

22 February 2017

Securities and Futures Commission  
35/F, Cheung Kong Centre  
2 Queen's Road Central  
Hong Kong

Dear Sirs,

**Re: Consultation Paper on Proposals to Enhance Asset Management Regulation and Point-of sale Transparency**

We welcome the captioned consultation and would like to provide our responses to the question 7 for your perusal.

7. Do you have any comments on the above proposals regarding custodian and safe custody of fund assets?

Referring to the paragraph 42, "The SFC proposes to enhance the relevant requirement in the FMCC to explicitly require a Fund Manager to exercise due skill, care and diligence in the selection, appointment and ongoing monitoring of the custodian where it is responsible for the overall operation of a fund (or has de facto control of the fund's oversight and operations).", we concur that Fund Manager and Trustee should have co-fiduciary duties to exercise due skill, care and diligence in the appointment and ongoing monitoring of the custodian for an unit trust.

Referring to paragraph 40, "In order to minimise and manage conflicts of interest arising from custodial arrangements, ..... the Fund Manager should arrange for the appointment of, and entrust the fund assets to, a custodian that is functionally independent from it.". This is insufficient in light of a number of incidents that have occurred in recent years, e.g., The Tracker Fund/State Street in HK, and other issues elsewhere. Singapore, for example goes significantly further than HK on this area when describing the appointment of trustees, which then are providers of custody services. Their Code states:

## **2 The Trustee**

### **2.1 Condition for Appointment**

The trustee should be independent of the manager.

#### *Guidance*

*The trustee may not be considered independent of the manager if any person who has an interest in 20% or more of the shares issued by the trustee also has an interest in 20% or more of the shares issued by the manager or its related corporations. Such interest would include deemed interest in the shares of the trustee or manager as the case may be under section 4(4) and (5) of the SFA.*

This has also has been included in the ASEAN CIS Framework, and de facto in the Asian Regional Funds Passport (ARFP) requirements.

We trust you find our responses in order. Should you have any questions or require further information, please do not hesitate to contact the undersigned on

Yours faithfully,