

B.1.3 Notice of Memorandum of Understanding Concerning Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Clearing Agencies Operating as Central Counterparties in Ontario and Taiwan

**NOTICE OF
MEMORANDUM OF UNDERSTANDING
CONCERNING COOPERATION AND THE EXCHANGE OF INFORMATION
RELATED TO THE SUPERVISION OF CROSS-BORDER CLEARING AGENCIES
OPERATING AS CENTRAL COUNTERPARTIES IN ONTARIO AND TAIWAN**

April 6, 2023

The Ontario Securities Commission (**OSC**) has entered into a Memorandum of Understanding (**MOU**) with the Financial Supervisory Commission of Taiwan (**FSC**) concerning regulatory cooperation related to the supervision and oversight of clearing agencies operating as central counterparties (**CCPs**) in Ontario and Taiwan. The MOU provides a comprehensive framework for consultation, cooperation and information-sharing related to the supervision and oversight of CCPs. The MOU came into effect on March 27, 2023.

Contact Information

Questions may be referred to:

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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 Financial Supervisory Commission, Taiwan and the Ontario Securities Commission (collectively, the "**Authorities**") have reached this Memorandum of Understanding ("**MOU**") regarding cooperation and the exchange of information in the supervision and oversight of clearing agencies that operate on a cross-border basis in both Taiwan and Ontario, Canada. This MOU does not preclude information sharing or cooperation with respect to persons that are not specifically defined as covered by this MOU but that nonetheless may be subject to regulatory requirements in Taiwan or Ontario, Canada. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates with respect to clearing agencies operating as central counterparties.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "**Authority**" means:
 - a. In Taiwan, the Financial Supervisory Commission ("**FSC**");
 - b. In Canada, the Ontario Securities Commission ("**OSC**"), or any other Canadian securities regulatory authority or Canadian derivatives authority that may become a party to the MOU in the manner set out in Article Eight (individually, a "**Canadian Authority**", or collectively, the "**Canadian Authorities**").
2. "**Requesting Authority**" means an Authority making a request under this MOU.
3. "**Requested Authority**" means:
 - a. Where the Requesting Authority is the FSC, the Canadian Authority to which a request is made under this MOU; or
 - b. Where the Requesting Authority is a Canadian Authority, the FSC.
4. "**Laws and Regulations**" means:
 - a. For the OSC, the *Securities Commission Act, 2021* (Ontario) and related rules and regulations ("**SCA**") and successor legislation; the *Securities Act* (Ontario) and related rules and regulations ("**OSA**") and successor legislation; the *Commodity Futures Act* (Ontario) and related rules and regulations ("**CFA**") and successor legislation; and other relevant requirements in Canada and Ontario;
 - b. For the FSC, the Futures Trading Act, Standards Governing the Establishment of Futures Clearing Houses, Regulations Governing Futures Clearing Houses, Operating Rules of the Taiwan Futures Exchange Corporation, Taiwan Futures Exchange OTC Derivative Clearing Rules, and Taiwan Futures Exchange Corporation OTC Derivative Clearing Enforcement Rules and any laws, regulations, and regulatory requirements relating and applicable respectively to FSC in force in Taiwan.
5. "**Person**" means a natural person, unincorporated association, partnership, trust, investment company, or corporation, and may be a Central Counterparty.
6. "**Central Counterparty**" ("**CCP**") means a Person in either Ontario, Canada, or in any other Canadian jurisdiction or Taiwan that satisfies both of the following criteria:
 - a. A clearing agency operating as a CCP that is, or that has applied to be, recognized or exempted from the requirement to be recognized as a clearing agency under the Laws and Regulations in Ontario, Canada; and
 - b. A clearing agency operating as a CCP that is, or that has applied to be, recognized or exempted from the requirement to be recognized as a clearing agency under the Laws and Regulations in Taiwan.
7. "**Clearing Member**" means a member of a CCP that also serves as an intermediary through which market participants access the CCP's services and/or a member of a CCP that does not serve as an intermediary but trades and clears transactions through the CCP solely for its own account, as principal.
8. "**Books and Records**" means documents, electronic media, and books and records within the possession, custody, and control of, and other information about, a CCP or the CCP's clearing services.
9. "**Emergency Situation**" means the occurrence of an event that could materially impair the financial or operational condition of a CCP.

10. “**On-Site Visit**” means any regulatory visit as described in Article Five to the premises of a CCP for the purposes of ongoing supervision and oversight including the inspection of Books and Records.
11. “**Local Authority**” means the Authority in whose jurisdiction a CCP that is the subject of an On-Site Visit is physically located.
12. “**Visiting Authority**” means the Authority conducting an On-Site Visit.
13. “**Governmental Entity**” means:
 - a. If the Requesting Authority is the OSC:
 - (i) the Ministry of Finance – Ontario;
 - (ii) the Federal Ministry of Finance – Canada;
 - (iii) the Bank of Canada; and
 - (iv) any provincial or territorial securities or derivatives regulatory authority in Canada which, from time to time, is or becomes a party to the Memorandum of Understanding Respecting the Oversight of Clearing Agencies, Trade Repositories and Matching Service Utilities, dated December 3, 2015 as amended and supplemented from time to time;
 - b. If the Requesting Authority is the FSC, the Executive Yuan;
 - c. Such other entity, as agreed to in writing by the signatories, as may be responsible for any other Canadian Authority which may become a party to this MOU in the manner set out in Article Eight; and
14. “CPMI-PFMIs” means the Principles for Financial Market Infrastructures published by the Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (“IOSCO”), as amended from time to time.

ARTICLE TWO: GENERAL PROVISIONS

15. This MOU is a statement of intent to consult, cooperate, and exchange information in connection with the supervision and oversight of CCPs. The cooperation and information sharing arrangements under this MOU should be interpreted and implemented in a manner that is permitted by, and consistent with, the legal requirements applicable to each Authority. With respect to cooperation pursuant to this MOU, at the date this arrangement is executed, each Authority believes that no domestic secrecy or blocking laws or regulations should prevent it from providing assistance to any other Authority. The Authorities may deny a request for assistance where the request would require an Authority to act in a manner that would violate applicable legislation. The Authorities anticipate that cooperation primarily will be achieved through ongoing informal consultations, supplemented as needed by more formal cooperation, including through mutual assistance in obtaining information related to CCPs. The provisions of this MOU are intended to support both informal consultations and formal cooperation, as well as to facilitate the written exchange of non-public information in accordance with applicable laws.
16. This MOU does not create any legally binding obligations, confer any rights, or modify or supersede domestic laws, or 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.
17. This MOU is not intended to limit or condition the discretion of an Authority in any way in the discharge of its regulatory responsibilities or to prejudice the individual responsibilities or autonomy of any Authority. 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 any Authority to communicate with, conduct an On-Site Visit of (subject to the procedures described in Article Five), or obtain information or documents from any Person subject to its jurisdiction that is physically located in the jurisdiction of another Authority.
18. This MOU is intended to complement but does not alter, except where explicitly noted, the terms and conditions of the following existing arrangements:
 - a. The *IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information* (revised May 2012) (“**IOSCO MMOU**”), to which the Authorities are signatories, which covers primarily information sharing in the context of enforcement matters; and
 - b. The *Co-operation Agreement Concerning Innovative Fintech Businesses* (June 2020) between the FSC and the OSC, which provides a comprehensive framework for cooperation and referrals between their respective Innovation functions; and
 - c. any other existing arrangements concerning cooperation between the Authorities.

B.1: Notices

19. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A, which may be amended from time to time by an Authority transmitting revised contact information to the other Authorities.
20. This MOU is a bilateral arrangement between each Canadian Authority and the FSC and should not be considered a bilateral agreement between any Canadian Authority.

ARTICLE THREE: SCOPE OF SUPERVISORY CONSULTATION, COOPERATION, AND EXCHANGE OF INFORMATION**General**

21. The Authorities recognize the importance of close communication concerning their supervision of CCPs and intend to consult regularly, as appropriate, regarding:
 - a. General supervisory issues, including regulatory, oversight, or other related developments;
 - b. Issues relevant to the operations, activities, and regulation of CCPs; and
 - c. Any other areas of mutual supervisory interest.
22. The Authorities recognize, in particular, the importance of close cooperation in the event that a CCP experiences, or is threatened by, a potential financial crisis or other Emergency Situation. An Authority should provide notification to the other Authorities consistent with Paragraphs 24 and 30 below and should keep the other Authorities informed throughout the Emergency Situation.
23. 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 with the FSC or a Canadian Authority for authorization, licensure, designation, recognition, qualification, registration, or exemption therefrom, by a CCP that is authorized, licensed, designated, recognized, qualified, registered, or exempted by an Authority in the other jurisdiction;
 - b. The ongoing supervision and oversight of a CCP including, for example, compliance with applicable statutory and regulatory requirements in either jurisdiction or with international standards, including the CPMI-PFMIs; and
 - c. Regulatory or supervisory actions or approvals taken in relation to a CCP by the FSC or a Canadian Authority that may impact the operations of the entity in the jurisdiction of the other Authority.

Event-Triggered Notification

24. As appropriate in the particular circumstances, the FSC or the relevant Canadian Authority will endeavor to inform, respectively, the relevant Canadian Authority (or Authorities) or the FSC promptly, and where practicable in advance, of:
 - a. Pending regulatory and/or legislative changes that may have a significant impact on the operations, activities, or reputation of a CCP, including those that may affect the rules or procedures of a CCP;
 - b. Any material event of which the Authority is aware that could adversely impact the financial or operational stability of a CCP including such events as a default or potential default of a Clearing Member; market or settlement bank difficulties that might adversely impact the CCP; failure by a CCP to satisfy any of its requirements for continued registration, authorization, licensure, designation, qualification or recognition or exemption therefrom, where that failure could have a material adverse effect in the other jurisdiction; and any known adverse material change in the ownership, operating environment, operations, financial resources, management, or systems and controls of a CCP, including such as material cyberattack, breach in security or material system failure;
 - c. The status of efforts to address any material financial or operating difficulties experienced by a CCP as described in Subparagraph b; and
 - d. Enforcement actions or sanctions or significant regulatory actions, including the revocation, suspension, or modification of relevant authorization, licensure, designation, recognition, qualification, registration, or exemption therefrom, concerning a CCP.
25. The determination of what constitutes “significant impact”, “material event”, “adversely impact”, “adverse material change”, “material adverse effect”, “market or settlement bank difficulties”, “adversely affect”, “material financial or operating difficulties”, or “significant regulatory actions” for purposes of Paragraph 24 shall be left to the reasonable discretion of the relevant Authority that determines to notify the other Authority.

Request-Based Information Sharing

26. To the extent appropriate to supplement informal consultations, upon written request, the Requested Authority intends to provide the Requesting Authority the fullest possible cooperation subject to the terms in this MOU in assisting the

Requesting Authority's supervision and oversight of CCPs, including assistance in obtaining and interpreting information that is relevant to ensuring compliance with the Laws and Regulations of the Requesting Authority and that is not otherwise available to the Requesting Authority. Such requests shall be made pursuant to Article Four of this MOU, and the Authorities anticipate that such requests will be made in a manner that is consistent with the goal of minimizing administrative burdens.

27. The information covered by Paragraph 26 includes:
- a. Information relevant to the financial and operational condition of a CCP including, for example, financial resources, risk management, and internal control procedures;
 - b. Relevant regulatory information and filings that a CCP is required to submit to an Authority including, for example, interim and annual financial statements and event specific notices; and
 - c. Regulatory reports prepared by an Authority, including, for example, examination reports, findings, or information contained in such reports regarding CCPs.

Periodic Meetings

28. Representatives of the Authorities intend to meet periodically, as appropriate, to update each other on their respective functions and regulatory oversight programs and to discuss issues of common interest relating to the supervision of CCPs, including: contingency planning and crisis management, systemic risk concerns, default procedures, the adequacy of existing cooperative arrangements, and the possible improvement of cooperation and coordination among the Authorities. Such meetings may be conducted by conference call or on a face-to-face basis, as appropriate.

ARTICLE FOUR: EXECUTION OF REQUESTS FOR INFORMATION

29. To the extent possible, a request for information pursuant to Article Three should be made in writing (which may be transmitted electronically), 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;
 - b. A general description of the matter that is the subject of the request;
 - c. The purpose for which the information is sought; and
 - d. The desired time period for reply and, where appropriate, the urgency thereof.

Information responsive to the request, as well as any subsequent communication among Authorities, may be transmitted electronically. Any electronic transmission should use means that are appropriately secure in light of the confidentiality of the information being transmitted.

30. In an Emergency Situation, the FSC and the relevant Canadian Authority or Authorities will endeavor to notify the other(s) as soon as possible of the Emergency Situation and communicate information as appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During an Emergency Situation, 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 FIVE: ON-SITE VISITS

31. In fulfilling its supervision and oversight responsibilities and to ensure compliance with its Laws and Regulations, the FSC may need to conduct On-Site Visits to a CCP located in Ontario, and a Canadian Authority may need to conduct On-Site Visits to a CCP located in Taiwan. Each Authority will consult and work collaboratively with the Local Authority in conducting an On-Site Visit.
32. An On-Site Visit by an Authority will be conducted in accordance with the following procedure:
- a. The Visiting Authority provides advance notice to the Local Authority of its intent to conduct an On-Site Visit and the intended timeframe for, and scope of, the On-Site Visit. Other than in exceptional circumstances, the Visiting Authority will notify the Local Authority prior to notifying the CCP.
 - b. The Local Authority will endeavor to share any relevant reports, or information contained therein, related to examinations it may have undertaken of the CCP.
 - c. The Authorities will endeavor to assist each other regarding On-Site Visits, including providing information that is available prior to the On-Site Visit; cooperating and consulting in reviewing, interpreting, and analyzing the contents of public and non-public Books and Records; and obtaining information from directors and senior management of a CCP.

- d. The Authorities will consult with each other, and the Local Authority may in its discretion accompany or assist the other Authority during the On-Site Visit, or the Authorities may conduct joint visits where appropriate.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

- 33. The Requesting Authority may use non-public information obtained under this MOU solely for the supervision and oversight of CCPs and seeking to ensure compliance with the Laws and Regulations of the Requesting Authority.
- 34. The Authorities recognize that, while this MOU is not intended to gather information for enforcement purposes, the Authorities may subsequently want to use the non-public information provided pursuant to this MOU for enforcement purposes. In cases where a Requesting Authority seeks to use non-public information obtained pursuant to this MOU for enforcement purposes, including in conducting investigations or bringing administrative, civil or criminal proceedings, treatment of the non-public information will be in accordance with the use and confidentiality provisions of the IOSCO MMOU, as amended from time to time.
- 35. Before using non-public information furnished under this MOU for any purpose other than those stated in Paragraphs 33 and 34, the Requesting Authority must first consult with and obtain the consent of the Requested Authority for the intended use. If consent is denied by the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.
- 36. The restrictions in this Article do not apply to an Authority's use of information it obtains directly from a CCP, whether during an On-Site Visit or otherwise. However, where non-public information is provided to the Requesting Authority pursuant to an information-sharing request pursuant to Article Four of this MOU, the restrictions in this MOU apply to the use of the information by that Requesting Authority.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

- 37. Except as provided in Paragraphs 38 and 39, each Authority will keep confidential, to the extent permitted by law, non-public information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.
- 38. As required or authorized by law, it may become necessary for a Requesting Authority to share non-public information obtained under this MOU with a Governmental Entity in its jurisdiction. In such circumstances and to the extent permitted by law:
 - a. The Requesting Authority intends to notify the Requested Authority; and
 - b. Prior to the Requesting Authority sharing the non-public information, the Requesting Authority will provide adequate assurances to the Requested Authority concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that:
 - (i) The Governmental Entity has confirmed that it requires the information for a purpose within the scope of its jurisdiction; and
 - (ii) The information will not be shared by the Governmental Entity with other parties unless:
 - A. The Governmental Entity is required to do so by law; or
 - B. The Requested Authority has provided prior written consent.
- 39. The requirements in Paragraph 38 do not apply where the Requesting Authority shares non-public information obtained under this MOU with a Governmental Entity that falls within the scope of Paragraph 13(a), so long as such Governmental Entity uses and treats that information in accordance with this MOU.
- 40. Except as provided in Paragraph 38 and 39, the Requesting Authority must obtain the prior written consent of the Requested Authority before disclosing non-public information received under this MOU to any non-signatory to this MOU. The Requested Authority will take into account the level of urgency of the request and respond in a timely manner. During an Emergency Situation, consent may be obtained in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification. If consent is denied by the Requested Authority, the Requesting and Requested Authorities will consult to discuss the reasons for withholding approval of such disclosure and the circumstances, if any, under which the intended disclosure by the Requesting Authority might be allowed.
- 41. To the extent possible, the Requesting Authority intends to notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. When complying with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.

42. The Authorities intend that the sharing or disclosure of non-public information, including deliberative and consultative materials, such as written analysis, opinions, or recommendations relating to non-public information that is prepared by or on behalf of an Authority, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such non-public information.

ARTICLE EIGHT: AMENDMENTS

43. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements between the FSC and the Canadian Authorities with a view, inter alia, to expanding or altering the scope or operation of this MOU should that be judged necessary. This MOU may be amended with the written consent of all of the Authorities referred to in Paragraph 1.
44. Subject to the approval of the FSC, any Canadian Authority may become a party to this MOU by executing a counterpart hereof together with the FSC and providing notice of such execution to the other Canadian Authorities that are signatories to this MOU.

ARTICLE NINE: EXECUTION OF MOU

45. Cooperation in accordance with this MOU will become effective on the date this MOU is signed by the Authorities.

ARTICLE TEN: SUCCESSORS

46. Where the relevant functions of a signatory to this MOU are transferred or assigned to another authority or authorities, the terms of this MOU shall apply to the successor authority or authorities performing those relevant functions without the need for any further amendment to this MOU or for the successor to become a signatory to the MOU and notice will be provided to the other Authorities. This will not affect the right of any Authority to terminate the MOU as provided hereunder. The Authorities shall work to ensure a seamless transition to any successor into the MOU, including the continued handling of outstanding matters.
47. Where regulatory functions have been assigned to another authority or authorities under Paragraph 46, the successor authority may use non-public information previously obtained under this MOU if the successor authority uses and treats the information in accordance with the terms of this MOU.

ARTICLE ELEVEN: TERMINATION

48. Cooperation in accordance with this MOU will continue until the expiration of 30 days after any Authority gives written notice to the other Authorities of its intention to terminate the MOU. If an Authority gives such notice, the parties will consult concerning the disposition of any pending requests. If an agreement cannot be reached through consultation, cooperation will continue with respect to all requests for assistance that were made under the MOU before the expiration of the 30-day period until all requests are fulfilled or the Requesting Authority withdraws such request(s) for assistance. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in the manner prescribed under Articles Six and Seven.
49. If any Canadian Authority terminates the MOU in accordance with this Article, the MOU shall remain effective between the FSC and the remaining Canadian Authorities (if any).

Signatures

Ontario Securities Commission

“D. Grant Vingoe”
Chief Executive Officer

Signed this 15th day of March 2023

Financial Supervisory Commission, Taiwan

“Tien-Mu Huang”
Chairperson

Signed this 27th day of March 2023

Appendix A

CONTACT PERSONS

In addition to the following contact information, the FSC and Canadian Authorities will exchange confidential emergency contact telephone information.

ONTARIO SECURITIES COMMISSION

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FINANCIAL SUPERVISORY COMMISSION, TAIWAN

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