Citigroup Global Markets Asia Limited

RE: SFC Public comments sought on proposed guidelines regarding anti-money laundering and counter-terrorist financing

Our comments are made in addition to the comments already submitted by the Hong Kong Association of Banks (HKAB) to the Hong Kong Monetary Authority.

Section 4.3.4 – We would recommend specifically allowing for the use of information in the public domain to verify the identity of a beneficial owner (For instance using Hong Kong Stock Exchange filings on significant shareholdings in private investment companies that hold majority / minority interests in a publicly traded company). In addition, we would request additional clarity as to what reasonable measures are, related to verifying the identity of a beneficial owner. Reasonable measures appears to be a highly subjective standard, we would request replacing it with a risk based approach to identification.

Section 4.3.5 – We recommend a risk based approach to identifying all beneficial owners. We believe that drilling down to 10% for high risk accounts and 25% for other accounts is highly restrictive. Given the following:

- Tipping off a client by obtaining the additional 15% ownership information if their risk level is changed to high risk.
- We may also encounter inconsistent treatment of customers in terms of risk level across the Firm. For instance in the Markets and the block trade space where we generally only service institutional clients, we consider all Private Investment Company (PICs) clients automatically high risk. However, in the Private Bank space given that a significant percentage of their client base can be PICs, and we could consider the same client as low or medium risk.

Section 4.6.2(e) – We would recommend removing the example of "obtaining copies recent and current statements" to gauge source of wealth. We believe that this section would be restrictive in applying a risk based verification approach and could lead to potentially applying this standard to institutional and fund clients. Furthermore, the statement approach seems to go beyond the Qualified Institutional Investor (US) and Accredited Investor (Singapore) requirements without a similar clearly stated risk of the client investing in a complex product.

Section 4.7.12 – We believe that updating client information upon the following trigger events would be extremely difficult and not applicable to a true risk need.

- Significant transactions are overly broad
- Material Change in account operation: An execution account can be dormant for some time and then when the client receives good pricing reactivate
    - Opening a new account is not a material change. It occurs often in the Markets space if the client wants to open an Execution and then a commodities account.

- Would recommend using a risk based approach through customer risk rankings and defined review/renewal cycles such as annual for high risk and bi or tri-annual for low risk
    - If there is some change in the FI's documentation standards then upgrade at renewal
    - If there is an awareness of a lack of documentation of a critical nature then refresh at that time.

Section 4.8.1 - We believe obtaining identification information from all natural persons, including those connected to a legal person would be extremely restrictive in the application of a risk based approach especially for signatories and all directors. We recommend an approach of obtaining information about key principals and shareholders over 25%. Furthermore, the way the section currently reads, it could even apply to trader information, this would be similar to the Indian PMLA regulations, which are extremely difficult to comply with, due to the volume of required documents and client confidentiality considerations.

Section 4.10.9 - We believe that the risk-based approach to identifying the identity of listed company directors should be extended to regulated entities and subsidiaries of listed companies.

Section 4.9.12 – We believe that performing company search reports would be restrictive and not necessarily provide full ownership information. We recommend including the possibility of performing either a company search report or alternatives such as obtaining certified true copies of ownership documentation from a trust company, nominee or attorney.

Section 5.10 - We believe that a risk based approach should be applied towards monitoring based on detailed risk assessments. For instance, in markets and IBD, high dollar value transactions are common and not necessary something that in itself should trigger an exception or represent a red flag.

Sections 7.2 and 7.11 read together lead to the creation of potential liability for a failure to create clear records as to why no filing was made. We believe that this may be viewed by a regulator in hindsight and lead to significant defensive STR filings with little investigation (See Section 5.12 on the need for investigating and higher quality filings) in order to avail the FI and others such as the MLRO of the safeharbor / statutory defence (Section 7.2).

Section 7.16 - We would specifically like to highlight this section:

> Disclosures can be made either before a suspicious transaction or activity occurs in circumstances where an intended transaction appears suspicious (whether the intended transaction ultimately takes place or not), or after a transaction or activity has been completed if the transaction appears suspicious only with the benefit of hindsight. Disclosures that are made after the activity or transaction has taken place are not intended as alternatives to reports that should have been made prior to the transaction or activity being processed or completed.

It seems to create the need for real time monitoring of a transaction and could lead to a situation where filings are made with little information. In addition, it could create instances of transactions, where upon obtaining additional information, through an investigation (Sec. 5.12), are found to be legitimate. Subsequently, if such a legitimate transfer is stopped, it could lead to a monetary client loss and potential FI liability. We would suggest only providing the option

to file a STR if necessary based on further investigation or contacting the SFC/JFIU before the transaction if the situation is deemed highly suspicious and time sensitive.

Section 7.20, 7.24, and 7.29 read together seem to create significant MLRO liability and responsibility to monitor that is currently delegated to surveillance staff. This monitoring responsibility would be difficult if not impossible for an MLRO alone to comply with and if there is any miscommunication among AML or other Compliance staff about suspicious/irregular activity it could lead to MLRO liability. Furthermore, MLRO criminal liability which is referenced in Section 7.29 for a failure to report should include some language about the reasonableness and subjective determination of the MLRO being the standard. Otherwise, this could lead to filing on anything that comes across an MLRO's desk, the need for MLRO personal liability insurance and the questioning of filing decisions in hindsight similar to Shah vs. HSBC (UK).

See: http://www.bailii.org/ew/cases/EWCA/Civ/2010/31.html

Section 6.5 - Is this intended to be a requirement or a recommendation / expectation that FIs consider lists issued by authorities in other jurisdictions?

Section 6.22a - Does the HKMA plan to define the term connected parties (if not already defined in other sections of the legislation)? They require ALL connected persons to be screened? Why is there no risk based approach?