

## **Bills Committee on Securities and Futures (Amendment) Bill 2015**

### **Responses to Follow-up Actions Arising from the Discussion at the Meeting on 7 July 2015**

This paper sets out the responses from the Administration and the Securities and Futures Commission (“SFC”) to the issues raised by Members in relation to the Securities and Futures (Amendment) Bill 2015 (“Bill”) at the meeting of 7 July 2015 and set out in the Clerk to Bills Committee’s letter of 14 July 2015.

#### Provision of supervisory assistance by the SFC to regulators outside Hong Kong

##### *Compliance with Domestic Laws of Requesting Regulator*

2. Under the Bill, the requesting regulator is required to provide a written statement to the SFC which confirms that –

- (a) it has not been and will not be able to obtain the requested information by any other reasonable means; and
- (b) without the information, it has not been and will not be able to fully ascertain whether the licensed corporation (“LC”) or its related corporation constitutes a risk to, or may affect, the financial stability of its jurisdiction; or whether the LC or its related corporation is in compliance with the securities-related legal or regulatory requirements that the requesting regulator administers.

3. Since the form of assistance to be provided will only be limited to requesting the LC or its related corporation to provide documents or records relating to a regulated activity and answer questions regarding the same, the scope is restricted and well defined. Also, under the proposed legislation, the SFC cannot provide any assistance by any other means which are more intrusive (e.g. entering the premises of any corporation to exercise this proposed power). It is therefore difficult to envisage under what circumstances a requesting regulator could circumvent legal requirements in its own jurisdiction in order to obtain information via the supervisory assistance mechanism. In any event, since the counterparts

which the SFC is dealing with will all be internationally recognised fellow securities regulators, it is reasonable to assume that they will be in compliance with their domestic law.

#### *Legal Rights and Protections for Licensed Corporations*

4. If an LC considers that it has a legitimate reason for not providing information to the SFC pursuant to a supervisory assistance request from a regulator outside Hong Kong, it may set out its response for the SFC to consider on a case-by-case basis. Possible reasons may include where the LC claims that the information attracts legal professional privilege or where the LC wishes to claim privilege against self-incrimination in relation to the answer to a question about a transaction. If the SFC considers that the reason constitutes a “reasonable excuse” pursuant to section 180(14) of the SFO, the SFC would not pursue that information further in fulfilling the request.

#### *Effectiveness of Safeguards*

5. To prevent abuse and to preserve confidentiality, the existing safeguards for providing assistance to regulators outside Hong Kong will continue to apply, including –

- (a) the SFC will consider whether the regulator outside Hong Kong performs similar functions to those of the SFC and whether it is subject to adequate secrecy provisions (under section 186(5) of the SFO);
- (b) the SFC will consider whether it is desirable or expedient that the assistance be provided and whether it is in the public interest to do so (under section 186(3) of the SFO); and
- (c) the SFC will take into account whether the regulator outside Hong Kong will be able and willing to provide reciprocal assistance within its jurisdiction in response to a comparable request for assistance from Hong Kong (under section 186(4) of the SFO).

6. Additional safeguards will also be attached to the new powers under the Bill. These safeguards include –

- (a) the SFC will require the regulator outside Hong Kong to provide a written statement confirming that it has not been and will not be able to obtain the information by any other reasonable means in order to fully ascertain the non-compliance issue or the risks of the activities to the financial stability of its jurisdiction (under new section 186(2D) in clause 24(3) of the Bill); and
- (b) the SFC will require the regulator outside Hong Kong to undertake in writing, amongst other things, that (i) it would use the information solely for ascertaining the relevant supervisory matters and it would not use the information in any proceedings unless it has sought and the SFC has agreed to provide such information under section 186(1) of the SFO (i.e., under the existing separate procedures for enforcement assistance); and (ii) it would treat the information as confidential and not disclose it to any other person for any purpose without the consent of the SFC (under new section 186(2E) in clause 24(3) of the Bill).

7. In the context of securities market supervision, international regulators can only enter into non-legally binding memoranda of understanding (“MoU”) with each other. Each such MoU sets out the agreed scope of cooperation and each party’s duties and obligations. There is no scope for the SFC to enter into legally binding MoUs as neither it nor its counterparts has treaty-making capacity.

8. In practice, if a regulator breaches its undertakings or any terms of an MoU, it will seriously damage its international reputation. In the event of breach, that regulator would lose the trust of other regulators participating in the global network of supervisory cooperation which is built on reciprocity. It would likely result in other regulators refusing to co-operate with it in future. This will be a major deterrent factor because, given the interconnections between different markets and the global presence of financial groups, information obtained from one jurisdiction may be highly relevant to and have impact on multiple jurisdictions. It is paramount for regulators to work together in overseeing the activities of globally active market participants, to identify and assess risks and to develop a coordinated response to mitigate those risks.

## Supervisory MoU

### *Mechanism and process for the SFC to enter into Supervisory MoUs with Regulators outside Hong Kong*

9. The SFC will identify and approach regulators outside Hong Kong that also regulate LCs or their related corporations with a view to entering into, or updating, supervisory MoU arrangements with them.

10. During the MoU discussion process, each regulator will propose its own terms and negotiate alternative wording where necessary. The MoU will then be scrutinized by the SFC clause-by-clause. When the text of an MoU is agreed, this would normally be considered by the SFC's Executive Committee and approval would be sought to execute the MoU. MoUs are normally executed by the Chief Executive Officer or one of the other Executive Directors of the SFC under delegated authority. They will then usually be published on the SFC's website.

11. The SFC has been working on a reference document (**Annex**) for use when the SFC engages in any supervisory MoU negotiation with regulators outside Hong Kong. This reference document aims to set out some usual terms that the SFC would generally be looking for in an MoU. This reference document has taken into account, inter alia, the following –

- (a) the Final Report on Principles Regarding Cross-Border Supervisory Cooperation issued by the International Organization of Securities Commissions (“IOSCO”) in October 2010, which includes a set of principles and a sample supervisory MoU to assist securities regulators to develop and maintain supervisory cooperation arrangements;
- (b) the relevant rules and regulations in Hong Kong, including the proposed amendments to sections 180 and 186 of the SFO in the Bill, in particular section 186(5) under which the regulators outside Hong Kong are subject to adequate secrecy provisions;
- (c) the SFC's statutory function to co-operate with and provide assistance to regulatory authorities or organizations, whether formed or established in Hong Kong or elsewhere

(under section 5(1)(h) of the SFO);

- (d) the SFC's goal to enhance supervision of LCs or their related corporations that operate and conduct similar business activities in other jurisdictions;
- (e) resource considerations if requested to provide supervisory assistance by regulators outside Hong Kong in the light of the SFC's statutory duty to make efficient use of its resources (under section 6(2)(e) of the SFO); and
- (f) similar supervisory MoUs that have been entered into by the SFC and other regulators in the past.

### *Vetting Process*

12. The regime for information exchange on tax matters and the system for international supervisory co-operation in the securities field are different in nature. Arrangements for exchange of tax information are provided for under binding bilateral international agreements that are entered into between the HKSAR Government and the governments of territories outside Hong Kong. Before these bilateral international agreements can have legal effect in Hong Kong, it is necessary for the Chief Executive in Council to declare by orders as required under the Inland Revenue Ordinance (Cap. 112) that the arrangements have been made and that it is expedient that the arrangements should have effect. These orders have to be enacted as subsidiary legislation, which are subject to negative vetting by the LegCo. In contrast, arrangements for supervisory co-operation are entered into between securities regulators (not governments) usually in the form of MoUs which are not legally binding and are expressly subject to each party's domestic law. Moreover, given the significant number of MoUs that are executed by the SFC, the operational nature of these MoUs and bearing in mind that no subsidiary legislation is involved in this process, it would not be appropriate to impose a negative vetting requirement on the process of entering into an MoU by the SFC.

13. To enhance transparency, the SFC is required under section 186(5) of the SFO to publish in the Gazette the names of the regulators outside Hong Kong with which it enters into supervisory MoUs. The SFC will usually publish the texts of signed supervisory MoUs on its website.

### *Mechanism to Facilitate Compliance and Monitoring*

14. The SFC is a statutory body and all its relevant regulatory powers are derived from the SFO. The SFC must act within its powers at all times and its decisions must be consistent with its statutory objectives and functions and reasonable as a matter of administrative law. Decisions by the SFC to enter into supervisory MoUs are subject to judicial review by the Courts.

15. In addition, the Chief Executive of the HKSAR appoints the Process Review Panel (“PRP”) which is an independent body comprising mainly non-officials to provide checks and balances to ensure that the SFC exercises its regulatory powers in a fair and consistent manner. In particular, the PRP is tasked to review and advise the SFC upon the adequacy of the SFC’s internal procedures and operational guidelines governing the actions taken and operational decisions made in the performance of the SFC’s regulatory functions, including inspection of licensed intermediaries. The PRP exercises its own discretion in determining what matters it will review after receiving, on a monthly basis, lists of completed or discontinued cases from the relevant operational divisions. Such cases would include any completed requests for supervisory information from regulators outside of Hong Kong pursuant to the new section 180(4A) in clause 22 of the Bill. In the review process, the PRP may also consider the provisions of the relevant MoUs as well as the new sections 186(2A) to (2E) in clause 24(3) of the Bill in order to assess the extent to which the SFC has complied with its procedures in exercising this power.

16. Annually, the PRP submits its reports to the Financial Secretary and publishes the reports for information by LegCo Members and the public. A copy of the PRP’s latest annual report for 2013 – 2014 can be found at [http://www.fstb.gov.hk/fsb/topical/doc/prereport13\\_e.pdf](http://www.fstb.gov.hk/fsb/topical/doc/prereport13_e.pdf).

**SFC'S REFERENCE DOCUMENT -  
FOR SUPERVISORY MOU NEGOTIATION**

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 Securities and Futures Commission in Hong Kong and [insert Regulator name] have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of Regulated Entities in the jurisdictions of both Authorities. The Authorities 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 competence and integrity of Cross-Border Regulated Entities; fostering market and financial integrity; reducing systemic risk and maintaining financial stability.

**ARTICLE ONE: DEFINITIONS**

For purposes of this MOU:

1. **"Authority"** means the Securities and Futures Commission in Hong Kong or [insert Regulator name]:
  - (a) **"Requested Authority"** means the Authority to whom a request is made under this MOU; and
  - (b) **"Requesting Authority"** means the Authority making a request under this MOU.
2. **"Cross-border On-site Visit"** means any regulatory visit by one Authority to the premises of a Cross-Border Regulated Entity located in the other Authority's jurisdiction, for the purposes of ongoing supervision and oversight.
3. **"Cross-Border Regulated Entity"** means (i) a Regulated Entity that is regulated by both Authorities; or (ii) a Regulated Entity which is regulated in the jurisdiction of one Authority that is a Related Corporation of another Regulated Entity which is regulated in the jurisdiction of the other Authority.
4. **"Emergency Situation"** means where an Authority (or the Authorities) is (are) seeking urgently to manage a circumstance where a Cross-Border Regulated Entity is or can reasonably be expected to be financially impaired or the operations of the Cross-Border Regulated Entity will or is likely to be affected adversely resulting in a significant increase in systemic risk or potential damage to financial stability and the wider financial system.
5. **"Person"** means a natural person or legal person, or an unincorporated entity or association, including partnerships, and corporations.

6. **“Regulated Entity”** means a financial market participant or other entity that is regulated by one of the Authorities.
7. **“Related Corporation”** means two or more corporations where one of them is (i) a holding company of the other; (ii) a subsidiary of the other; or (iii) a subsidiary of the holding company of the other.

## **ARTICLE TWO: GENERAL PROVISIONS**

8. 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 Hong Kong and [insert jurisdiction], in a manner consistent with, and permitted by, the respective laws and requirements that govern the Authorities in order to enhance the protection of investors and to promote the competence and integrity of Cross-Border Regulated Entities. This MOU also seeks to support high standards in Cross-Border Regulated Entities’ conduct of business, including but not limited to acting honestly, fairly, in the best interests of their clients and the integrity of the market, as well as acting with due skill, care and diligence. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc formal cooperation. The provisions of this MOU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary and regular/periodic liaison to discuss, inter alia, issues of common interest concerning particular Cross-Border Regulated Entities.
9. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws and regulations. 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.
10. 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 an Authority to communicate with or to obtain information or documents from, any Person subject to its jurisdiction that is located in the jurisdiction of the other Authority. However, an Authority should communicate with the other Authority prior to carrying out any Cross-Border On-site Visit in the jurisdiction of the other Authority.
11. [This MOU complements, but does not alter the terms and conditions of the following existing arrangements concerning cooperation in securities matters: (i) the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories, which covers information-sharing in the context of enforcement investigations; [and



any of the existing arrangements concerning cooperation in securities matters between the Authorities] [or insert specific existing MOUs between the Authorities].] <sup>explanatory note 1</sup>

12. Each Authority will, within the framework of this MOU and subject to its laws and regulations, use reasonable endeavors to provide the other Authority with the fullest cooperation permissible in relation to the supervision and oversight of Cross-Border Regulated Entities. Nevertheless, cooperation may be denied in the following circumstances:
  - (a) Where the cooperation would require an Authority to act in a manner that would violate domestic laws or regulations <sup>explanatory note 2</sup>,
  - (b) Where a request for assistance is not made in accordance with the terms of this MOU; or
  - (c) On the grounds that it would be contrary to the public interest.
13. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements under this MOU with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary.
14. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

### **ARTICLE THREE: SCOPE OF SUPERVISORY COOPERATION**

15. The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult and update regularly at the staff level regarding: (i) general supervisory issues, including with respect to regulatory, oversight or other program developments; (ii) issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities; and (iii) any other areas of mutual supervisory interest.
16. This MOU is also a statement to support the Authorities' participation in supervisory colleges for the purpose of coordinating the supervision and oversight of Cross-Border Regulated Entities. While the Authorities anticipate that cooperation with respect to Cross-Border Regulated

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<sup>1</sup> This paragraph will only be applicable when there are existing arrangements between the SFC and a regulator outside Hong Kong.

<sup>2</sup> Information sharing powers of the SFC are subject to all the statutory safeguards under the Securities and Futures Ordinance (SFO). The new safeguards attached to the new powers can be found in the proposed new sections 186(2A)-(2E) of the SFO, whereas the existing safeguards can be found in sections 186(3)-(5) of the SFO. These safeguards while not directly incorporated in the document are included by this reference and required to be observed by the signatories of the MoU.

Entities will also be achieved through such supervisory colleges, this MOU may facilitate the exchange of non-public supervisory information in the context of supervisory colleges of which both Authorities are members.

17. 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 of a Regulated Entity in one jurisdiction also to be regulated by the other Authority;
  - (b) The ongoing supervision and oversight of a Cross-Border Regulated Entity;
  - (c) Regulatory approvals or supervisory actions taken in relation to a Cross-Border Regulated Entity by one Authority that may impact the operations of the Cross-Border Regulated Entity in the other jurisdiction;
  - (d) Any updates on their respective functions, and regulatory oversight programs; or
  - (e) General supervisory developments where considered necessary.
18. **Advance Notification.** Each Authority will inform the other Authority in advance, where practicable, or as soon as possible of:
  - (a) Any known information <sup>explanatory note 3</sup> that may, in its reasonable opinion, have a material adverse impact on a Cross-Border Regulated Entity. Such information includes known material changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity; and
  - (b) The status of efforts to address any material financial or operational difficulties experienced by a Cross-Border Regulated Entity as described in subparagraph (a) above.
19. Where an Authority considers it appropriate and necessary, it may inform the other Authority on a voluntary basis in advance, where practicable, or as soon as possible thereafter of:
  - (a) Pending regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity; and

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<sup>3</sup> The SFC has existing powers under section 378(3)(g)(i) to share information in its possession with regulators outside Hong Kong, who, in the opinion of the SFC satisfies the requirements, including that it is subject to adequate secrecy provisions.

- (b) Pending enforcement or regulatory actions or sanctions including the revocation, suspension or modification of the regulatory status of a Cross-Border Regulated Entity, which may, in its reasonable opinion, have a material effect on the Cross-Border Regulated Entity.
20. **Provision of Unsolicited Information.** Where an Authority has information<sup>explanatory note 4</sup> 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 the MOU.
21. **Exchange of Information.** To supplement informal consultations, each Authority intends to provide the other Authority, upon written request and as far as their laws and regulations permit<sup>explanatory note 5</sup>, with assistance in obtaining information not otherwise available to the Requesting Authority, and if so requested, to further explain or elaborate on such information to the Requesting Authority as far as possible with a view to assisting the Requesting Authority to perform its supervisory functions (including but not limited to assessing compliance by a Cross-Border Regulated Entity with the laws and regulations it administers and identifying whether or not a Cross-Border Regulated Entity constitutes a risk to or may affect the financial stability of its jurisdiction). The information covered by this paragraph includes, without limitation:
- (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, and internal controls procedures;
  - (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;
  - (c) Information impugning the competence and integrity of a Cross-Border Regulated Entity, such as regulatory reports prepared by an Authority, including for example: examination reports, compliance review reports on investor complaints, self-reported breaches or sundry referrals from other regulators, and findings or information drawn from such reports; and
  - (d) Group-level information of Cross-Border Regulated Entities, including (without limitation) group-wide organizational charts, board and

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<sup>4</sup> Please refer to explanatory note 3 above.

<sup>5</sup> Please refer to explanatory note 2 above.

management committee minutes, senior management responsibility maps, business model analysis and risk profiles.

22. **Regular/ Periodic Liaison.** To facilitate each Authority in performing its respective supervisory functions, the Authorities intend to liaise with each other concerning the following matters from time to time as far as their laws and regulations permit, including, but not limited to, supervisory colleges.
- (a) Representatives of the Authorities intend to discuss with each other:
- i. Any updates on their respective functions, and regulatory oversight programs, including supervisory priorities and ‘best practices’ on a regular basis. This may also include, but is not limited to, discussions on conduct risk and control culture, risk trends, thematic and/or cross-sector issues, contingency planning/ crisis management and systemic risk concerns; and
  - ii. General supervisory developments where considered necessary.
- (b) Staff contacts from each Authority responsible for particular Cross-Border Regulated Entities (please see Appendix B which may be revised from time to time if both Authorities so agree) intend to engage in regular or periodic liaison for the purpose of discussing issues of common interest concerning these Cross-Border Regulated Entities.
23. **Training/ Learning and Development.** The Authorities agree to regularly liaise and exchange learning and development programs on topics of mutual supervisory interest and each Authority agrees to notify or make papers available to the other of its own learning and development programs which might be of relevance and interest to the officers in the other Authority.

#### **ARTICLE FOUR: CROSS-BORDER ON-SITE VISITS** explanatory note 6

24. An Authority should communicate with the other Authority prior to carrying out any Cross-border On-site Visits. Authorities should also discuss and reach understanding on the terms regarding Cross-border On-site Visits,

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<sup>6</sup> The article is necessary so as to make clear that authorities in these jurisdictions are required to consult the SFC first and follow certain procedures before they carry out any on-site visits in Hong Kong. In some jurisdictions, authorities have extra-territorial powers under their laws to conduct on-site visit outside their jurisdictions (such as in Hong Kong) when other authorities may just obtain the consent of the licensed corporation in Hong Kong (for example, a subsidiary of the parent company regulated outside Hong Kong) to conduct such a visit. Notwithstanding that these authorities are not seeking our supervisory assistance in any way and the SFC’s consent is therefore not required, by inserting the article into the MoU these jurisdictions are required to consult the SFC first and follow certain procedures before they carry out any on-site visits in Hong Kong.

taking into full account each other's jurisdiction, legal framework and statutory obligations in particular in determining the respective roles and responsibilities of the Authorities. Generally, the Authorities will act in accordance with the following procedure before conducting a Cross-border On-site Visit.

- (a) 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 and any information that was made available or is capable of being made available by that Authority.
  - (b) If so requested, the Requested Authority will explain or elaborate on the contents of public and non-public documents to the Requesting Authority with a view to assisting the Requesting Authority to perform its supervisory functions as outlined in paragraph 21 of this MOU; and assist the Requesting Authority to obtain information from a Cross-Border Regulated Entity.
  - (c) [The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any Cross-border On-site Visit.] [The Authority seeking to conduct the visit will notify the other Authority of its intent to conduct an on-site visit, by itself or by a third party commissioned by it, the intended timeframe for and the scope of the Cross-border On-site Visit. If practicable, the Authority seeking to conduct the visit will attempt to notify the other Authority [at least one week] prior to notifying the Cross-Border Regulated Entity.]  
explanatory note 7
25. The Authorities will consult, and, where desired, may conduct concurrent visits with a view to possibly leveraging resources in the oversight of the Cross-Border Regulated Entity, in which case these will be carried out under the control of the Authority in whose jurisdiction the visit takes place.
26. The local Authority will endeavor to share with the Authority conducting the Cross-border On-site Visit any relevant examination reports or compliance reviews it may have undertaken respecting the Cross-Border Regulated Entity.
27. The Authorities will communicate with each other, including meetings as appropriate during the Cross-border On-site Visit. After concluding a Cross-border On-site Visit, the Authority conducting the visit will communicate any major issues to the other Authority that may impact negatively upon the regulatory status of the Cross-Border Regulated Entity.

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<sup>7</sup> This is subject to the agreement between the SFC and a regulator outside Hong Kong.

## **ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE**

28. A request for written information pursuant to paragraphs 21 and 25(b) should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:
- (a) The information sought by the Requesting Authority, including specific questions to be asked and an indication of any sensitivity about the request.
  - (b) A concise description of the facts underlying the request and the supervisory purpose for which the information is sought, including the applicable regulations and relevant provisions behind the supervisory activity; and
  - (c) The desired time period for reply and, where appropriate, the urgency thereof.
29. In Emergency Situations, 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 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 SIX: PERMISSIBLE USES OF INFORMATION**

30. The Requesting Authority may use non-public information obtained under this MOU solely for the purposes of supervising Cross-Border Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority or perform its supervisory functions (including but not limited to assessing compliance by a Cross-Border Regulated Entity with the laws and regulations it administers and identifying whether or not a Cross-Border Regulated Entity constitutes a risk to or may affect the financial stability of its jurisdiction).
31. 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 [0]. The Authorities recognize that information is not to be gathered under the auspices of this MOU for enforcement purposes. No information received under this MOU will be used in any judicial or other proceedings.

## **ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING**

32. Each Authority will keep confidential information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU and not disclose non-public information received under this MOU to any third party for any purpose unless it has obtained the prior consent of the Requested Authority.
33. The Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU as soon as reasonably practicable, assist in preserving the confidentiality of the information by taking all appropriate measures and co-operate with the Requested Authority in any actions or proceedings which seek to safeguard the confidentiality of the information.
34. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

## **ARTICLE EIGHT: TERMINATION**

35. 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 the MOU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the 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.

Contact Persons



List of Cross-Border Regulated Entities – Regular Liaison