

# **Memorandum of Understanding**

**Between the Securities Investor Protection Corporation  
and China Securities Investor Protection Fund Co., Ltd**

## MEMORANDUM OF UNDERSTANDING

THE SECURITIES INVESTOR PROTECTION CORPORATION (“SIPC”) and CHINA SECURITIES INVESTOR PROTECTION FUND CO., LTD (“SIPF”) have reached the following understanding.

### I. PARTIES

1. SIPC is a non-profit, membership corporation created under the Securities Investor Protection Act, Title 15 U.S.C. section 78aaa et seq. SIPC’s purpose is to afford certain protections against losses to customers resulting from a broker-dealer failure, thereby promoting investor confidence in the securities markets. SIPC describes itself as a nonprofit corporation created by an act of the United States Congress.

2. SIPF is a State-owned financial institution established on approval from the State Council of People’s Republic of China (“the State Council”). As a non-profit corporate body, its main duty is to raise, manage, and use a securities investor protection fund (“fund”); to monitor risks of securities companies and participate in the risk disposition of these companies; to compensate creditors as required by China’s relevant policies in case a securities company is subject to compulsory regulatory measures, including dissolution, closure, bankruptcy, administrative takeover by the China Securities Regulatory Commission (“CSRC”), and trustee operation; to organize and participate in the liquidation of the dissolved, closed or bankrupt securities companies; to manage and dispose of foreclosed assets and safeguard the fund’s rights and interests; to put forward regulatory and disposal suggestions to the CSRC in case a securities company’s operation and management have material risks that may damage investor interests and the safety of the securities markets; to join relevant authorities in establishing a rectification mechanism for the potential risks arising from operation of securities companies and so forth. SIPF is governed by the “Administrative Measures for the Securities Investor Protection Fund” and has its responsibilities approved by the State Council. SIPF describes itself as the sole legitimate body of China in the area of securities protection.

### II. OBJECTIVES

3. This Memorandum of Understanding (the “MoU”) is intended to create a communications channel between SIPC and SIPF, and to establish, foster, and

develop a partnership, through which both investor protection and confidence in capital markets will be promoted.

4. The objectives of this MoU are to facilitate and encourage good relations between SIPC and SIPF including:

- (a) the exchange of information on a regular basis regarding the nature, role and experience of each organization (“communication”);
- (b) cooperation in setting up periodic mutual visits, personnel exchange, and organization of investor protection forums (“cooperation”); and
- (c) consultation with each other in improving investor protection (“consultation”).

### **III. LEGAL IMPLICATIONS**

5. This MoU is not legally binding on the parties. Nothing in this MoU applies to override or challenge any laws or obligations to which either SIPC or SIPF are subject. In identifying these objectives, each party recognizes that the other’s compliance with these objectives is subject to those limits.

6. Compliance with this MoU is subject to related laws, regulations, and conventions in each investor program’s home jurisdiction and as permitted within the scope of each other’s authority. Compliance shall not be contrary to the public interests of either investor program’s home jurisdiction.

### **IV. COMMUNICATION**

7. Each party agrees to exchange information in the following situations as soon as possible in the following instances:

- (a) when major changes occur in law, rules, policies, or other conditions in the home jurisdiction relating to investor protection;
- (b) when the investor protection program incurs changes in organizational structure, functions, scopes of work, and staff; and
- (c) when any circumstance makes it necessary to amend this MoU.

8. Each party agrees to periodically exchange information that may aid both parties' development of investor protection. This provision is subject to compliance with any law or any convention or agreement signed with a third party by either party:

9. At least every 12 months, each party will send to the other a report of its activities for that period. Each party is free to decide the length and format of its report, but the content should include the following:

- (a) contact details and any change of contact personnel and management;
- (b) an overview of claims experience and funding position; and
- (c) its annual report.

10. Neither party shall use the information acquired from the other for any business purpose unrelated to its investor protection activities.

## V. COOPERATION

11. Each party shall communicate, cooperate, and provide assistance to the other on any matters relating to cross-border compensation or bilateral investor protection cooperation between the two jurisdictions, in order to set up cross-border cooperative mechanisms for investor protection.

12. Each party agrees to cooperate with the other as much as practicable on the following issues related to investor protection:

- (a) establishment of a periodic meeting mechanism for senior management officers to gain a better understanding of each other's investor protection schemes; and
- (b) collaborating on investor protection education programs of mutual interest.

13. If further opportunities of cooperation related to this MoU arise in the future, both parties may consider, and, upon mutual consent, make agreements for cooperative arrangements.

14. Each party agrees to consider periodic staff exchange and training mechanisms, which will help staff gain and improve their knowledge of the other jurisdiction's investor protection scheme.

## VI. CONSULTATION

15. Each party agrees to make an effort to consult with the other with respect to matters or problems that may assist in improving either's investor protection work.

## VII. CONFIDENTIALITY

16. Each party and, by extension, its staff, undertakes to keep all non-public information or non-public matters arising or coming to its attention pursuant to and in the course of performance of this MoU secret and confidential ("Confidential Information") and shall not at any time or for any reason whatsoever disclose such Confidential Information or permit such Confidential Information to be disclosed to any third party except as permitted hereunder.

17. The obligation of confidentiality referred to in Clause 16 shall not apply to any Confidential Information which shall have come into the public domain without fault on the part of the recipient or which is disclosed to, or is known to, or recorded by, the recipient prior to its entering into this MoU.

18. No disclosure of Confidential Information shall be made by the recipient to any third party without the consent of the other party except in the following instances:

- (a) to any third party having a legal right or duty to obtain or require such Confidential Information in accordance with the prevailing laws in the respective country of the recipient; or
- (b) for the purposes of any legal proceedings or arbitration involving either party to this MoU.

19. In the event of disclosure to any third party of any Confidential Information as permitted or required under this MoU, the party required to disclose the Confidential Information shall take all reasonable steps to inform the other party of the disclosure taking place.

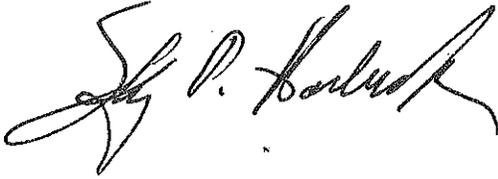
20. The provisions of confidentiality shall apply for a period of five years following termination of this MoU.

#### VIII. MISCELLANEOUS

21. This MOU will be effective from the date of its signature.
22. Both parties recognize that this MoU may need to be amended in the light of experience and/or change of circumstances and agree to review its terms from time to time.
23. This MoU may be terminated by either party at any time upon written notice to the other party.
24. Each party agrees to attempt to resolve any dispute over the meaning of any term used in this MoU by agreement.
25. All requirements of providing information, notification, and other exchange should be delivered to the following person located in following address, or delivered to the person or address as set forth in writing by the other party.
- (a) Securities Investor Protection Corporation  
Address: 805 Fifteenth Street, NW, Suite 800, Washington, DC  
20005  
Contact: Mr. Stephen P. Harbeck, President & CEO  
Tel: 202-371-8300  
Fax: 202-371-6728  
E-mail: sharbeck@SIPC.org
- (b) China Securities Investor Protection Fund Co., Ltd.  
Address: Tower B, Xincheng Place, No.5 Jinrong Street, Xicheng  
District, 100034, Beijing, P.R.China  
Contact: Mr. Rui Yuhua  
Tel: 86 10 66580866  
Fax: 86 10 66580607  
E-mail: ryh@sipf.com.cn
25. There are two copies of this MoU with each one both in English and Chinese. Both versions are equally authentic.

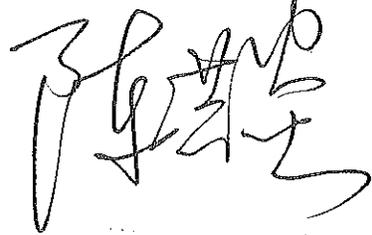
(signing date)

Signed for and on behalf of  
the Securities Investor  
Protection Corporation  
by:



Stephen P. Harbeck  
President & CEO

Signed for and on behalf of  
the China Securities Investor  
Protection Fund Co., Ltd  
by:



Chen Gongyan  
Chairman

中国证券投资者保护基金有限责任公司和美国证券投资者保护公司关于

## 证券投资者保护合作的谅解备忘录



中国证券投资者保护基金有限责任公司（以下简称“SIPF”）和美国证券投资者保护公司（以下简称“SIPC”）达成谅解如下：

## 一、简介

SIPF 是由中华人民共和国国务院（以下简称“国务院”）批复成立的国有独资金融机构，性质为非盈利性企业法人。SIPF 是中国唯一合法的证券投资者保护机构，目前按照国务院批复的职能和《证券投资者保护基金管理办法》开展工作，主要负责证券投资者保护基金的筹集、管理和使用；监测证券公司风险，参与证券公司风险处置；按照有关规定对债权人予以偿付；组织、参与被撤销、关闭或破产证券公司的清算工作；管理和处分受偿资产；对证券公司运营中存在的风险隐患会同有关部门建立纠正机制等。

SIPC 是根据美国《1970 年证券投资者保护法案》（SIPA，《美国法典》第 15 篇第 78aaa-III 节）成立的非盈利性、会员制公司。SIPC 的目的是为由于经纪商-交易商经营失败而使客户遭受损失提供一定程度的保护，并由此提升投资者对证券市场的信心。

## 二、目标

（一）本“谅解备忘录”的目的是在 SIPF 和 SIPC 之间开辟交流渠道，建立、培育和发展相互之间的合作伙伴关系，促进双方共同加强对投资者的保护，推进两国资本市场的发展。

（二）本谅解备忘录的目标是为 SIPF 和 SIPC 的以下方面提供便利并且鼓励双方建立良好的关系：

- 1、定期交换关于双方性质、作用以及经验的信息；（“沟通”）
- 2、在定期进行人员互访、交换和发起召开投资者保护论坛方面进行合作；（“合作”）

3、就双方旨在改善各自投资者保护工作选定事项或问题中相互咨询。（“咨询”）

### 三、 法律意义

（一）本谅解备忘录对双方都不存在法律上的约束，而且本谅解备忘录中的任何方面都没有违背或者逾越 SIPF 和 SIPC 各自所适用的法律或义务。在确定上述目标时，各方都承认对方在遵守这些目标时需要受到上述规定的限制。

（二）本谅解备忘录条款的执行应当符合两国各自相关政策、法律、监管规定和惯例，并在双方主管机构各自允许的范围内进行，且不得与任何一方国家的公共利益相悖。

### 四、 沟通

（一）在发生如下所示的情况时，双方应尽快通知对方：

- 1、本国证券投资者保护法律、政策、环境发生重大改变；
- 2、一方组织架构、职责、工作范围、人员发生重大改变；
- 3、发生使得必须修正或扩展本谅解备忘录的任何情况。

（二）双方应通过合理努力，在不违反任何适用的法律及任何一方与第三方签署的合约或协议的前提下，定期交换双方认为有利于双方开展投资者保护的信息。

（三）SIPF 和 SIPC 之间应该至少每隔 12 个月向对方发送一个其在该期间所从事活动的报告，双方可以自行决定其报告的长度和格式，但是报告的内容必须包括：

- 1、联系人的详细情况以及管理层的变化；
- 2、对赔偿经验和融资状况进行的总体性介绍；
- 3、年报。

（四）任何一方不得以任何形式将从对方获取的信息用于与

其投资者保护活动无关的商业用途。

## 五、 合作

(一) 如今后发生跨境索赔或任何涉及双方投资者保护跨境合作事项, 双方应及时沟通, 积极合作, 并在各自职能范围内尽力向对方提供帮助, 以建立投资者保护跨境合作机制。

(二) 双方同意就以下与投资者保护有关的事项尽最大可能进行合作:

1、建立双方高级管理人员的定期会晤机制, 以增进对相互之间业务发展的了解;

2、在投资者保护教育项目中就共同关注的内容开展合作。

(三) 如果出现与本备忘录相关的其它合作机会, 双方可在协商一致的基础上, 签订进一步的合作协议。

(四) 双方同意考虑定期互派人员或相互培训以增进对彼此市场及投资者保护情况的了解及认知。

## 六、 咨询

任何一方可向另一方就有助于改善各自投资者保护相关工作的的事项或问题进行咨询。

## 七、 保密

(一) 在本备忘录条款实施过程中, 双方将确保各自及其员工将对所有发生或引起其注意的, 或在履行本备忘录时可以接触到的非公开信息或非公开事项(“机密信息”)保密, 不在任何时候披露这些机密信息, 并不允许向任何第三方披露这些机密信息, 除非是下文条款允许。

(二) 如果机密信息并非由于接受方的过错已进入公共领域

或在签订本备忘录之前已被披露给接受方，已为接受方所知或记载时，不适用上述第七款第（一）条的保密义务。

（三）一方未经另一方许可，不应向任何第三方披露任何机密信息，除非是：

1、根据接受方所在国现行法律，任何有法定权利或义务获取这些机密消息的第三方；

2、为涉及到本备忘录一方的任何法律程序或仲裁的需要。

（四）如根据本备忘录的允许或要求，一方需向第三方披露机密信息，信息披露方应在披露之前采取合理措施将拟披露的机密信息告知另一方。

（五）保密约定将在本备忘录终止之后五年内继续有效。

## 八、 其他

（一）本谅解备忘录将自签字之日起生效。

（二）SIPF 和 SIPC 承认，本谅解备忘录需要根据经验进行调整并且同意经常性地对其条款进行审查。

（三）任何一方都可以随时通过送达书面终止通知的方式终止本备忘录。

（四）在任何情况下，如果对本谅解备忘录中任何条款的意义产生争议，都应该在 SIPF 和 SIPC 之间进行协商。

（五）所有关于提供信息、通知和其它交流的需求都应当送达下列地址的下列人员，或送达对方以书面形式告知的其他地址及/或其他人员。

中国证券投资者保护基金有限责任公司

地址：中国北京市西城区金融大街 5 号新盛大厦 B 座 邮编 100034

联系人：芮跃华副董事长

电话：86-10-66580866  
传真：86-10-66580607  
电子信箱：ryh@sipf.com.cn

美国证券投资者保护公司

地址：哥伦比亚华盛顿特区纽约市第 15 大街 805 号，邮编 20005

联系人：史蒂夫·哈伯克先生，总裁兼首席执行官

电话：202-371-8300

传真：202-371-6728

电子信箱：sharbeck@SIPC.org

本备忘录一式两份，每份均用中文和英文写成，两种文本同等作准。

签署日期：

中国证券投资者保护基金  
有限责任公司代表



陈共炎  
董事长

美国证券投资者保护公司代表



史蒂夫·哈伯克  
总裁兼首席执行官