

Comments on "Consultation Paper on Proposals to Enhance Asset Management Regulation and Point-of-sale Transparency" published in November 2016

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2. I support the need to study and, to certain extent, follow the new international regulatory developments. In particular, we need to explore more about (1) the relationship between the post-global financial crisis and the insufficiency of the existing international and domestic regulations, (2) the difference in the objectives between the international regulatory bodies and Hong Kong, (3) the implications of the new regulations on Hong Kong financial market, and so on. However, these issues have not been elaborated.

4. The meaning of "a proper balance" is not clear here. It seems to suggest that coping with potential financial crisis and protecting investors' interests and market integrity are not priorities. Given this, it is necessary to convince investors why their sacrifice may facilitate market development and competitiveness, and what and how much risks they have to continue to face while not being in line with the international regulatory developments.

13. It is important to enhance regulations on the fund manager where it is, in substance, responsible for the overall operation of a fund (or has de facto control of the oversight or operation of the fund), because these persons are operating the funds.

14. I would say that a fund manager managing a substantial portion of a fund should be regulated as well.

16. I agree that there is no strong reason to exclude private funds from new regulations.

17. Despite the irrelevancy, it is helpful to set out some minimal requirements for the private funds to observe and follow.

20. It becomes urgent to regulate private funds, including those domiciled in overseas jurisdictions, under various codes.

21. To safeguard the interest of the investors who rely on the fund or account manager, I agree with the proposed clarification that the FMCC applies to the business activities carried out by fund managers which would include the management of discretionary accounts.

26. It is indispensable that a collateral valuation and management policy should be pursued. Not only certain minimum valuation and margin requirements should be included.

27 and 28. The criteria for the acceptability of collateral should be set, at least as guidelines, for the Fund Manager to follow. It is not sufficient to rely solely on a Fund Manager's professional judgment and give due consideration to the specific nature of each managed fund. The types of acceptable collateral and the haircut calculation methodology should be reviewed and endorsed by an independent third party or a regulatory body.

- 29.** The cash collateral reinvestment policy is clear and seems sufficient enough.
- 30.** A Fund Manager must set specific requirements for the cash collateral reinvestment portfolio and/or liquidity pool maintained to meet cash collateral recalls, and these requirements should be assessed by an independent third party or regulatory body.
- 31.** I agree that if non-cash collateral received is re-hypothecated, there should at least be adequate disclosure made by the Fund Manager.
- 32.** Yes, disclosure of the listed items is reasonable and required.
- 33.** It should be on a quarterly rather than annual basis to reflect the updated information.
- 34.** Yes, Fund Managers should obtain access to the relevant information from the third-party agent. There is no excuse for this.
- 38.** The segregation of fund assets is of fundamental importance. I agree that fund assets must be completely segregated from the assets of the Fund Manager.
- 39.** Regarding fund assets held in an omnibus client account, the Fund Manager MUST assume the responsibility to ensure that adequate safeguards are put in place such that fund assets belonging to each client are appropriately recorded with frequent and appropriate reconciliations being performed.
- 40.** A Fund Manager is required to arrange for the appointment of, and entrust the fund assets to, a custodian that is functionally independent from it. The appointment procedure should also be made transparent to avoid conflict of interest.
- 41.** If possible, a selfcustody arrangement should be prohibited.
- 42.** The custodian should be appointed jointly by the board of directors of the fund and the Fund Manager.
- 43.** A Fund Manager needs to seek legal advice and a legal opinion to ensure that the custody agreement includes provisions about the scope of the responsibility and liability of the custodian, and monitor the custody arrangements on an ongoing basis to ensure the custodian's compliance with the custody agreement.
- 44.** It is not enough that a Fund Manager discloses the custody arrangements and its associated risks. A Fund Manager should also set up a policy to forecast, monitor and manage these risks.
- 47.** It is, however, necessary to define the effectiveness of liquidity management policies and procedures. Without this, it is not clear how to review, evaluate, and update them.

48. Yes, a Fund Manager of any type of fund should be bound by the requirements on liquidity risk management proposed.

49. Yes, a Fund should conduct regular assessments of liquidity in different scenarios, including stressed situations, to assess and monitor the liquidity risk of the funds accordingly.

50. An explanation from a Fund Manager is required, if the extent or frequency of the testing are varied depending on the nature and liquidity profile of each fund. Also, it will help if a committee is set up to review stress test results.

52. It is necessary to require a Fund Manager to use liquidity risk management tools and to adopt a policy for such use.

53 and 54. It is necessary for a Fund Manager to pursue a policy that, in the use of liquidity risk management tools, protect investors' interest first. This policy should be disclosed and contained in the fund offering documents.

58. Yes, it is a must for a Fund Manager to disclose the maximum level of leverage which it may employ on behalf of each fund it manages.

59. The SFC may propose as soon as possible some leverage calculation principles and methods based on the current industry practice, especially when the use of derivatives is involved.

62. Regarding the accurate valuation of fund assets, I support the SFC's proposal to expressly codify existing requirements and industry practices. I prefer the appointment of a qualified independent third party to pursue valuation.

63. Also, it is necessary to require a Fund Manager to appoint an independent auditor.

64. I suggest that the SFC should further supervise the implementation of a Fund Manager's risk management.

69. Yes, the SFC would need to collect relevant information from Fund Managers from time to time or on an ad hoc basis. The reporting requirements to be complied with by Fund Managers forms the base for supervising the Fund Industry.

71. I support the addition of the clarification under paragraph 3.10 (a) of the proposed FMCC that aggregation of house orders with client orders should only be made if it is in the best interests of clients.

77. I think a 6-month transition period following gazettal of the final form of the amendments to the FMCC is appropriate. The SFC should further state how the investment mandate sets out, amongst others, the types, risks and allocation of investments so as to offer the basic

protection to the clients.

88. I agree that one of the policy implications of the market survey conducted in 2015 is that the adoption of a pay-for-advice model with a complete ban on receipt of commissions by intermediaries may not seem appropriate for Hong Kong. Nonetheless, another implication is that more education, in particular the value of financial consultancy, is needed. Through education, a pay-for-advice will become more feasible.

89. At this stage, where education has not been fully launched, the proposed a two-pronged approach is appropriate, taking into consideration the various investor protection measures and requirements that already exist under the Code of Conduct and related guidance.

92. Yes, it is good to restrict representation by an intermediary as being “independent” or using any other term(s) with similar inference if monetary or non-monetary benefits from other parties including product issuers are received.

95. It is also good to enhance the disclosure requirement in relation to monetary benefits received or receivable that are not quantifiable prior to or at the point of entering into a transaction. Nonetheless, it is necessary to avoid a possible negative result, that is, further encouraging the investors to seek service of the lowest price. In the long run, we should raise the consultancy fee and lower the transaction fee, not all the fees.

96. To enhance transparency, I agree that it is necessary to require an intermediary to disclose (i) the range of such monetary benefits receivable on an annualised basis and (ii) the maximum dollar amount of such monetary benefits receivable per year.

97. The example is simple. However, as there exists a range, it is not clear the exact commission is and the reasons for the variation, such as the investment size of some investors, are.

98. In the context of trailer fees, more complicated assumptions can also be introduced as investor may invest less than a 12-month period and the net asset value (NAV) per unit in reality always change.

99. The obligation to disclose such information in respect of all applicable investment products lies with intermediaries prior to or at the point of entering into a transaction, and the disclosure is to be made on a transaction basis.

100. It is better for the SFC to list various alternatives on how monetary benefits receivable by intermediaries, largely trailer fees in the context of funds, should be disclosed.

101. It is not clear how the balance is achieved in the current proposal.

102. It is necessary to educate the investors. However, is should not be limited to the Investor

Education Centre, the SFC's wholly-owned subsidiary. Industrial participation is recommended.

105. It is possible, however, that some European remuneration rules may help strengthen our existing system which is governed by only the general principles under the existing FMCC and Code of Conduct.

106. More attention has to be paid to the unbundling of research from broker commissions charged to fund managers.