Hong Kong Investment Funds Association

Appendix A

HKIFA members' comments and queries re the proposed guideline on anti-money laundering and counter-terrorist financing ("Guideline")

Relevant section of the Guideline	HKIFA members' comments and queries
Question 1, 4.4.3, 4.9.19	Section 4.4.3 specifies that "...FIs should verify the identity of those authorized to give instructions for the movement of funds or assets." Authorized signatories are required to act in the interest of the principal who appoint them, so if they do not own the assets in question, the fact that they have control over the assets is still subject to the requirement to handle the assets in the interest of the beneficial owner. In that case, for low-risk accounts, if FIs have already determined that the anti-money laundering and counter-terrorist financing risk of that account is low, FIs should not need to verify the identity of each and every authorized signatory who has authority to transfer funds, but should be able to rely on a verification by an independent department within the customer. However, it will still be difficult to obtain such verification confirmation from the customer because it is hard for the customer to confirm the identities of the authorized signatories who have been verified by an independent department (e.g. a bank may have more than 100 authorized signatories) and this is not a common practice in the course of business. Given the impracticality of verifying the identity of the long lists of authorized signatories, members suggest that SFC can consider a risk-based approach, i.e. verify the identities of all authorized signatories for high-risk clients only; while for low/medium-risk clients, identities of only two account signatories are required to be verified; or a copy of a list of authorized signatories who are solemnly appointed to act on behalf of the customer and the copy is certified true by a recognized certifier for cases of low/medium-risk clients.
4.5.1	Section 4.5.1 specifies that FIs should take whatever practical and proportionate steps available to establish whether the document offered is genuine, or has been reported as lost or stolen when suspicions are raised. Members opine that this will be a huge burden to the FIs. FIs normally will not have expertise to verify whether the identification documents are forged or not, and there is no source to validate (calling the Immigration Department hotline every time is not a practical solution). It is also meaningless to request corroboratory evidence from the customer if the customer deliberately provides a

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	forged document.
4.6.2(e)	Members point out that it is not practical to request copies of recent and current statements to verify the initial and ongoing sources of wealth or income. Investors may think it is unreasonable to provide wealth or salary statements, in particular when an investor is not investing a huge amount in funds.
4.8.1/4.9.11	4.8.1 and 4.9.11 specify the need for FIs to record the legal name, residential address, date of birth, nationality and identity document type and number of all directors. Members opine that this is not practicable especially for overseas corporate customers where not all these information is publicly available. There is no such specific requirement in FATF 40 Recommendations. Members recommend that the SFC allows FIs to adopt a risk-based approach to determine the information needed to identify a director.
4.8.4	Section 4.8.4 specifies that "For non-permanent residents, FIs should verify the individual's identity, including name, date of birth, and identity card number by reference to their Hong Kong identity card.....FI should verify the individual's nationality by reference to: (a) a valid travel document..." Given that the name and date of birth can be verified by reference to a valid travel document, members think that it would be sufficient to obtain the travel document only for non-permanent residents and there would be no need to obtain the Hong Kong identity card. It would be helpful if SFC can clarify this.
4.8.11/4.8.12	The proposed Guideline expressly excludes mobile phone bills as acceptable address proof but in some cases for non-Hong Kong residents, mobile phone bills may be the only available address proof. For example, in Taiwan, it is normally acceptable to use a mobile phone bill as address proof if the individual provides a residential address which is different from the address stated on the national identity card. Besides, SFC accepts national identity card containing the 'current' residential address for non-Hong Kong residents, however, for some cases in Taiwan, the address stated on the national identity card may not be 'current'. It is normally the original household address where the individual lives with his/her parent. An individual may move out from his/her parent and has his/her own residential address. As such, there will be two addresses for a Taiwan investor, one stated on the national identity card and the other can be the real current residential address as well as for correspondence.

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	Members suggest the SFC confirms that a copy of national identity card containing a residential address for non-Hong Kong residents is sufficient regardless the investor provides another residential or correspondence address and the FI is not required to verify such residential or correspondence address if a copy of the national identity card containing address is obtained. If the SFC considers that the FIs need to verify the additional residential or correspondence address, members suggest to include mobile phone bill as address proof.
4.9.11/4.10.9	4.9.11 and 4.10.9 specify the need to identify and record the identity of all directors, including listed company. Members point out that it is very onerous to obtain the ID number of all directors, especially for listed companies or registered FIs. It also duplicates efforts given these entities are already regulated. Members suggest a risk-based approach can be adopted by making reference to UK and EU Directives, so that listed companies or similar low risk type of entities can be excluded from obtaining the ID number of all directors, and instead, only names of the directors are required to be obtained.
Question 3 and 4.9.12/4.9.13	Members believe that the requirement of 4.9.12 is onerous and may cause a heavy burden (in terms of costs) to the FIs. Clients have a duty to provide documentation that is both relevant and proven to be authentic so that the FIs can satisfy themselves as to whether documents relied upon are forged. Under current requirements, at the time of account opening, FIs are required to obtain relevant identification and company documents from clients which are generally required to be certified by a suitable certifier in order to perform the CDD. Members opine that the current requirements are sufficient which are also in line with the requirements in UK, and therefore, performing a company registry search might be redundant. Members suggest that the SFC should grant flexibility to FIs to determine whether a company registry search is required, and if not, to alternatively accept other substitutes to show the live status of the company (e.g. certificate of good standing, certificate of incorporation etc.) and to identify the list of directors and shareholders (e.g. proof of annual return). In addition, it would be helpful to make clear that the same information does not need to be obtained more than once from the customer (e.g. if the company search has included the item, then it should not be separately needed). Besides, for overseas corporate customers, members point out that not all the required information is available in overseas public company registry. For example, in Taiwan, the company

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	information available in Commerce Industrial Services Portal (www.gcis.nat.gov.tw) does not show names of all shareholders (if directors hold shares of the company, the directors' shareholdings will be shown). Members recommend that the SFC clarifies in the Guideline that where information of names of directors and shareholders and registered address is not available in overseas public company registry for overseas corporate customers, FIs may adopt a risk-based approach to determine the need and appropriate measures to verify the information. Besides, some members opine that the company registry search should not be adopted for all non-listed companies, including low-risk customers. It seems appropriate to consider whether a simplified on-going due diligence process could be adopted for low-risk existing customers such that FIs would not be required to perform a company registry search for such low-risk existing customers. Members believe that a customer that has established a business relationship with an FI to buy and sell investment products using a settlement account in his/her own name (i.e. with no third-party payments) maintained with a regulated bank subject to the same CDD requirements could be regarded as a low-risk existing customer of the FI.
4.10.3	4.10.3 states that "SDD may be applied to… (e) the Government or any public body in Hong Kong; or (f) the government of an equivalent jurisdiction or a body in an equivalent jurisdiction that performs functions similar to those of a public body." Members point out that under the current AML Guidance Note, SDD may be applied to government or government related organizations in a non-NCCT jurisdiction. Can the proposed Guideline adopt the same wordings from the AML Guidance Note?
4.10.6/4.10.9/ 4.10.10/4.10.17	Sections 4.10.6, 4.10.9, 4.10.10 and 4.10.17 specify the need to identify and record the identity of all directors of local and foreign FIs, listed companies, investment vehicles and specific products. Similar to the comment for sections 4.8.1/4.9.11 above, the requirement of recording the legal name, residential address, date of birth, nationality and identity document type and number of all directors of local and foreign FIs, listed companies, investment vehicles and specific products (i.e. directors of the fund if the vehicle is in the form of a legal person, or directors of the trustee of the fund if the vehicle is in the form of trust) is not practicable especially for overseas companies where not all these information is publicly available. Members recommend that the SFC allows FIs to adopt a risk-based approach to determine the information needed to identify a director.

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4.10.12/4.10.13	Members opine that the combined effect of these two sections is such that for an investment fund, if the entity entrusted to carry out CDD is not an FI within a FATF/equivalent jurisdiction, then the fund manager will still need to perform a full CDD itself on investors investing >10% of the fund. It is quite common that a fund administrator, which will not be an FI mentioned in the sections, will be entrusted to carry out CDD. Most of the time, the fund administrator will be from a reputable financial group in a FATF/equivalent jurisdiction, which has adequate CDD requirements. If there are clear contractual provisions requiring such fund administrator to do what an investment manager needs them to do (carry out CDD according to FATF/equivalent requirements, keep records and send copies to the fund manager upon request), why is this arrangement not acceptable even if the administrator is not an FI within a FATF/equivalent jurisdiction? Members propose SFC to consider this as an acceptable arrangement.
4.10.14/4.10.15	4.10.14 and 4.10.15 describe that FIs may apply SDD to a customer that is a government or public body, i.e. no need to identify and verify beneficial owners. However, where a public body is established as a body corporate, it seems that the appropriate category of "legal persons" available in 4.9 is "corporation". This leads to the requirements of recording the identity of all directors and obtaining a full company search report. Directors of a public body are mostly senior government officials. Information of their residential address, date of birth, identity document type and number may be of national security and are not publicly available. Besides, obtaining a full company search report for an overseas public body may not be practicable because the required information may not be available in overseas public company registry. Members recommend that the SFC clarifies in the Guideline that FIs shall refer to "partnerships and unincorporated bodies" (one of the categories of "legal persons" available in 4.9) for conducting CDD for government and public body, whether they are established as a body corporate or not, in order to apply consistent requirements among governments and public bodies, irrespective of their legal structure. Also, for public bodies or government related bodies (including corporate), in the case of the incorporation is required by law, members suggest evidence of incorporation can be substantiated by checking the relevant statutory reference instead of company search.

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4.11.1	According to 4.11.1, non-resident customers and private banking are deemed as high risk clients, and thus, EDD would be required. Members do not agree that non-resident customers are necessarily high risk customers. Also, private banks should not be classified as high risk clients as they are regulated/licensed corporates. It would be helpful if SFC can explain the reasons for deeming these two types of customers as high risk clients.
4.12.2	Members recommend that the SFC clarifies how this section applies to corporate customers. For example, is the corporate customer considered as physically present if the registered address of the company is verified and that the client relationship manager has met one of the representatives of the corporate customer in person? A full company search report or a certificate of incumbency needs to be obtained for corporate customers under the proposed Guideline. Together with other identity documents of a corporate customer, such as copy of certificate of incorporation, identity card copy of authorized signatories, etc., members consider that the identity of corporate customers is sufficiently verified and the companies are physically presented. Members believe that the measures in 4.12.2, including the requirement of certified true copy, do not apply to corporate customers where a full company search report or a certificate of incumbency is obtained and the client relationship manager has met one of the representatives of the corporate customer in person. Members believe that copy, instead of certified true copy, is sufficient. It is suggested that the SFC can clarify such in the Guideline and in paragraph 5.1 of the Code of Conduct for Persons Licensed by or Registered with the SFC.
Others - implementation	Given the various practical issues that the industry has to face to implement the new rules, members suggest SFC to provide a grace period (of at least three-month) for system enhancement, e.g. to record the additional information such as all directors' information, all beneficial owners' information, former names etc., and for proper communication with clients since the information required under the new rules is hugely different from the existing regime.

(End)

Second batch comments and queries from HKIFA members on the Proposed Guideline on the proposed guideline on anti-money laundering and counter-terrorist financing ("Guideline")

Proposed Guideline	Comments and queries
Persons purporting to act on behalf of customers: Under AMLO, Financial Institutions ("FIs") should identify all persons purporting to act on behalf of customers, take reasonable measures to verify their identities and verify their authority to act on behalf of the customers. After much deliberation, the SFC has clarified in the proposed Guideline that as a general rule, FIs should verify the identity of those authorized to give instructions for the movement of funds or assets. **Some flexibility has been provided in the proposed Guideline as to what measures/ methods would be considered reasonable for verifying the identity of a person purporting to act on behalf of a customer.** FI may adopt a streamlined approach in verifying the identities of account signatories based on its risk assessment of the customer where the customer is an FI or a listed company.	It is very common for FIs (usually distributors) to open accounts with fund managers to subscribe mutual funds (usually through the distributors' nominee accounts). However, it is difficult for fund managers to verify all signatories of these distributors. Members welcome the SFC's proposal to allow FIs (usually fund houses) to adopt a risk-based approach in determining the appropriate measures to verify the person's identity. For example, in respect of verification of account signatories related to a customer which is another FI and the risk is considered as low, fund managers could adopt a more streamlined approach in verifying the identities of the account signatories. The adoption of a signatory list, in which the identities of the account signatories have been verified by a department or person within that FI, which is independent to the persons whose identities are being verified (e.g. compliance, audit or human resources) may be sufficient to demonstrate reasonable measures. It would be helpful if the SFC could provide more guidance on the streamlined approach (e.g. who can decide which department of the FIs can verify the signatory list? Is there any format of the signatory list?).
Wire transfers: The AMLO imposes special requirements on FIs when carrying out wire transfers, such as the need to verify and record various identification information of the originator of the wire transfer, and include the information in the message or payment form accompanying the wire transfer. After much deliberation, **SFC has included a new chapter ("Chapter 10") in the Guideline, which gives generic guidance on the wire transfer provisions**. Chapter 10 clarifies that it is primarily applied to authorized institutions and money service operators only.	Where the beneficiary institutions are not located in Hong Kong, (i.e. money is sent from HK to overseas), these overseas beneficiary institutions (usually banks) are already subject to their own local regulatory requirements. For instance, the EU wire transfer directive would prohibit any funds entering EU institutions unless they meet the minimum identification of the source of funds, address etc (audit trail) requirements. Thus, some members wonder how the SFC wire transfer provisions/guidelines could be enforced.
Performance of a company registry search: The proposed Guideline requires a **FI to perform a company registry search and obtain a full company search report** in respect	Members wonder if the benefits of performing a company registry search could outweigh the costs, especially in overseas jurisdictions

of all locally incorporated non-listed companies and companies incorporated in jurisdictions which have a public company registry as part of the CDD process.	where company search is difficult to conduct. The only benefit of company search is that it will show whether the company is winding up/struck off. However, if the company is winding up after the account is opened, the FI will not be aware of it. The existing measures for high-risk clients or where there is any doubt as to the identity of the beneficial owner/shareholder etc. is a more workable solution to implement. There is currently a requirement to identify and verify directors/shareholders etc. in place and alternative legal documentation (i.e. passport) would meet that requirement. There are other public tools available to verify a company's registered office address or alternatively this can be verified by another regulated entity. The business type of fund industry is investment not banking. Fund managers would receive funds from a regulated entity/bank (not cash) and therefore it would be unlikely that the company will have been struck off. Members suggest the Guideline should reflect the entity type that these requirements should apply to (i.e. banks).
Nominee companies: Under the AMLO, an FI may apply simplified customer due diligence ("SDD") whereby it is not required to identify and verify the beneficial owners in relation to a customer if the customer is another FI. However, it is common for the fund distributor to open an account with a fund house in the name of a nominee company for holding fund units on behalf of the customers of the fund distributor. The fund industry was concerned that whether SDD would not be available in such circumstances as the nominee company might appear to be the customer of the fund house rather than the FI fund distributor. As fund distributors might not wish to disclose information about their clients for legitimate commercial reasons, fund houses would not be able to identify and verify the beneficial owners of the fund units held by the nominee company. To address the concern, SFC has drafted para. 4.10.6, subject to certain safeguards, the fund distributor is regarded as the customer of the fund house and not the nominee company. The safeguards include the requirements that the fund distributor is an FI as defined under the AMLO; has conducted CDD on the underlying customers of the fund; and is authorized to operate the account which is in the name of the nominee company pursuant to a contractual document or agreement.	Members welcome the SFC's proposal of a pragmatic approach to handle SDD of nominees account.

Sanction Lists	Currently, fund distributors are required to fulfill the European AML requirements, in particular the sanction lists they have to check against, should they are distributing UCITS funds in Hong Kong. Members would suggest the Guideline specifying what sanction lists FI have to check against for CDD and align the standards under the European requirements.