Comments/questions raised by HKIFA members on SFC's Consultation Paper on Proposed Amendments to the (1) Guideline on Anti-Money Laundering and Counter-Terrorist Financing ("Guideline") and (2) Prevention of Money Laundering and Terrorist Financing Guideline issued by the Securities and Futures Commission for Associated Entities (Aug 2018)

Seq.	Para of the proposed revised Guideline	Comments/suggestions
RE: Determination of persons purporting to act on behalf of the customer ("PPTA")		
Question 8: Do you agree with the proposed amendments relating to PPTA? If not, what other criteria do you think LCs should take into account when determining whether a person is a PPTA?		
1.	4.4.1	● Some members point out that from a risk-based approach ("RBA"), the risks associated with PPTAs would be similar to that of directors. Additionally, Anti-Money Laundering and Counter-Terrorist Financing Ordinance ("AMLO") allows application of reasonable measures to verify the identity of PPTA, which is less stringent than the requirements for a customer who is a natural person. Hence it would appear to be more appropriate to align the identity and verification of a PPTA to that used for a director.
2.	4.4	● SFC proposes to remove the general rule to include persons authorized to give instructions for the movement of funds or assets as PPTA who are required to be identified and verified by FIs and allow FIs to determine who is a PPTA. SFC also proposes that the determination should be based on the nature of that person's roles and the activities which he or she is authorized to conduct, as well as the ML/TF risks associated with these roles and activities. We appreciate the proposed flexibility and that SFC makes it clear that dealers and traders are not considered PPTAs; however, can SFC provide more guidance in the Guideline on how to determine who is a PPTA. For example, with respect to a corporate customer who authorizes a list of its staff to operate the account to be opened with the financial institution ("FI") to move the assets in the account, who are the PPTAs? Does SFC consider the Chief Executive Officer of the corporate customer, not the authorized signatories of the account to be opened with the FI, as the PPTA? It would be useful if SFC gives examples of the roles and activities which a person would be considered as PPTA. ● Members believe the scope of exemption of PPTAs should include other FI authorized personnel i.e. authorized signatories of a regulated FI who are authorized to act on behalf of the FI. In the fund industry, managers typically would appoint retail/private banks, insurers, independent financial advisers ("IFA"), brokerages etc. to distribute products. Their roles are similar to dealers and traders as well as other intermediaries, and thus should also receive exemption status. FIs are also subject to the regulations in respect of their own activities as well as their representatives' activities and are required to have adequate measures in place to address ML/TF risks. Thus, there are already sufficient safeguards in place.

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		• The proposed Guideline removes the streamlined approach to receive confirmation from an independent person within the customer to confirm the identities are bring verified (See 4.4.4). We believe that such streamlined approach should be kept. Multinational corporations may have a long list of persons acting on behalf of the customer. It is fairly difficult to verify and identify each person. As such, the streamlined approach is necessary to be kept. • SFC proposes that the identification and verification requirements of a PPTA follow paragraphs 4.2.2 and 4.2.4 respectively. Paragraph 4.2.2 proposes that at least the following identification information should be obtained: (a) full name; (b) date of birth; (c) nationality; and (d) unique identification number (e.g. identity card number or passport number) and document type. Paragraph 4.2.4 proposes that as a minimum, the FI should verify the name and date of birth. We recommend that obtaining the name and at least one or two of the identification information, such as date of birth, nationality, unique identification number and document type, age, photograph, biography or curriculum vitae ("CV") would be sufficient for identification purpose. We also suggest that SFC's proposal of verifying the name and date of birth at a minimum (paragraph 4.2.4) does not apply to the individuals associated with a customer who is a legal person (e.g. senior managing officials, beneficial owners, connected parties, PPTAs).
RE: Supplementary measures that may be taken to mitigate the risks associated with customers who are not physically present for identification purposes		
Question 9: Do you have any views on the proposed additional types of supplementary measures that LCs may take to mitigate the risks associated with customers who are not physically present for identification purposes or similar situations? Please state your views.		
3.	4.10.5	• We would like to understand the rationale behind paragraph 4.10.5: if the intention is to provide LCs with more flexibility to apply the additional risk mitigating measures, we suggest to slightly amend the wording as follows: *In taking additional measures to mitigate the risks posed by customers not physically present for identification purposes, reference* ***~~should~~ may*** *also be made by LCs to the relevant provisions (presently paragraph 5.1) in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission concerning account opening procedures for customers who are not physically present for identification purposes.*
RE: Domestic politically exposed persons ("PEPs") or international organisation PEPs who are no longer entrusted with a prominent public function or prominent function		

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Question 11: Do you have any views on the list of non-exhaustive examples of risk factors that an LC should take into account to determine whether a domestic PEP or an international organisation PEP should continue to be treated as a domestic PEP or an international organisation PEP if the person is no longer entrusted with a prominent public or prominent function? Please explain.		
4.	4.11.23	● We welcome the guidance regarding the declassification of a domestic or an international organization PEP. Would this be extended to foreign PEP in accordance to Financial Action Task Force ("FATF") Guidance on PEP issued on June 2013 (http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf)?
RE: Identification and verification of the beneficial owners of a legal person customer		
Question 12: Do you have any views on the proposal that LCs should identify the senior managing official of a legal person where no natural person ultimately owns or controls the legal person customer? Please explain.		
5.	4.3.7	● The Interpretive Note to Recommendation 10 of the FATF Recommendations revised in Feb 2018 states that "*Where no natural person is identified under (i.i) or (i.ii) above, financial institutions should identify and take reasonable measures to verify the identity of the* ***relevant natural person*** *who holds the position of senior managing official*." In applying the FATF recommendations, members believe the identification of the chairman of a legal person (particularly relevant to large corporates, or listed company/FIs where simplified due diligence ("SDD") cannot be applied) should be sufficient. The proposed wordings of the Guideline suggest that all "natural persons holding the position of senior managing official" need to be considered as beneficial owners, which is much more than that required by the FATF recommendations.
6.	4.3.7, 4.3.2, 4.2.2 and 4.2.4	● According to SFC's proposal, if no natural person ultimately owns or controls the legal person (beneficial owner), the FI should identify the natural persons holding the position of senior managing official in the legal person, and take reasonable measures to verify their identities. Paragraph 4.3.2 proposes that the FI should endeavor to collect the identification information of beneficial owners the same as at paragraph 4.2.2. Paragraph 4.2.2 proposes that at least the following identification information should be obtained: (a) full name; (b) date of birth; (c) nationality; and (d) unique identification number (e.g. identity card number or passport number) and document type. Paragraph 4.2.4 proposed that at a minimum, the FI should verify the name and date of birth. Members are concerned that the above proposals may pose practical challenges in performing customer due diligence on legal persons, especially large or multi-national corporations where their senior officials may be residing overseas.

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		Obtaining all information of (a) full name; (b) date of birth; (c) nationality; and (d) unique identification number and document type (paragraph 4.2.2) of all senior officials can be excessive. We believe that obtaining the name and probably one or two other pieces of information, such as date of birth, nationality, unique identification number and document type, age, photograph, biography or CV would be sufficient for identification purposes. We also suggest that SFC's proposal of verifying the name and date of birth at a minimum (paragraph 4.2.4) should not apply to individuals associated with a customer which are legal persons (e.g. senior managing officials, beneficial owners, connected parties and PPTAs). This can provide some flexibility to the customer due diligence process. Information, such as age, photograph and biography of senior officials, may be publicly available and can be verified more readily through public sources (e.g. audited annual report of listed company; news about the senior officials).
7.	4.3	● Paragraph 4.3 of the proposed Guidelines provides guidance on beneficial owners for customer that is a natural person, legal person, trust or other similar legal arrangement. We would like to seek clarification on beneficial owners for customers that are appointed as a distributor of funds managed by asset managers and opens an omnibus account to invest on behalf of its underlying investors. Some members point out that they believe beneficial owners would be an investor who is interested in more than 25% of the AUM of the omnibus account. The shareholders of the distributor (e.g. a bank) would not be seen as beneficial owners in the distribution relationships. We hope the SFC can confirm this point in the Guideline.
RE: Regular review of AML/CFT systems by an audit function		
Question 13: Do you have any views on the additional guidance on the areas which should be covered in regular review of AML/CFT systems by an audit function to ensure their effectiveness? Please explain.		
8.	2.16	● In the existing Guideline, the review can be carried out either by an audit or compliance function, however, SFC proposes that the review should be carried out by an independent audit function. We propose to keep the existing text so as to retain flexibility, given that smaller firms may not have a separate audit function.
Others		
9.	4.2.14	*RE: Identification of connected parties* ● The SFC proposes that FIs should identify the connected parties of the customer (who is legal person) by obtaining the name

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		and at least one of the following identification information: (a) date of birth; (b) nationality; or (c) unique identification number and document type. Suggest SFC to consider adding **(d) age; (e) photograph; or (f) biography/CV**; of the connected parties as acceptable identification information. This can provide more flexibility to the customer due diligence process and the information of age, photograph and biography of connected parties, being the persons having senior management positions, may be publicly available and be verified more readily through public sources (e.g. audited annual report of listed company; news about the connected parties). We also propose that this requirement does not need to be extended to customers where SDD can be applied.
10.	4.8.8	*RE: Listed company* ● SFC proposes that an FI may apply SDD to a customer that is a company listed on a stock exchange. The FI should assess whether the stock exchange is subject to any disclosure requirements (either by stock exchange rules, or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership of the listed company. The above proposal creates additional burden to FIs to assess the disclosure requirements of stock exchanges. Moreover, "adequate transparency" would give rise to subjective judgement and different FIs may have different assessment results for the same stock exchange. It would result in the same listed company being subject to different customer due diligence requirements when dealing with different FIs. To facilitate efficient customer due diligence process and minimize regulatory arbitrage among FIs, we suggest that SFC accept that the availability of information about substantial shareholders (e.g. top 4 shareholders considering the beneficial ownership threshold is 25%) of a listed company as provided on the stock exchange websites, Bloomberg Terminal or other listed company information providers would imply that the stock exchange, where the company is listed, fulfill SFC's expectations regarding disclosure requirements and clarify such in the Guideline or FAQs.
11.	4.10.6-4.10.7	*RE: Certification of copy identification documents by an appropriate person* ● Suggest to remove "independent" in paragraph 4.10.6 of the proposed Guideline to avoid confusion. For example, we

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		believe that the company secretary of a corporate customer should be able to certify the verification of identification documents for the corporate customer. The current list of appropriate certifiers in paragraph 4.10.7 of the proposed Guideline is very limited for customers from Non-Equivalent Jurisdictions (e.g. Thailand, Philippines) as lawyers, professional accountants, and staff of financial institutions from Non-Equivalent Jurisdictions do not fall under the current list. FIs which onboard those customers may have to assign their customer onboarding colleagues to travel to those countries to perform certification or to request the customers to appoint and pay notary public for certification. We suggest more choices of appropriate certifiers be provided in paragraph 4.10.7 (e.g. lawyers, professional accountants, staff of financial institutions from Non-Equivalent Jurisdictions) for customers from Non-Equivalent Jurisdictions in order to improve the efficiency of customer due diligence process for those customers.
12.	4.11.3	*RE: PEPs* ● SFC proposes that an FI should implement appropriate risk management systems to identify PEPs. Under-classification of PEPs poses a higher ML/TF risk to the FI whilst over-classification of PEPs leads to unnecessary compliance burdens to the FI and its customers. The SFC clarified in paragraph 6.17 that the sanction screening requirements should be extended to other connected parties and PPTAs of a customer using a risk-based approach. Can SFC provide guidance on identifying PEPs for customers who are legal persons? For example, whether the connected parties and PPTAs of legal person customers are required to be assessed if they are PEPs. We consider that the PEP assessment for legal persons customers should commensurate with the verification requirements i.e. where those individuals' personal information are required to be verified under the Guideline, PEP assessment may be performed on those individuals because FIs should have collected identity documents of those individuals provided by the governmental body or authorities and have reasonable amount of data to perform PEP assessment.
13.	4.12.4	*RE: Nominee shareholders* ● SFC proposes that for a customer identified to have nominee shareholders in its ownership structure, an FI should obtain satisfactory evidence of the identities of the nominees, and the persons on whose behalf they are acting, as well as the details of arrangements in place, in order to determine who the beneficial owner is.

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		The above proposal may bring about practical difficulties. For example, substantial shareholders of some listed companies as provided on the stock exchange websites may be nominee shareholders who do not participate in the day-to-day management of the companies and do not have close relationships with any personnel of the listed companies (e.g. hedge funds, institutional investors). Asking for identity information of them and the persons on whose behalf they are acting for the purpose of the listed companies establishing business relationship with FIs would create challenging compliance burden and there would be huge difficulties in obtaining the information. We suggest SFC to consider and clarify that where the nominee shareholder is a member of financial institution group which operates in an Equivalent Jurisdiction, FIs are required to obtain the name of the nominee shareholder. But it would not be necessary to obtain evidence on the persons on whose behalf they are acting and the details of arrangements in place.

(End)