

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

SECURITIES AND FUTURES COMMISSION

AND THE

FINANCIAL CONDUCT AUTHORITY

1. **INTRODUCTION**

The Securities and Futures Commission of Hong Kong (“SFC”) and the United Kingdom Financial Conduct Authority (“FCA”) have reached this Memorandum of Understanding (“MOU”) to express their willingness to cooperate with each other to facilitate the discharge of their respective regulatory responsibilities in the supervision and oversight of the Hong Kong Exchanges and Clearing Limited (“HKEx”) and The London Metal Exchange (“LME”).

2. **DEFINITIONS**

For the purposes of this MOU:

“**Authority**” means the SFC or the FCA (together “**the Authorities**”):

“**Requested Authority**” means the Authority to whom a request is made under this MOU; and

“**Requesting Authority**” means the Authority making a request under this MOU.

“**Cross-Border On-Site Visit**” means any regulatory visit by one Authority to the premises of the entity located in the other Authority’s jurisdiction to support the supervision of the Local Market domiciled in the visiting Authority’s jurisdiction.

“**Emergency Situation**” (as referred to in paragraph 6(b)(iii)) means the occurrence of any event that could materially impair the financial or operational condition of HKEx or LME.

“**Integrated Areas**” mean those areas of operations, functions and activities that are shared or integrated across HKEx and LME set out in paragraph 6(a)(i).

“**Laws and Requirements**” means any law, regulation or requirement applicable in Hong Kong and/or in the United Kingdom and where the context permits includes:

- (a) relevant European legislation that has not yet been 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.

“**Local Market**” means the market operating under the relevant Authority’s jurisdiction.

3. **FUNCTIONS OF EACH AUTHORITY**

(a) Securities and Futures Commission

The SFC was established by section 3 of the repealed Securities and Futures Commission Ordinance and continues in existence under section 3 of the Securities and Futures Ordinance (“SFO”).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. HKEx is a recognized exchange controller under the SFO. Pursuant to section 378(3)(g)(i) 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 a regulator outside Hong Kong that performs any function similar to a function of the SFC and that is subject to adequate secrecy provisions, 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 recipient of the information to perform its functions and it is not contrary to the interest of the investing public or to the public interest to disclose such information.

(b) Financial Conduct Authority

The FCA regulates the financial services industry in the United Kingdom (“UK”) acting in accordance with the Financial Services and Markets Act 2000 (“FSMA”) as amended by the Financial Services Act 2012. The FCA’s strategic objective is ensuring that markets function well. The FCA’s operational objectives are consumer protection (securing an appropriate degree of protection for consumers), integrity (protecting and enhancing the integrity of the UK financial system), and competition (promoting effective competition in the interests of consumers in the markets).

4. HKEx and LME

(a) HKEx

- (i) 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.

- (ii) On 29 November 2012, the United Kingdom Financial Services Authority gave notice under section 301G(3) of the FSMA of its approval of HKEx's acquisition of control over LME. The acquisition of LME was completed on 6 December 2012. Upon completion, LME became one of the key operating subsidiaries within the HKEx group of companies.

(b) LME

LME is an investment exchange recognized under Part XVIII of FSMA as amended by the Financial Services Act 2012. LME is regulated by the FCA. LME has to satisfy the requirements in the Financial Services and Markets Act 2000 (Recognition Requirements for Exchanges and Clearing Houses (Regulations) 2001 on an on-going basis.

5. **GENERAL PRINCIPLES**

- (a) This MOU sets forth a statement of the intent of the Authorities to establish a framework for cooperation, including the effective exchange of information between them, in relation to the supervision of HKEx and LME, and for consultation about the regulatory implications arising from the integration and operations of HKEx and LME, including the potential impact of activities carried out by one entity on the other, in a manner consistent with, and permitted by, the respective Laws and Requirements that govern the Authorities. The Authorities contemplate that cooperation will be primarily achieved through ongoing, informal, and oral consultations, supplemented by more in-depth information sharing where appropriate. 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.
- (b) This MOU does not create any legally enforceable rights nor impose any legally binding obligations. This MOU does not modify or supersede any Laws and Requirements in force in, or applying to, Hong Kong or the UK.
- (c) This MOU complements and does not alter the terms and conditions of the following existing arrangements:

- (i) The IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories;
- (ii) The Memorandum of Understanding signed on 28th October 1992 between The Treasury and Securities & Investments Board of the United Kingdom and the SFC; and
- (iii) Any arrangements under other Memoranda applicable to the Authorities.

(d) The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law. However, following consultation, cooperation may be denied:

- (i) Where the cooperation would require an Authority to act in a manner that would violate the law in its jurisdiction;
- (ii) Where a request for assistance is not made in accordance with the terms of this MOU;
- (iii) Where the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
- (iv) Where it would be otherwise contrary to the public interest of the Requested Authority's jurisdiction to give the assistance sought; or
- (v) Where complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions.

- (e) In fulfilling the terms of the MOU, the Authorities:
- (i) Will periodically review the functioning and effectiveness of the cooperation arrangements between them with a view, inter alia, to ensuring that the scope of this MOU remains apt for its purpose;
 - (ii) May consult one another and revise the terms of this MOU where indicated by a review under sub-paragraph (e)(i) or in the event of a substantial change in Laws and Requirements or any other matter affecting its operation;
 - (iii) Will consult one another in the event of any uncertainty over the meaning of any terms used in this MOU; and
 - (iv) May agree on such practical measures as may be necessary to facilitate the implementation of this MOU.
- (f) To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set out in Appendix A unless otherwise agreed. Each Authority may amend its designated contact person as set out in Appendix A by written notice to the other Authority.

6. **SCOPE OF SUPERVISORY COOPERATION**

(a) Regular Meetings

The Authorities recognize the importance of close communication concerning HKEx and LME, and endeavour to discuss at staff level at a minimum every six months regarding:

- (i) Regulatory implications arising from the sharing and/or integration of the operations, functions and activities of HKEx and LME. This could include transfer/centralisation of the operations and functions to/in one jurisdiction. Areas of particular interest would include, but not be limited to, human resources, finance, legal/regulatory, audit, compliance, risk management, strategy, and information technology;
- (ii) Regulatory issues or risks relating to the provision by one entity in its jurisdiction of the other entity's products and services (for example via cross-membership or admission to trading);
- (iii) Issues of regulatory concern to either or both Authorities in respect of HKEx or LME that may have an impact on the operations, functions or activities of the other entity or its ability to meet the Laws and Requirements of its jurisdiction;
- (iv) General supervisory and business developments relevant to the supervision and regulation of HKEx and LME; and
- (v) Any other areas of mutual supervisory interest.

(b) Information Sharing

The Authorities intend to provide one another, without prior request, where practicable in advance or as soon as possible after it occurs, with any information considered likely to be of assistance to the other including, but not limited to, information concerning:

- (i) Proposed supervisory actions to be taken in relation to HKEx or LME that may significantly impact the operations, functions or activities of the entity in the other jurisdiction;
- (ii) Pending regulatory changes that may have a significant impact on the operations, functions or activities of HKEx or LME in the other jurisdiction or its ability to meet the Laws and Requirements of its jurisdiction; and
- (iii) Any material event, Emergency Situation, or development that could adversely impact on the operations, functions or activities of HKEx or LME or their ability to meet the Laws and Requirements of their respective jurisdictions.

(c) Consultation and Coordination of Regulatory Processes

To the extent permitted by and in a manner consistent with the governing Laws and Requirements in their respective jurisdictions, the Authorities intend to consult regularly regarding supervisory and regulatory developments, including harmonising the rules of HKEx or LME, in the Integrated Areas and where appropriate, to work together to coordinate their regulatory processes if a supervisory or regulatory

development in one or more of the Integrated Areas generates or is likely to generate significant:

- (i) Effects on the operations, functions or activities of the entity in the other jurisdiction;
- (ii) Changes in activities performed by the entity in the other jurisdiction;
- (iii) Changes in the financial condition of the entity in the other jurisdiction; or
- (iv) Changes in the organisation, IT structures, and risk management measures and procedures of the entity in the other jurisdiction.

(d) Coordinated Oversight

To the extent permitted by and in a manner consistent with the governing Laws and Requirements in their respective jurisdictions, the Authorities agree to consult in the interest of developing practical arrangements where appropriate to coordinate their regulatory oversight of the Integrated Areas giving due and full consideration to their respective supervisory activities.

(e) Request-based Information Sharing

To supplement the regular meetings and information sharing mentioned above, each Authority intends to provide the other Authority, upon written request, with assistance in obtaining other relevant information.

7. **CROSS-BORDER ON-SITE VISITS**

- (a) The Authorities intend to facilitate access to HKEx and LME where necessary to support the supervisory activities of the other Authority with regard to the Local Market, such as meetings with HKEx and LME staff and visits to view HKEx and LME functions and facilities.
- (b) The Authorities should discuss and reach understanding on the terms regarding Cross-Border On-Site Visits, 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.
- (c) Generally, the Authorities will act in accordance with the following procedure before conducting a Cross-Border On-Site Visit:
 - (i) 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
 - (ii) 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.

8. **REQUESTS FOR ASSISTANCE**

- (a) A request for assistance pursuant to paragraph 6(e) above should be made in writing, and addressed to the Requested Authority's relevant contact person identified in Appendix A. A request for assistance may be sent by electronic mail in order to expedite its delivery.

- (b) The Requesting Authority will specify the following in a request for assistance:
 - (i) The information sought;
 - (ii) The supervisory purpose for which the information is sought; and
 - (iii) The desired timing for receipt of the information.

- (c) In urgent situations, requests for information may be made orally provided such communication is confirmed in writing in the manner prescribed by subparagraph (b) as promptly as possible following such request.

9. **EXECUTION OF REQUESTS FOR ASSISTANCE**

- (a) Each request made under paragraph 8 above will be assessed by the Requested Authority to determine whether information can be provided under the terms of this MOU. In any case where the request cannot be accepted completely, the Requested Authority will consider whether part of the information or assistance requested may be provided or

whether there may be any other relevant assistance or information which might be provided.

10. CONFIDENTIALITY AND USE OF INFORMATION

- (a) Any information provided under this MOU should be used by the recipient only for the purposes of performing its regulatory functions and should not be disclosed to any third party without the prior consent of the Authority that provided the information (the “**Providing Authority**”). Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.
- (b) Except for disclosures in accordance with this MOU, each Authority intends to keep confidential to the extent required by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising from this MOU.
- (c) In certain circumstances, and as required by law, it may become necessary for the Authority that has received information under this MOU (the “**Receiving Authority**”) to share it with other governmental entities in its jurisdiction. In these circumstances, the Receiving Authority will:
 - (i) Notify the Providing Authority; and
 - (ii) Prior to sharing the information, obtain an undertaking or adequate assurances from the intended further recipient that it

will maintain the confidentiality of the information and will not share the information with any other party without the prior consent of the Providing Authority.

- (d) If either Authority becomes aware that information provided under this MOU may be subject to a legally enforceable demand for disclosure, it will, to the extent permitted by law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action.

11. DISCLOSURE TO OTHER DOMESTIC AUTHORITIES

- (a) Notwithstanding paragraph 10 of this MoU, the FCA, as a Requesting Authority receiving information from the SFC as the Requested Authority, may share any such information that is non-public with the Prudential Regulation Authority and/or the Bank of England (each an “**Onward UK Receiving Authority**”) where this is necessary in order for the FCA or the Onward UK Receiving Authority to perform its regulatory functions, provided that:
 - (i) The FCA notifies the SFC about what non-public information it intends to share each time this occurs;
 - (ii) The relevant Onward UK 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 FCA is subject to (including, where relevant, restrictions or conditions imposed on it by the Requested Authority); and

(iii) The relevant Onward UK 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 SFC.

(b) Notwithstanding paragraph 10 of this MoU, the SFC, as a Requesting Authority receiving information from the FCA as the Requested Authority, may share any such information that is non-public with the Hong Kong Monetary Authority (“HKMA”) where this is necessary in order for the SFC or the HKMA to perform its regulatory functions, provided that:

(i) The SFC notifies the FCA about what non-public information it intends to share each time this occurs;

(ii) The HKMA is required to maintain a level of confidentiality in respect of the non-public information that is at least equivalent to that which the SFC is subject to (including, where relevant, restrictions or conditions imposed on it by the Requested Authority); and

(iii) The HKMA 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 FCA.

12. TERMINATION

- (a) Subject to subparagraph (b), 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 discontinue the cooperation.
- (b) A notice of termination given under subparagraph (a) does not affect the execution of any request for assistance that was made under this MOU before such notice was given
- (c) In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner as prescribed by paragraph 10 above.

13. ENTRY INTO EFFECT

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

Dated 25th day of February 2014.

Securities and Futures Commission

Financial Conduct Authority



Keith Lui
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David Lawton
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APPENDIX A

LIST OF CONTACT PERSONS

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