

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE SECURITIES AND FUTURES COMMISSION

AND

THE MONETARY AUTHORITY OF HONG KONG

1. INTRODUCTION

This Memorandum of Understanding sets out the mutually understood framework between the Securities and Futures Commission and the Monetary Authority of Hong Kong for the exchange of relevant information and cooperation to facilitate the discharge of their respective regulatory responsibilities or statutory functions in relation to the supervision or oversight of financial market infrastructures in Hong Kong and maintaining the financial and/or monetary stability of Hong Kong in that connection.

2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

“**Authority**” means either the SFC or the MA, and “**Authorities**” shall mean both the SFC and the MA;

“**BO**” means the Banking Ordinance (Chapter 155 of the Laws of Hong Kong);

“**CPMI**” means the Committee on Payments and Market Infrastructures of the Bank for International Settlements¹;

“**designated clearing and settlement system**” has the meaning given to such term in section 2 of the PSSVFO;

¹ Previously known as the Committee on Payment and Settlement Systems (the renaming became effective as of 1 September 2014).

“**EFO**” means the Exchange Fund Ordinance (Chapter 66 of the Laws of Hong Kong);

“**FIRO**” means the Financial Institutions (Resolution) Ordinance (Chapter 628 of the Laws of Hong Kong), and where the context permits, includes references to applicable rules or other subsidiary legislation made thereunder, in each case as amended or re-enacted from time to time;

“**FMI**s” or “**financial market infrastructures**”, in relation to the SFC, means the financial market infrastructures as listed in Part 1 of Appendix I, and in relation to the MA, means the financial market infrastructures as listed in Part 2 of Appendix I. A reference in this MoU to an FMI that is a designated clearing and settlement system, includes a settlement institution and/or system operator (as defined in the PSSVFO) in relation to such FMI;

“**IOSCO**” means the International Organization of Securities Commissions;

“**MA**” means the Monetary Authority appointed under section 5A(1) of the EFO;

“**MoU**” means this Memorandum of Understanding and includes the appendices;

“**PFMI**” means the Principles for financial market infrastructures published in April 2012 by the CPMI and the IOSCO, and where the context permits, includes guidance thereon published by CPMI and IOSCO;

“**PSSVFO**” means the Payment Systems and Stored Value Facilities Ordinance (Chapter 584 of the Laws of Hong Kong), and where the context permits, includes references to applicable rules or other subsidiary legislation made thereunder, in each case as amended or re-enacted from time to time;

“**recognized clearing house**” means a company recognized as a clearing house under section 37(1) of the SFO;

“**Relevant Laws**” means the SFO, the BO, the FIRO, the PSSVFO and any other law or regulation administered by or applicable to the SFC or the MA that is relevant to this MoU;

“**SFC**” means the Securities and Futures Commission referred to in section 3(1) of the SFO; and

“**SFO**” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong), and where the context permits, includes references to applicable rules or other subsidiary legislation made thereunder, in each case as amended or re-enacted from time to time.

3. REGULATORY FUNCTIONS OF EACH AUTHORITY

This MoU is executed between the SFC and the MA in their respective capacity as supervisor or overseer of FMIs under their respective purview. The legal basis for the involvement of each Authority for the purposes of this MoU is set out below.

SFC

- (a) The SFC was established by section 3 of the repealed Securities and Futures Commission Ordinance and continues in existence under section 3 of the 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 industry² and reducing systemic risks in the securities and futures industry. In furtherance of its regulatory objectives, section 5(1)(b)(i) of the SFO sets out the functions of the SFC which include to supervise, monitor and regulate the activities carried on by recognized clearing houses.

- (b) Pursuant to section 378(3)(e)(ii) of the SFO, the SFC may disclose information, which has come to its knowledge in the course of the performance of any of its functions, to the MA if the SFC is of the opinion that it is desirable or expedient to do so in the interest of the investing public or in the public interest or the disclosure will enable or assist the MA to perform his functions and it is not contrary to the interest of the investing public or to the public interest to disclose such information.

² The term "securities and futures industry" is defined in section 1 of Part 1 of Schedule 1 to the SFO and includes recognized clearing houses.

MA

- (c) The effective functioning of the FMIs in Hong Kong within the MA's purview is essential to the financial and/or monetary stability of Hong Kong. The policy objectives of the MA in overseeing such FMIs are primarily to promote the general safety and efficiency of the FMIs and to limit systemic risk.

- (d) Section 9(1) of the PSSVFO provides that it is a function of the MA under the PSSVFO to monitor compliance with the obligations imposed under the PSSVFO in relation to designated clearing and settlement systems and to promote the general safety and efficiency of such designated clearing and settlement systems. Section 9(2)(c) of the PSSVFO provides for the MA's function to, whenever appropriate, co-operate with and assist recognized financial services supervisory authorities of Hong Kong in maintaining and promoting safety and efficiency in the operations of designated clearing and settlement systems. Pursuant to section 50(4)(a) of the PSSVFO, the MA may disclose information which has come to his knowledge in the performance of any function under the PSSVFO to the SFC if the MA is of the opinion that such disclosure will assist the SFC in exercising its function and the disclosure is not contrary to the public interest.

- (e) The HKTR (as defined in Part 2 of Appendix I) is a trade repository established by the MA pursuant to the EFO, and the HKTR is subject to the

oversight of the MA as a matter of policy³. The SFO imposes a reporting obligation on prescribed persons⁴ to report OTC derivative transactions to which section 101B(2) of the SFO applies to the MA in accordance with the reporting rules⁵, and such transaction information is currently reported to the HKTR. The MA may disclose information which has come to his knowledge in the performance of his functions under the SFO to the SFC pursuant to the applicable disclosure gateways under the Relevant Laws.

4. GENERAL PRINCIPLES

The Authorities recognize the following general principles with respect to this MoU, and this MoU shall be construed according to such principles:

- (a) This MoU sets forth a statement of the intent of the Authorities, in their respective capacity as supervisor or overseer of FMIs under their respective purview, to cooperate closely on matters of mutual interest concerning the oversight of the FMIs in Hong Kong to facilitate the discharge of their respective regulatory responsibilities or functions under the Relevant Laws in relation to the supervision or oversight of FMIs and maintaining the financial and/or monetary stability of Hong Kong in that connection. The Authorities recognize the importance of close communication generally and during times of market stress or crisis to enable them to act and respond in a timely manner having regard to their respective regulatory responsibilities

³ See the MA's policy statement "Oversight of Financial Market Infrastructures by the Hong Kong Monetary Authority" and the MA's guideline on "Oversight Framework for The Hong Kong Trade Repository".

⁴ As defined in section 101A of the SFO.

⁵ As defined in section 101A of the SFO.

or functions under the Relevant Laws as supervisor or overseer of FMIs under their respective purview.

- (b) For the purposes of this MoU, the FMIs that are subject to the supervision and oversight of the SFC are set out in Part 1 of Appendix I, and the FMIs that are subject to the oversight of the MA are set out in Part 2 of Appendix I. Each Authority may amend the list of FMIs set out in Appendix I that are within its purview by written notice to the other Authority.
- (c) In cooperation between the Authorities under this MoU, subject to compliance with the Relevant Laws, the SFC and the MA will take into account the applicable requirements under the PFMI, in particular Responsibility E, which emphasises the importance of cooperation among relevant authorities as appropriate in promoting the safety and efficiency of FMIs.
- (d) This MoU does not create any legally enforceable rights nor impose any legally binding obligations on either Authority. This MoU does not modify or supersede, and operates subject to, the Relevant Laws. This MoU does not detract from the regulatory responsibilities or statutory functions of the Authorities.
- (e) This MoU replaces the Memorandum of Understanding signed between the Authorities dated 4 November 2004 that set out the scope and arrangements of the consultation between them in relation to the oversight regime

implemented under the Clearing and Settlement Systems Ordinance⁶ to certain recognized clearing houses referred to in that Memorandum of Understanding. Apart from the aforesaid, this MoU complements and does not alter the terms and conditions of any arrangements under any other memorandum of understanding or similar arrangements made between or applicable to the Authorities.

5. **COOPERATION AND COMMUNICATION ARRANGEMENT**

I. Consultative Arrangements

- (a) The recognized clearing houses set out in Part 1 of Appendix I are participants in a designated clearing and settlement system set out in Part 2 of Appendix I. The provisions of the PSSVFO, where applicable, and the operating rules of such designated clearing and settlement system thus apply to each such recognized clearing house as a participant in such designated clearing and settlement system. A designated clearing and settlement system set out in Part 2 of Appendix I may become a participant in a recognized clearing house set out in Part 1 of Appendix I. The provisions of the SFO, where applicable, and the rules of such recognized clearing house thus apply to such designated clearing and settlement system as a participant in such recognized clearing house. With a view to avoiding any incompatibility between the obligations of the recognized clearing houses under the SFO and their obligations as participants in a designated clearing and settlement system under the

⁶ The Clearing and Settlement Systems Ordinance, as amended by the Clearing and Settlement Systems (Amendment) Ordinance 2015 published in the Gazette on 13 November 2015, was renamed as the PSSVFO.

PSSVFO and the operating rules of such designated clearing and settlement system, or any incompatibility between the obligations of the designated clearing and settlement systems under the PSSVFO and their obligations as participants in a recognized clearing house under the SFO and the rules of such recognized clearing house, the Authorities intend to consult each other as follows:

- (i) the SFC intends to consult the MA, where appropriate, prior to requesting a recognized clearing house to make or amend its rules, or approving any rules or amendments to rules proposed by a recognized clearing house that the SFC considers (A) may have implications on the recognized clearing house's obligations as a participant in a designated clearing and settlement system set out in Part 2 of Appendix I, (B) may have significant impact on a designated clearing and settlement system set out in Part 2 of Appendix I, or (C) may have significant impact on the MA's oversight of designated clearing and settlement systems set out in Part 2 of Appendix I; or
- (ii) the MA intends to consult the SFC, where appropriate, prior to directing that the operating rules of a designated clearing and settlement system be amended so as to bring them into compliance with the PSSVFO, or approving any changes to the operating rules of a designated clearing and settlement system that the MA considers (A) may have implications on the

designated clearing and settlement system's obligations as a participant in a recognized clearing house set out in Part 1 of Appendix I, (B) may have significant impact on a recognized clearing house set out in Part 1 of Appendix I, or (C) may have significant impact on the SFC's supervision and oversight of recognized clearing houses set out in Part 1 of Appendix I.

For the avoidance of doubt, a reference to a designated clearing and settlement system in this paragraph 5(a) includes, where appropriate, a settlement institution and/or system operator (as defined in the PSSVFO) of such designated clearing and settlement system.

- (b) The consultation referred to paragraph 5(a) above will be in writing and where appropriate, will include the issues on which an Authority particularly wishes to seek the other Authority's views.

II. Communication Generally and during a Period of Stress

- (c) In addition to the existing or any future channels at the senior management level for general or crisis-management-specific cooperation and information sharing between the Authorities on issues of mutual interest with respect to their supervision or oversight of FMIs falling within their respective purview or that may have systemic or cross-sector implications in that regard, the Authorities intend to foster closer communication at staff level.

(d) The Authorities intend to provide to each other at staff level, where appropriate and practicable, relevant information concerning any of the FMIs within their purview considered likely to be of assistance to the other Authority's discharge of its regulatory responsibilities or functions under the Relevant Laws with respect to supervision or oversight of FMIs, in particular maintaining the financial and/or monetary stability of Hong Kong in that regard under the following circumstances:

- (i) during a period of market stress or crisis that could have an adverse impact on the operations, functions or activities of an FMI within its purview or could affect the operations, functions or activities of an FMI within the other Authority's purview. Such events include but are not limited to a default of a recognized clearing house's participant which may cause major liquidity stress or a credit loss to the clearing house; or
- (ii) in the event of an FMI activating its recovery plan; or
- (iii) in the event resolution of an FMI has been initiated under the FIRO.

(e) For the avoidance of doubt, cooperation between the Authorities pursuant to this MoU in the event of an FMI activating its recovery plan or where resolution of an FMI has been initiated as referred to in paragraph 5(d) above only relates to the Authorities' respective capacity as supervisor or overseer of FMIs under their respective purview; cooperation between the Authorities pursuant to this MoU does not extend to arrangements concerning the process of resolution of an FMI pursuant to the FIRO, or

communication between the Authorities in their respective capacity as resolution authority under the FIRO.

III. Principal Contact Points

- (f) The Authorities' respective designated principal contact persons for the purposes of cooperation between the Authorities under this MoU (including that under paragraphs 5(a) and (d) above) are set out in Appendix II. Each Authority may amend its designated contact persons as set out in Appendix II by written notice to the other Authority.

6. CONFIDENTIALITY AND USE OF INFORMATION

Any information provided by an Authority to the other Authority under this MoU should be used by the receiving Authority only for the purposes of performing its regulatory responsibilities or functions under the Relevant Laws and, except as otherwise required by law, should not be disclosed to any third party without the prior written consent of the Authority that provided the information. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

7. AMENDMENTS

Each Authority may at any time request to make a specific amendment, whether by supplement or otherwise, to this MoU or may consult with the other Authority regarding the need of any amendment or supplement to this MoU. An amendment to this MoU takes effect only by written agreement of the Authorities. For the

avoidance of doubt, changes to Appendix I and Appendix II can be made pursuant to the procedure in paragraphs 4(b) and 5(f) above respectively.

8. ENTRY INTO EFFECT

This MoU will become effective on the date by which it has been signed by both the SFC and the MA.

Dated 3rd day of September 2019.

Signed for and on behalf of the
Securities and Futures Commission

Signed by the Monetary Authority

Mr. Ashley Alder
Chief Executive Officer

Mr. Norman T.L. Chan
Monetary Authority

Appendix I

Financial Market Infrastructures subject to the supervision or oversight of the respective Authorities that are within the scope of this MoU

Part 1

FMI's subject to the supervision and oversight of the SFC:

Recognized clearing houses

1. Hong Kong Securities Clearing Company Limited
2. HKFE Clearing Corporation Limited
3. SEHK Options Clearing House Limited
4. OTC Clearing Hong Kong Limited

Part 2

FMI's subject to the oversight of the MA:

Designated clearing and settlement systems

1. Hong Kong dollar Clearing House Automated Transfer System (CHATS)
2. US dollar CHATS
3. Euro CHATS
4. Renminbi CHATS
5. Central Moneymarkets Unit

Others

6. Over-the-Counter Derivatives Trade Repository established and operated by the MA (HKTR)

As of 3 September 2019

Appendix II

Principal contact persons

SFC

Ryan Ko
Poh Hiang Tan
Colin Lau

MA

Daniel Leong
Stephen Pang
Yuki Chan