hinder its operation.

### **Termination of MoU**

32. This MOU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority.
33. A notice of termination given under paragraph 33 does not affect the execution of any request for assistance that was made under this MoU before such notice was given.
34. In the event of termination of this MoU, information obtained under this MoU will continue to be treated in a manner prescribed under paragraphs 19-27.

Dated this 29 day of February 2016.

---

NAME: **David Bailey**  
Title: Director  
For the Bank of England

---

NAME: **Keith Lui**  
Title: Executive Director  
For the Securities and Futures  
Commission

## Appendix 1

### Onward Receiving Authorities for Information Sharing

UK –

- a. Prudential Regulation Authority;
- b. Financial Conduct Authority;
- c. Any of the EU authorities identified in Article 18(2) of EMIR, namely:
  - i. ESMA;
  - ii. the CCP's competent authority;
  - iii. the competent authorities responsible for the supervision of the clearing members of the CCP that are established in the three Member States with the largest contributions to the default fund of the CCP referred to in Article 42 on an aggregate basis over a one-year period;
  - iv. the competent authorities responsible for the supervision of trading venues served by the CCP;
  - v. the competent authorities supervising CCPs with which interoperability arrangements have been established;
  - vi. the competent authorities supervising central securities depositories to which the CCP is linked;
  - vii. the relevant members of the ESCB responsible for the oversight of the CCP and the relevant members of the ESCB responsible for the oversight of the CCPs with which interoperability arrangements have been established;
  - viii. the central banks of issue of the most relevant European Union currencies of the financial instruments cleared.

Hong Kong –

- a. Hong Kong Monetary Authority

## **Appendix 2**

### **Contact Points**

#### **Bank of England**

Yannick Cox  
Head of Division – Supervision  
Financial Market Infrastructure Directorate  
Bank of England  
20 Moorgate  
London EC2R 6DA

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

Rico Leung  
Senior Director, Supervision of Markets Division  
Securities and Futures Commission  
35/F, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

## Appendix 3

### Procedure for Requests Concerning Enforcement Matters

#### Details to be contained in requests for assistance

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following details will be contained in the request:
  - (a) a description of the conduct or suspected conduct which gives rise to the request;
  - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
  - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority;
  - (d) the relevance of the requested assistance to the specified rule or law; and
  - (e) whether it is desired that, to the extent permitted by the laws applying to the Requested Authority, any persons from the country of the Requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

#### Grounds for denial of request

2. If a request for assistance, as described in this MoU, relates to actual or possible enforcement action, the following matters may be taken into account by the Requested Authority in determining whether to fulfil the request in whole or in part:
  - whether the request conforms with this MoU;
  - whether the request involves the administration of any Applicable Laws and Requirements which have no close parallel in the jurisdiction of the Requested Authority
  - where the cooperation would require an Authority to act in a manner that would violate its domestic law;
  - whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
  - whether it would be otherwise contrary to the public interest of the Requested Authority's jurisdiction to give the assistance sought;
  - any other matters specified by the Applicable Laws and Requirements of the Requested Authority's jurisdiction;
  - the reason for the request;
  - whether complying with the request may otherwise be prejudicial to the performance of its functions by the Requested Authority; and

- whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the Requested Authority has already been appropriately dealt with in relation to the alleged breach, in respect of the subject matter of the request, unless the Requesting Authority can demonstrate that the relief or sanctions sought in any proceedings initiated by the Requesting Authority would not be of the same nature or duplicative of any relief or sanctions obtained in the jurisdiction of the Requested Authority.

### **Requests to Sit in**

3. If, following a request from the Requesting Authority, the Requested Authority conducts an interview of any person, the Requested Authority may permit a representative of the Requesting Authority to attend such an interview and to ask questions subject to the Applicable Laws and Requirements of the Requested Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the Requested Authority.

### **Joint Investigations**

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.
5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and will liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.
6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to the SFC for a joint investigation should be made to the Head of Enforcement Division of the SFC. Suggestions to the Bank should be made to the Head of the enforcement division of the Bank.