Memorandum of Understanding

European Securities and Markets Authority

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

證監會

Securities and Futures Commission

Memorandum of Understanding on Cooperation Arrangements and Exchanges of Information related to information on derivatives contracts held in trade repositories

[illegible]

and Markets Authority ("ESMA") have reached this Memorandum of Understanding ("MoU") regarding arrangements for the exchange of information related to the information on

[illegible]

This MoU is an arrangement between SFC and ESMA. It is not legally binding and it does not affect any other arrangements that SFC may enter into/have in place with any other national competent authorities of any Member States of the European Union. For the [redacted] under Article 75 EMIR.

Article 1

Definitions

For the purpose of this MoU:

a) "Authority" means a signatory to this MoU or any successor thereto.

[redacted]

April 2004 on markets in financial instruments[3], and in Directive No 2003/6/EC of 28 January 2003 on insider dealing and market manipulation[4].

i) "Person" includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered TR.

[redacted]

regulatory authority in Hong Kong that may require information on OTC derivatives

[redacted]

5) This MoU does not limit an Authority to taking solely those measures described herein in fulfilment of its responsibilities and mandates.

6) The Authorities should, within the framework of this MoU, provide each another with the fullest cooperation permissible under their Laws and Regulations in relation to the exchange of information related to information on derivative contracts held in Covered TRs. Following consultation, request for information may be refused by the Requested Authority:

   a) Where the exchange of information would require an Authority to act in a [redacted]

   b) Where a request for information has not been made pursuant to Article 4 of this MoU; or

   c) On the grounds of public interest for SFC or of national / European Union public interest for ESMA.

7) The Authorities hereby designate contact persons as set forth in the Appendix to facilitate communication under this MoU.

Article 3

Scope of the exchange of information

1) The Authorities recognise the importance of exchanging information related to derivative contracts held in Covered TRs.

2) The Requested Authority will provide to the Requesting Authority the requested information on derivative contracts held in the Covered TRs to enable the [redacted]

a) any known material event that could adversely impact the availability of information on derivative contracts held in a Covered TR;

b) changes and pending changes to the relevant obligations and requirements to which Covered TRs are subject and to any relevant Laws and Regulations applicable to Covered TRs when these changes could [redacted] information on derivative contracts held in Covered TRs; and

c) changes and pending changes to the relevant Laws and Regulations as well as any known event that could impact the fulfilment of the conditions under this MoU (including where the measures in place to protect professional secrecy cease to exist);

d) [redacted] which this MoU is entered into; and

e) changes in the responsibilities and mandates of the Authorities that can affect their right to access information held in TRs.

The determination of what constitutes “material event” or “material effect” will be left to the reasonable discretion of the notifying Authority.

Article 4

Execution of requests for information

f) the desired time period for reply by the Requested Authority and, where appropriate, the urgency thereof.

2) In Crisis Situations, the Authorities will endeavour to notify each other of the Crisis Situation and communicate information between them as deemed appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Crisis Situation. During Crisis Situations, requests for information may be made to the contact person identified in the Appendix in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

Article 5

Permissible uses of information

The Requesting Authority will use non-public information received in accordance with this MoU solely for the purpose of fulfilling its responsibilities and mandates as defined in the Laws and Regulations of the Requesting Authority that are relevant to and within the limits of this MoU.

Article 6

Confidentiality and onward sharing of information

1) Except for disclosures under paragraphs 4 to 6 of this Article and permissible uses [redacted]

4) When, according to the Laws and Regulations of an Authority, the Requesting Authority must transmit the information obtained under this MoU to or by the order of other persons that are not signatories of this MoU, the Requesting Authority [redacted] must notify the Requested Authority of such transmission, including the details of the information transmitted. When complying with a demand for such a transmission of information, the Requesting Authority intends to assert all [redacted] be available.

5) In cases other than those referred to in paragraphs 4 and 6 of this Article, the SFC and ESMA may respectively share non-public information obtained under this [redacted]

6) Where the request for information relates to derivatives contracts entered into by a European entity supervised by a National Competent Authority or underlying instruments negotiated in markets supervised by a National Competent Authority, ESMA will transmit such information to that National Competent Authority.

7) The Authorities intend that the sharing or disclosure of non-public information, pursuant to the terms of this MoU, will not constitute a waiver of privilege or confidentiality of such information.

Article 7

Personal data

[redacted]

Article 10

Execution of the MoU

This MoU will enter into force on the date that it is signed by the Authorities.

Article 11

Termination

1) This MoU will remain operative for an unlimited period of time.

2) If an Authority wishes to no longer be a signatory to this MoU, it will provide thirty (30) calendar days prior written notice to the other Authority.

[illegible]

3) If an Authority gives such notice, the parties will consult concerning the disposition [illegible] of any pending requests. If an agreement cannot be reached through [illegible]

Appendix

Contact Persons

European Securities and Markets Authority	Securities and Futures Commission
[redacted]	[redacted]

[redacted]

[redacted]