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Intermediaries Supervision Department  
Securities & Futures Commission  
8/F, Chater House  
8 Connaught Road Central  
Hong Kong

Dear Sirs,

## **Submission by BCT Financial Limited**

We refer to the SFC Consultation Paper on (1) the Proposed Guideline on Anti-Money Laundering and Counter-Terrorist Financing and (2) The Proposed Prevention of Money Laundering and Terrorist Financing Guideline issued by the SFC for Associated Entities ("SFC Proposed Guideline"). We write to provide our response below.

### **1. Existing Guidance Note**

Paragraph 6.4.1 of the existing SFC Prevention of Money Laundering and Terrorist Financing Guidance Note ("Existing Guidance Note") refers to, for the purposes of customer due diligence, documents and information "such as" board resolution and copies of identification documents of at least two directors, etc.. The use of the words "such as" caters for flexibility, especially the flexibility required in circumstances where the simplified Customer Due Diligence ("CDD") procedures on a risk-based approach (as referred to in paragraph 6.2.3 of the Existing Guidance Note) apply.

The said paragraph 6.2.3 states that "Simplified CDD procedures may be used for identifying the identity of the customer and beneficial owner where there is no suspicion of money laundering or terrorist financing", and lists out examples of lower risk categories of customers including customers of "pension, superannuation or similar schemes" ("Pension Products") that provide retirement benefits to employees.

The need for flexibility is spelt out in paragraph 6.2.1 of the Existing Guidance Note which states that the relevant simplified CDD process "may vary from case to case depending on customers' background, transaction types and specific circumstances, etc.". To cater for that flexibility, the list of documents and information set out under the said paragraph 6.4.1 is not a mandatory list but is, instead, a list containing examples of documents and information the obtaining of which, especially in cases of customers of products (such as Pension Products) to which simplified CDD procedures on a risk-based approach apply, may or may not be necessary for due diligence purposes.

The above is in line with the AMLO which specifically provides for the adoption of simplified CDD procedures for products set out in s4(5) of Part 2-Div 1 of Schedule 2 of AMLO, which include Pension Products.

## **2. SFC Proposed Guideline (Paras 4.2 to 4.9)**

We note that the SFC Proposed Guideline (paragraph 4.10) refers to simplified CDD (“SDD”) procedures. Many requirements under the SFC Proposed Guidelines are worded as blanket requirements which do not explicitly cater for the flexibility required in cases where SDD procedures on a risk-based approach apply.

The CDD requirements as set out in paras 4.2 to 4.9 should all be expressly made subject to SDD as and when SDD is applicable under the terms of para 4.10 of the SFC Proposed Guideline (such as when the due diligence is being carried in respect of the specific products set out in para 4.10.16 (which products include provident, pension retirement or superannuation scheme)). Many of the requirements set out in paras 4.2 to 4.9 are currently worded as blanket requirements and, to cater for the flexibility of allowing SDD to apply as and when appropriate. In particular, we would like to draw the SFC’s attention to the following paragraphs.

### **Paras 4.4.2 and 4.9.10**

SFC Proposed Guideline para 4.4.2 and para 4.9.10 specify that FI should obtain written authority (eg. board resolution or similar power of attorney) to verify that the individual purporting to represent the customer is authorized to do so. Whilst the Existing Guidance Note does not mandatorily require such written authority, the said two paragraphs of the SFC Proposed Guidelines are currently drafted in such a way as to suggest a mandatory requirement and it is, accordingly, uncertain whether the SDD referred to in para 4.10 of the SFC Proposed Guideline would apply to allow FI to rely on verification other than by way of written authority in cases (such as customers of Pension Products) to which SDD procedures on a risk-based approach apply.

We, for the reasons set out above, suggest that the said blanket requirement of obtaining written authority be expressly made subject to SDD procedures on a risk-based approach in the case concerning customers of the low-risk products (such as Pension Products).

### **Para 4.4.3**

Verification of the identity of at least one account signatory should be allowed in circumstances where there is only one account signatory.

The requirement to refer to the means listed in Appendix A wherever possible should also be expressly made subject to SDD procedures on a risk-based approach in the cases of customers of low-risk products such as Pension Products.

### **Paras 4.8.1 and 4.9.11**

The paragraphs specify the need for FIs to record the legal name, residential address, date of birth, nationality and identity document type and number of persons, including

connected persons of a legal person and all directors. We are of the view that this is not practicable as regards MPF products in view of the statutory time limits which apply to MPF products. Once again, expressly subjecting such requirement to SDD procedures on a risk-based approach in cases of customers of low-risk products (such as Pension Products) should solve the problem.

### **3. SFC Proposed Guideline (Para 4.10)**

Para.4.10.17 of the SFC Proposed Guideline states:

*“For the purpose of item (a) of paragraph 4.10.16, FIs may treat the employer, the trustee and any other person who has control over the business relationship including the administrator or the scheme manager, as the customer. FIs are not required to apply the provisions of section 2(1)(b) of Schedule 2 where the customer is a scheme falling within item (a) of paragraph 4.10.16. This means that they need not normally indentify the beneficial owners of the scheme, i.e. the employees and verify their identities. It is only necessary to conduct CDD on the customer of the FI.”*

In the context of the Pension Industry, the last sentence of Para 4.10.17 would seem to have the effect of applying SDD to a pension scheme in such a way as to (i) remove the need to carry out due diligence on the relevant employees but (ii) require CDD (instead of SDD) to be carried out in respect of the employer.

We submit in 1 and 2 that SDD as it is provided for under the AMLO would apply in the above-mentioned context as to also allow SDD (instead of CDD) to be applied to the employer if appropriate. For this reasons and for those as set out in 1 and 2 above, Para 4.10.17 should be amended accordingly.

For your information, as Vice Chairman of the Hong Kong Trustees' Association, I have also provided relevant input to the HKTA for submission to the SFC.

Yours faithfully,

