

Memorandum of Understanding



European Securities and Markets Authority

SECURITIES AND
FUTURES COMMISSION

證券委員會

Securities and Futures Commission

Memorandum of Understanding Related to ESMA's Monitoring of the On-going Compliance with recognition conditions by CCPs established in Hong Kong

~~A group of central counterparties ("CCPs") established in Hong Kong have applied to the~~

European Securities and Markets Authority ("ESMA") for recognition ("Covered CCP"), pursuant to Article 25 of 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 ("EMIR"), the Securities and Futures Commission ("SFC") of Hong Kong and ESMA.

d) "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Covered CCP;

e) "EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of

[REDACTED]

repositories;

f) "ESCB" means the European System of Central Banks;

g) "ESMA" means the European Securities and Markets Authority;

h) "Laws and Regulations" means in relation to ESMA applicable Union legislation within ESMA's scope of action and in relation to the SFC any domestic laws and regulations relating to securities and financial markets in force in Hong Kong;

i) "Other Authority" means

i. If the Requesting Authority is the SFC, the Hong Kong Monetary Authority;

If the Requesting Authority is ESMA, any of the EU authorities identified in Articles 25(3) of EMIR, namely:

(a) the competent authority of a Member State in which the Covered CCP

k) "On-site inspection" means any regulatory visit by ESMA to the premises of a Covered CCP located in Hong Kong in accordance with Article 5 of this MoU;

l) "Person" includes a natural person, unincorporated association, partnership, trust investment company or corporation and may be a Covered CCP;

m) "Personnel" means any individual who is employed by or for a Covered CCP, or who is a director, officer, partner, member, trustee, or shareholder of a Covered CCP;

n) "Request" means a request made by a Covered CCP to the Requested Authority, or by the Requested Authority to a Covered CCP, under this MoU;

o) "Requester" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

p) "Requested Authority" means the Authority to whom a request is made under this MoU;

q) "Requesting Authority" means the Authority that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

r) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

s) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

t) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

u) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

v) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

w) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

x) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

y) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

z) "Requesting Party" means the Covered CCP that makes a request to the Requested Authority, or the Requested Authority that makes a request to a Covered CCP, under this MoU;

6. The Authorities should, within the framework of this MoU, provide each other with the fullest cooperation permissible under their Laws and Regulations in relation to ESMA's monitoring of the activity of the Covered CCPs, ESMA's monitoring that the Covered

and ESMA's monitoring of the on-going compliance with the Recognition Conditions by Covered CCPs. Following notification, cooperation may be denied:

- a) Where cooperation would require an Authority to act in a manner that would violate its Laws and Regulations; or
 - b) Where a request for assistance has not been made in accordance with the terms of this MoU; or
 - c) On the grounds of the Hong Kong or European Union public interest.
7. The Authorities represent that no domestic banking secrecy, blocking laws or regulations should prevent them from providing assistance to one another in accordance with the

- b) changes in Covered CCP internal rules, policies and procedures that could affect the way in which the Covered CCP complies with any Recognition Conditions; or

[REDACTED]

Covered CCP and including changes to the relevant obligations and requirements to which the Covered CCPs are subject that may impact the Covered CCPs' continued compliance with the Recognition Conditions.

4. *Notification.* The Authorities shall seek to inform each other as soon as practicable of:

- a) any known material event that could adversely impact a Covered CCP, including where the Covered CCP is deemed to be in breach of the conditions of any

[REDACTED]

The information covered by this paragraph includes:

- a) information that would assist the Requesting Authority in verifying that a Covered CCP complies with the relevant obligations and requirements of the Laws and Regulations of the Requesting Authority and under the Laws and Regulations of the Derivatives Authority

[REDACTED]

[REDACTED]

Covered CCP to observe a measure that ESMA has adopted to ensure

including the status of efforts to address the Emergency Situation. During Emergency Situations, 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 5

On-Site Inspections

1. ESMA does not intend to conduct any On-site inspection of the Covered CCPs as part of its monitoring of the activity of the Covered CCPs, its monitoring that the Covered CCPs continue to be subject to efficient and effective supervision on an on-going basis and its monitoring of the on-going compliance with the Recognition Conditions by Covered CCPs, since under Article 25(6) of EMIR the Commission has adopted Commission Decision 2014/754/EC determining that the legal and supervisory arrangements of Hong Kong ensure that CCPs authorised in Hong Kong comply with legally binding requirements which are equivalent to the requirements of EMIR, that those CCPs are subject to effective supervision and enforcement in Hong Kong on an on-going basis and that the legal framework of Hong Kong provides for an effective equivalent system for the recognition of CCPs under the legal regimes of third countries.

2. Given that ESMA is not responsible for Covered CCPs' compliance with the supervision and

directors and senior management of the Covered CCPs or any other relevant person.

Article 6

Permissible uses of information

1. The Requesting Authority shall use non-public information obtained under this MoU solely for the purpose of ensuring monitoring or assessing compliance by the Covered

CCP with the Law and Regulations of the Requesting Authority that are relevant to

- of the Document Authority of the document, and the information is not a secret.

written notice as provided in Article 11(2) that it no longer wishes to be a signatory to this MoU if it wishes to do so.

Article 9

Amendments

1 The Authorities intend to periodically review the functioning and effectiveness of

[REDACTED]

cooperation arrangements between the Authorities. This MoU may be amended with the written consent of both signatories.

Article 10

Execution of the MoU

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

[REDACTED]

Signatures

Date:

15 / 12 / 14

European Securities and Markets Authority

Securities and Futures Commission

Steven Maijoor
Chairman

Ashley Alder
Chief Executive Officer

Appendix

Contact Persons

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Securities and Futures Commission

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