



24 September 2012

The Securities and Futures Commission  
8/F Chater House  
8 Connaught Road Central  
Hong Kong

Email to: [electronic\\_trading@sfc.hk](mailto:electronic_trading@sfc.hk)

Dear Sirs,

**Re: Consultation paper on the regulation of electronic trading**

ICAP welcomes the opportunity to respond to the Consultation Paper on the Regulation of Electronic Trading (the "Paper") issued for comment by the Securities and Futures Commission ("SFC") on 24 July 2012.

ICAP is the world's leading voice and electronic interdealer broker and provider of post trade risk and information services. ICAP is active in the wholesale markets across various asset classes and aims to be the main infrastructure provider to the world's wholesale OTC markets, be the leading global intermediary and the leading post trade risk services provider.

**Response**

ICAP has opted to only respond to the specific Paper questions listed below and has not taken any view on the remaining questions (adopting the numbering set out in the Paper):

***Q1 – Do you agree that the proposed scope of the regulation of electronic trading is appropriate in terms of***

- (i) the types of electronic trading, which include internet trading, DMA and algorithmic trading?***
- (ii) the types of products primarily covered by these proposals namely securities and futures contracts that are listed or traded on an exchange?***
- (iii) the persons to whom the proposals apply?***

ICAP is supportive of the proposal that these proposals will apply only to (and not to OTC products):

- (a) electronic trading, internet trading, DMA and algorithmic trading;**
- (b) all exchange-traded securities, futures contracts and products as set out in paragraph 20 of the Paper; and**
- (c) licensed and registered persons under the SFO.**

**Q2 – Do you agree that an intermediary should be ultimately responsible for the orders sent to the market through its electronic trading system and for the compliance of the orders with applicable regulatory requirements?**

ICAP is supportive of the proposal however we note the SFC's comments in paragraph 28 of the Paper that an intermediary will not be responsible for a client's market misconduct or other transgression. Clients should still remain responsible and liable for their own conduct, their own orders and submission of orders.

**Q3 – Do you agree that an intermediary should effectively manage and adequately supervise the design, development, deployment and operation of the electronic trading system it uses or provides to clients for us?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

**Q4 – Do you agree that an intermediary should ensure the integrity of the electronic trading system it uses or provides to clients for use, including the system's reliability, security and capacity, and have appropriate contingency measures in place?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

ICAP also requests that the SFC provide further guidance on the standards for system reliability, capacity and evaluation including what is considered 'material service interruption' and the expected frequency of testing, monitoring etc.

**Q5 & 6 – Do you agree that an intermediary should keep, or cause to be kept, proper records on the design, development, deployment and operation of its electronic trading system? Do you agree with the proposed periods for record keeping?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

**Q7 & 8 – Do you agree that, in providing internet trading or DMA services, the proposed pre-trade controls should be put in place by an intermediary? Do you agree that in providing internet trading or DMA services, an intermediary should conduct post-trade monitoring to reasonably identify any order instructions and transactions which may be manipulative or abusive in nature?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

**Q11 – Do you agree that an intermediary should establish and implement effective policies and procedures to reasonably ensure that persons involved in the design and development of, or approved to use its algorithmic trading system and trading algorithms are suitably qualified?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

ICAP also requests that the SFC provide further guidance on the standards for 'adequately qualified staff'.

**Q12 – Do you agree that an intermediary should ensure that the algorithmic trading system and trading algorithm it uses or provides to clients for use are adequately tested to ensure that they operate as designed at all times?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

**Q13 – Do you agree that an intermediary should have effective controls to ensure the integrity of its algorithmic trading system and trading algorithms and that they operate in the interest of the integrity of the market?**

ICAP is supportive of the proposal however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

**Q14 & 15 – Do you agree that an intermediary should keep, or cause to be kept, proper records on the design, development, deployment and operation of its algorithmic trading system and trading algorithms? Do you agree with the proposed periods of record keeping and details of the records to be kept?**

ICAP is supportive of the proposals however requests that a reasonable transition period is granted to ensure compliance with any implemented proposals.

**Q16 & 17 – Do you agree that where an electronic trading system is provided by a third party service provider, an intermediary should perform appropriate due diligence to ensure that the intermediary meets the proposed requirements set out in paragraph 18 of and Schedule 7 to the Code of Conduct in its use of the system? What is your view on requiring an intermediary to make arrangements with a service provider for the purpose of meeting the proposed requirements on record keeping?**

ICAP is supportive of the proposal where this relates to service providers who are other related group companies.

However, ICAP wishes to note that an intermediary may use technology licensed from external service providers in developing its electronic trading system or use electronic trading systems provided by external third parties. The intermediary has limited or no control over the business and operations of its external service providers and ICAP notes that it may be onerous and impractical to require the intermediary to conduct appropriate due diligence on its external service providers to ensure regulatory compliance especially if the external service provider is outside of Hong Kong. ICAP also requests that the SFC provide further guidance on what 'appropriate due diligence' would entail.

Practically the measures an intermediary could be expected to take would be to deal only with reputable external service providers who have adequate and appropriate experience and rely on appropriate representations and warranties from external service providers that they are fully compliant with relevant regulations.

## **Conclusion**

ICAP again wishes to thank the SFC for the opportunity to comment on the Paper.