

The DTC Association

(The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)

存款公司公會 (香港有限制牌照銀行及接受存款公司公會)

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

Dear Sir,

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

Thank you for your email of 28th November, 2016 (Mon) consulting our Association members on the captioned subject.

We have received a response from one of our Association members. The content of this reply is herewith attached as appendix to the present letter.

Thank you for your kind attention,

Yours sincerely

Encl.
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1. **Do you have any comments on the proposed clarification that the FMCC applies to the business activities carried out by fund managers which would include the management of discretionary accounts?**

The proposed clarification that the FMCC applies to the business activities carried out by fund managers which would include the management of discretionary accounts, whilst we support the above proposal in principle, in our view there are certain aspects of the requirements which are not appropriate for discretionary account managers to follow. We set out two examples below.

The first example relates to the selection, appointment and continuing monitoring of custodians. It has been proposed in the revised FMCC that discretionary account managers should exercise due skill, care and diligence in the selection, appointment and ongoing monitoring of the custodians. However, it is market practice for discretionary account clients to directly appoint custodians for their assets (in some cases, they may be mandated by local laws to do so, such as the laws applicable to Qualified Domestic Institutional Investors), and for discretionary portfolio managers that operate within a private bank, the custodian is typically the bank itself or the bank's affiliates.

The second example relates to the requirement for discretionary account managers to, amongst others, maintain and implement effective liquidity management policies and procedures to monitor the liquidity risk of the discretionary account. However, discretionary portfolio managers that operate within a private bank would typically agree with their clients on the investment strategies to be followed (including the liquidity profile of the underlying assets) with respect to the discretionary accounts.

The above requirements should be carved out from the FMCC for discretionary accounts.

16. **Do you think a 6-month transition period following gazettal of the final form of the amendments to the FMCC is appropriate? If not, what do you think would be an appropriate transition period and please set out your reasons.**

In our view, this transition period is too short given that industry participants need to conduct gap analysis, draft new policies and procedures, update or change their existing processes, enhance their operational systems, establish corresponding internal controls and monitoring policies and to provide training to their front line staff, amongst others. We believe one year is more appropriate.

20. **Do you have any comments on the suggested manner of disclosure of trailer fees (in the context of funds) set out in the sample disclosure above? Do you have any other suggestions to ensure the disclosure of non-quantifiable monetary benefits relating to other types of investment products will be clear, fair, meaningful and easily understood by investors?**

We welcome the SFC's proposals to enhance transparency and disclosures to investors aligning the Hong Kong market with international regulatory developments in this area. Disclosures play an important role in helping investors make sound investment decisions and evaluate the investments they own. Even investors who do not themselves read disclosures can benefit indirectly if improved transparency leads to beneficial market competition. We believe the goal

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of disclosure would be to enhance the investors' understanding of the costs they bear when they invest in a fund and the impact of those costs on total accumulation over the lifetime of the investment.

As the maximum dollar amount disclosed is only indicative, based on assumptions and may not be the exact amount that the intermediary will actually receive from the fund manager, disclosing dollar amount does not add too much value to the client but becomes onerous for the intermediary to do the calculation. The range of monetary benefits receivable disclosed one-time or periodically (annual) (if concluded disclosure is a requirement) should provide investors with sufficient information and transparency and is in line with the requirement on the disclosure of quantifiable benefits.

As part of a longer term effort to improve disclosures, we agree with the SFC that investor education plays an important part of effective disclosures. We encourage the SFC to continue exploring ways to provide context for cost information in order to improve investor understanding of the impact of those costs.

We also request the SFC to clarify the disclosure of trailer fees where discretionary account managers invest in funds-of-funds.

- 21. Do you think a 6-month transition period following gazettal of the final form of the amendments to the Code of Conduct is appropriate? If not, what do you think would be an appropriate transition period and please set out your reasons.**

In our view, this transition period is too short given that industry participants need to conduct gap analysis, draft new policies and procedures, update or change their existing processes, enhance their operational systems, establish corresponding internal controls and monitoring policies and to provide training to their front line staff, amongst others. We believe one year is more appropriate.