



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE SECURITIES AND FUTURES COMMISSION**

**AND**

**THE COMPETITION COMMISSION**

## Preamble

Whereas:

- A. the Securities and Futures Commission (“**SFC**”) of 35<sup>th</sup> Floor, Cheung Kong Center, 2 Queen’s Road Central, Hong Kong is a statutory body established under the repealed Securities and Futures Commission Ordinance (Cap. 24) to regulate Hong Kong's securities and futures markets, and continued in existence pursuant to the Securities and Futures Ordinance (Cap. 571) (“**SFO**”). The SFC’s regulatory, supervisory and enforcement powers are specified in the SFO, Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“**CWUMPO**”), Companies Ordinance (Cap. 622), Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“**AMLO**”) and Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“**MPFSO**”). Relevant regulatory objectives and functions of the SFC are set out in Part A of the Annex to this Memorandum of Understanding (“**MoU**”);
- B. the Competition Commission (“**CC**”) of 19/F, South Island Place, 8 Wong Chuk Hang Road, Wong Chuk Hang, Hong Kong is an independent statutory body established under the Competition Ordinance (Cap. 619) (“**CO**”), which administers and enforces the CO across all sectors of the economy. The CC’s powers and functions are specified in the CO. Part B of the Annex to this MoU sets out relevant powers and functions of the CC; and
- C. the SFC and the CC (each referred to as a “**Party**”, and together as the “**Parties**”) consider that this MoU will allow them to more effectively meet their regulatory objectives (as applicable), exercise their respective powers and perform their respective statutory functions, and have come to the following understanding:

## Purpose and Principles

1. The purpose of this MoU is to provide a framework to promote:
  - (a) collaboration and co-operation; and
  - (b) the lawful exchange of information as more particularly described in this MoU,insofar as doing so allows the Parties to more effectively exercise their respective powers and perform their respective functions.
2. The Parties acknowledge the following principles:
  - (a) this MoU does not and is not intended to:
    - i. have any legal effect;

- ii. modify or supersede any law or regulation or any guideline or published policy issued by either Party;
  - iii. create or alter, directly or indirectly, any legal rights, obligations or liabilities, enforceable by the Parties or by any third party;
  - iv. amount to a delegation of any of the powers, duties or obligations of the Parties; or
  - v. affect any arrangements under any other MoU that either of the Parties has entered into or may enter into with any other party;
- (b) where a matter which concerns the interests of the Parties arises and is not dealt with explicitly in this MoU, the Parties agree to work together, without undue delay, to address the issue in accordance with the principle of promoting collaboration and cooperation;

and this MoU shall be construed accordingly.

3. Notwithstanding its lack of legal effect, the Parties will nevertheless endeavour to meet the terms of this MoU.

### **Cooperation and Information Sharing**

#### Scope

4. Subject to the provisos and safeguards in paragraphs 13 to 15 below, the Parties agree to:
- (a) notify, consult each other and share information and views as stated in paragraphs 7 to 9 below; and
  - (b) seek to achieve a complementary and consistent approach so far as this is compatible with their independent roles.
5. The Parties acknowledge that where the following entities are engaged in economic activity and do not fall within an express statutory exception, they are also subject to the CO:
- (a) persons carrying on a regulated activity (as defined in the SFO) or that are licensed by or registered with the SFC;
  - (b) entities authorized or approved by the SFC (including authorised automated trading services (“ATS”) providers);
  - (c) applicants for listing or issuers listed on the stock market operated by The Stock Exchange of Hong Kong Limited;

- (d) companies or trusts subject to the SFC's Codes on Takeovers and Mergers and Share Buy-backs; and
- (e) collective investment schemes authorized by the SFC.

Persons in categories (a) to (e) are collectively referred to as "**Relevant Entities**" (each a "**Relevant Entity**") in this MoU.

6. The Parties further acknowledge that recognized exchange controllers, recognized exchange companies and recognized clearing houses may engage in economic activity but certain parts of the CO are disapplied pursuant to the Competition (Disapplication of Provisions) Regulation (Cap. 619B) and section 4 of the CO ("**Specified Persons**").

#### Notification and Consultation

7. Subject to the provisos and safeguards in paragraphs 13 to 15 below, each Party will notify the other of any issue that the notifying Party believes may have a significant implication for the other Party. This may include the development and publication of policies and guidelines, for example:
  - (a) where any of the CC's proposed policies or guidelines are likely to have significant impact on the securities and futures industry (as defined in section 1 of Part 1 of Schedule 1 to the SFO) or investors; and
  - (b) where any of the SFC's proposed policies or guidance are likely to have significant impact on competition issues.
8. The notifying Party agrees to consult the other Party and have regard to any views expressed by the other Party following a notification.

#### Information Sharing

9. Subject to the provisos and safeguards in paragraphs 13 to 15 below:
  - (a) each Party intends to share information with the other Party as and when it considers appropriate and necessary regarding issues that it considers relevant to the performance of the functions or the carrying out of the objectives of the other Party (as applicable) vis-à-vis Relevant Entities or Specified Persons;
  - (b) each Party intends to share information with the other Party as and when it considers appropriate and necessary regarding issues arising in specific investigations, proceedings and processes relating to Relevant

Entities, Specified Persons or their respective officers<sup>1</sup> and employees that it considers relevant to the performance of the functions or the carrying out of the objectives of the other Party (as applicable);

- (c) each Party agrees to exchange views with the other Party as and when it considers appropriate and necessary on policy issues that the first mentioned Party considers relevant to the performance of the functions or the carrying out of the objectives of the other Party (as applicable) vis-à-vis Relevant Entities or Specified Persons;
- (d) the SFC may, as it considers appropriate and necessary, seek from the CC any views or concerns the CC may have on any competition related issues;
- (e) the CC agrees to inform the SFC of the imminent or, where not practicable to do so earlier, recent publication of: (i) decisions or block exemption orders relating to exclusions and exemptions in the CO, (ii) infringement and warning notices, (iii) media releases, and (iv) any revised regulatory requirements that the CC considers relevant to the performance of the SFC's functions or the carrying out of the SFC's objectives vis-à-vis Relevant Entities, Specified Persons or their respective officers;
- (f) the SFC agrees to inform the CC of the imminent or, where not practicable to do so earlier, recent publication of: (i) consultation papers and conclusions, (ii) press releases, (iii) circulars and (iv) any revised regulatory requirements that the SFC considers relevant to the performance of the CC's functions vis-à-vis Relevant Entities and Specified Persons or their respective officers; and
- (g) the CC agrees to send the SFC a copy of the non-confidential version of any originating notice of application made to the Competition Tribunal and any order made by the Competition Tribunal against a Relevant Entity or an officer of the Relevant Entity.

#### Consent for Relevant Entities to Inform the SFC

10. Upon the request of a Relevant Entity or (where a Relevant Entity is a corporation) an officer of the Relevant Entity whose conduct is or has been the subject of the exercise of the CC's investigative powers under Part 3 of the CO,<sup>2</sup>

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<sup>1</sup> "Officer" is defined in Schedule 1 to the SFO and section 79 of the CO, as applicable. "Officer" includes "director" (in the case of an undertaking that is a corporation) and "director" is defined in section 2 of the CO.

<sup>2</sup> For example, the power to request the production of information and documents, the power to require relevant persons to attend before the CC to answer questions and the power to enter and search premises (after obtaining a warrant from a judge of the Court of First Instance).

the CC will, subject to the provisos and safeguards in paragraphs 13 to 15 below, give consent to that Relevant Entity or officer to:

- (a) inform the SFC of the exercise of the CC's powers; and
- (b) provide the SFC with such details of the investigation as the CC considers in its sole discretion to be necessary and appropriate.

#### Requests for Information

11. A Party may make a formal request for information to the other Party, in which case the request will be accompanied by a statement:

- (a) explaining the purpose for which the information is requested and confirming that the requesting Party considers that the provision of the information will assist, or will be likely to assist, the requesting Party in performing its functions, carrying out its objectives (as applicable) or exercising its powers; and
- (b) confirming that any information received will be treated as confidential in accordance with paragraph 15 below.

12. The Party receiving such a request will:

- (a) acknowledge receipt of the request; and
- (b) consider the request with reference to the provisos and safeguards in paragraphs 13 to 15 below, and:
  - i. where it intends to respond to the request, indicate the estimated delivery date for the relevant information;
  - ii. where it does not intend to respond to the request, notify the requesting party of this intention and the reasons as soon as possible.

#### Provisos and Safeguards

##### *Conditions for Action under paragraphs 7 to 12 of this MoU*

13. A Party may decline to take any particular action under paragraphs 7 to 12 of this MoU, including the sharing of information, where in the view of that Party:

- (a) the action (including consequential disclosure of any particular information) is not permitted by law;

- (b) the performance of either Party's functions or the exercise of its powers would not be furthered or could be prejudiced by the action;<sup>3</sup>
- (c) the permission of a third party would be necessary for the Party to take the action and that permission has not been granted;
- (d) it would not be proportionate or appropriate to take the particular action because of resource and operational considerations; or
- (e) the action concerns the sharing of information of which the other Party will be or should already be aware in any event.

*Confidentiality and Use of Information*

14. A Party proposing to share information under paragraphs 7 to 12 of this MoU will assess prior to sharing the information whether they have lawful authority to do so. A Party sharing the information may attach conditions to the provision of the information that they consider appropriate. This may include, but is not limited to, conditions as to:
- (a) the confidentiality of information;
  - (b) protection of personal data, for example with reference to the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”); and
  - (c) how the information provided can be used.
15. With respect to any information provided under paragraphs 7 to 12 of this MoU, the receiving Party will:
- (a) treat any non-public information received from the providing Party as confidential and only use it in accordance with applicable laws (including the PDPO, the SFO, the CWUMPO, the Companies Ordinance, the CO, the AMLO and the MPFSO) and this MoU;
  - (b) use the information only in accordance with any conditions attached under paragraph 14;
  - (c) use the information solely for the purposes set forth in the request for assistance;
  - (d) keep the information secure in accordance with the Party's standard procedures;

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<sup>3</sup> By way of example, this would include, but is not limited to, any action which might undermine the efficacy of a leniency policy through the disclosure of information provided by a leniency applicant or related to a leniency application.

- (e) not disclose the information to any third party without the prior written consent of the providing Party unless as required by law. In the event that the requesting Party must disclose information pursuant to a legal requirement, the requesting Party will notify the providing Party as soon as reasonably practicable (if such notification is permitted by the legal requirement), and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.

### **Ongoing Communications**

- 16. Representatives of the Parties will meet every year or at intervals to be agreed between them, and hold ad hoc meetings, where necessary, to discuss:
  - (a) the implementation of this MoU;
  - (b) any issue to which the notification or consultation arrangements apply;
  - (c) any further opportunity for collaboration and cooperation;
  - (d) any proposed legislative changes and/or policy approaches and changes that may affect the performance of their respective functions or the carrying out of their respective objectives; and
  - (e) any other matter of mutual interest.
- 17. The Parties will periodically review the arrangements related to cooperation and information sharing set out in this MoU.

### **Training and Secondment**

- 18. Each Party intends to enable staff from the other Party to attend training courses that it may conduct which are relevant to the performance of their respective functions. Each Party will provide the other Party with advance notice, and circulate details of, such relevant training courses, subject to resource and other operational considerations.
- 19. To further the cooperation and collaboration between the Parties, they may agree to arrange temporary secondments of staff to one another, subject to resource and other operational considerations.

### **Designated Contacts**

- 20. Each Party will designate one or more officers of their respective organisations to coordinate and facilitate their activities in carrying out the terms of this MoU (“**Designated Contact**”). The Parties should send requests or communications relating to matters under this MoU to the other Party’s Designated Contact. The

existence of Designated Contacts does not, however, preclude direct communication between other staff of the SFC and the CC.

21. Upon the signature of this MoU, the Parties will advise each other of their Designated Contacts. The Parties may add to and/or change their respective Designated Contacts from time to time by notifying each other in writing.

#### **Effective Date, Amendment and Termination**

22. This MoU will come into effect from the date of signature by both the SFC and the CC.
23. This MoU may be amended or terminated at any time by mutual written consent of both Parties.
24. A Party may unilaterally terminate this MoU by giving a 60-day written notice to the other Party.
25. In the event of termination of this MoU, paragraphs 14 and 15 above shall continue to apply in relation to non-public information exchanged between the Parties before such termination.

#### **Language**

26. This MoU is made in Chinese and English. The English version shall prevail in the event of any inconsistencies or conflict as to the terms of this MoU.

Dated 16<sup>th</sup> April 2020

*[Signed]*

*[Signed]*

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Mr Ashley ALDER,  
Chief Executive Officer  
for and on behalf of the  
Securities and Futures Commission

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Ms Anna WU Hung-yuk,  
Chairperson  
for and on behalf of the  
Competition Commission

## ANNEX

### **Part A**

#### **Relevant objectives and functions of the SFC**

1. The regulatory objectives of the SFC include:
  - (a) to maintain and promote a fair, efficient, competitive, transparent and orderly securities and futures industry;
  - (b) to promote understanding by the public of financial services including how the securities and futures industry works;
  - (c) to provide protection for the investing public;
  - (d) to minimize crime and misconduct in the securities and futures industry<sup>4</sup>;
  - (e) to reduce systemic risks in the securities and futures industry; and
  - (f) to assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry.
  
2. The functions and powers of the SFC include:
  - (a) the licensing and registration of intermediaries<sup>5</sup> engaged in regulated activities<sup>6</sup> as defined in the SFO;
  - (b) the licensing of individual representatives of licensed corporations;
  - (c) the supervision, monitoring and regulation of licensed persons;
  - (d) the recognition, authorisation and approval of market institutions such as exchanges, clearing houses, exchange controllers, and ATS providers;
  - (e) the supervision, monitoring and regulation of the activities of market institutions referred to in paragraph (d) and registered institutions;
  - (f) enforcement matters including investigating suspected crime and misconduct in the securities and futures industry, taking disciplinary and other action in relation to intermediaries and related regulated persons, conducting proceedings before the Market Misconduct Tribunal and conducting civil and criminal proceedings before the courts;

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<sup>4</sup> “securities and futures industry” is defined in section 1 of Part 1 of Schedule 1 to the SFO as meaning “the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants”.

<sup>5</sup> “intermediaries” refers to corporations licensed by the SFC under section 116 or 117 of the SFO as ‘licensed corporations’, or authorized financial institutions registered with the SFC under section 119 of the SFO as ‘registered institutions’.

<sup>6</sup> See Schedule 5 to the SFO for the definition of each regulated activity.

- (g) the regulation, authorization and ongoing monitoring of publicly-offered investment products and their related offering documents;
- (h) the supervision and monitoring of the listing markets, supervision and monitoring of the performance of The Stock Exchange of Hong Kong Limited's listing-related functions and responsibilities and administration of the Codes on Takeovers and Mergers and Share Buy-backs;
- (i) the promotion and development of an appropriate degree of self-regulation in the securities and futures industry;
- (j) the promotion, encouragement and enforcement of the proper conduct, competence and integrity of persons carrying on activities regulated by the Commission under any of the relevant provisions in the conduct of such activities;
- (k) the maintaining and promotion of confidence in the securities and futures industry in such manner as it considers appropriate, including by the exercise of its discretion to disclose to the public any matter relating or incidental to the performance of any of its functions;
- (l) taking appropriate steps in relation to the securities and futures industry further to any requirement of the Financial Secretary for the purpose of providing assistance in maintaining the financial stability of Hong Kong;
- (m) performance of functions conferred or imposed on it by or under the SFO and any other Ordinance;
- (n) cooperation with and provision of assistance to local and overseas regulatory authorities; and
- (o) investor education.

## **Part B**

### **Relevant powers and functions of the CC**

The functions of the CC are:

- (a) to investigate conduct to investigate conduct that may contravene the competition rules and enforce the provisions of the CO;
- (b) to promote public understanding of the value of competition and how the CO promotes competition;
- (c) to promote the adoption by undertakings carrying on business in Hong Kong of appropriate internal controls and risk management systems, to ensure their compliance with the CO;
- (d) to advise the Government on competition matters in Hong Kong and outside Hong Kong;

- (e) to conduct market studies into matters affecting competition in markets in Hong Kong; and
- (f) to promote research into and the development of skills in relation to the legal, economic and policy aspects of competition law in Hong Kong.

The CC considers applications for decisions made under Section 9 and Section 24 of the CO, and the issuance of block exemption orders under Section 15 of the CO, which relate to the applicability of certain exemptions and exclusions set out in Schedule 1 of the CO.

The CC may issue warning notices or infringement notices, and commence enforcement proceedings in the Competition Tribunal to seek a pecuniary penalty and other orders against undertakings which contravene or are involved in the contravention of a competition rule and persons who are involved in the contravention of a competition rule in the CO.