

US SEC and Hong Kong SFC Sign New Memorandum of Understanding

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The US Securities and Exchange Commission (SEC) and the Hong Kong Securities and Futures Commission (SFC) have signed a [Memorandum of Understanding](#) (MOU) which came into effect on January 18, 2017. The subject of the MOU is mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in both the United States and Hong Kong. Each of the SEC and the SFC is referred to in the MOU as an "Authority."

The scope of the MOU applies to "Cross-Border Regulated Entities" which broadly refers to a person regulated by both or one of the Authorities; a person regulated by one Authority but exempted by the other; persons within the same group where each is regulated by a different Authority; a person who is a regulated entity of one Authority that is physically situated in the territory of the other Authority; and a person regulated by one Authority that manages or advises an investment vehicle that is authorized by the other Authority. Specifically, this term includes: brokers or dealers; investment advisers; investment fund managers; investment funds or investment companies; clearing agencies or houses; and credit rating agencies.

This is not the first time that the two regulators have signed an MOU, but it should be viewed as a sign of a renewed commitment to cross-border regulation and of a shared common interest in enforcement. The MOU complements but does not alter the terms and conditions of any of the existing arrangements between the SEC and the SFC concerning cooperation in securities matters.

By way of background, both the SEC and the SFC are board-level members of the International Organization of Securities Commissions (IOSCO), and the current Chairman of the Board is the Chief Executive Officer of the SFC. According to the IOSCO website, its member organizations currently regulate over 95% of the world's securities markets. IOSCO members have resolved to cooperate in developing, implementing, and promoting adherence to internationally recognized and consistent standards of regulation, oversight and enforcement, to maintain fair, efficient and transparent markets, and to seek to address systemic risks.

Cross-border activities initiated pursuant to the MOU will be coordinated by the SEC through its Office of International Affairs and by the SFC via directors of several of its operating units, and the Senior Director of International Affairs. In addition to Hong Kong, the SEC currently has memoranda of understanding in place focusing on financial markets and their participants with at least ten other foreign jurisdictions. This MOU, as with all existing MOUs, is not legally binding and simply represents a statement of intent to consult, cooperate and exchange information.

The MOU also sets out specific procedures that each Authority will comply with before conducting an on-site regulatory visit or inspection of the books and records and premises of a Cross-Border Regulated Entity for the purposes of ongoing supervision and oversight. These provisions in particular which are key also to the process of regulatory enforcement require that an Authority seeking to examine a Cross-Border Regulated Entity located in the other Authority's territory, consult and to work collaboratively with the second (i.e., local) Authority in conducting an on-site visit.

The MOU signifies that there is no doubt that going forward persons who are Cross-Border Regulated Entities can expect to experience an increased level of cooperation between the SEC and the SFC on a number of fronts.