



31 December 2019

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

Via electronic submission to: ra13-consultation@sfc.hk

**Re: Consultation Paper on the Proposed Regulatory Regime for Depositories of
SFC-authorized Collective Investment Schemes**

Dear Sir / Madam

State Street Corporation ("State Street") appreciates the opportunity to provide comments to the Hong Kong Securities and Futures Commission ("SFC") on the proposed new regulated activity ("RA13") for depositories of SFC-authorized collective investment schemes ("Consultation Paper").

Headquartered in Boston, Massachusetts, State Street specializes in providing institutional investors with investment servicing, investment management, data and analytics, and investment research and trading. With US\$32.90 trillion in assets under custody and administration and US\$2.95 trillion¹ in assets under management as of September 30, 2019, State Street operates in more than 100 geographic markets globally.

In Hong Kong, State Street provides custody, trustee, and investment management services to SFC-authorized collective investment schemes, which makes this Consultation Paper highly relevant to us. We are able to provide views, taking into account both the perspectives from a global custodian and an investment manager. We have also been active in participating in the soft consultations held by SFC with industry stakeholders over the past year.

General

Overall, State Street appreciates the constructive approach taken by the SFC to bring trustees and custodians of public funds under the SFC's licensing and supervision. In that context, we welcome the consideration given by the SFC to the regulatory cooperation and distinction with the Hong Kong Monetary Authority ("HKMA"), which will remain the frontline supervisor of the authorised institutions, as well as with the Mandatory Provident Fund Schemes Authority ("MPFA"), which will remain the competent regulator of pure Mandatory Provident Fund ("MPF") products. This provides custodians with helpful clarification as we transition to the new model of additional oversight by the SFC. Nonetheless, we have some comments and would like to seek further clarifications on the following aspects of the Consultation Paper.

Question 1: Do you have any comments on the proposed scope of RA13?

We note that the proposed scope of RA13 is intended to cover "top level" trustees and custodians. Whilst these "top level" entities may delegate certain functions to third parties, the responsibility with respect to these functions remain with the entities. Further these "top level" entities have the responsibility to exercise reasonable care, skill and diligence in the selection and monitoring of delegates. In the case of a global

¹ Assets under management include the assets of the SPDR® Gold ETF and the SPDR® Long Dollar Gold Trust ETF (approximately US\$44 billion), for which State Street Global Advisors Funds Distributors, LLC ("SSGA FD") serves as marketing agent; SSGA FD and State Street Global Advisors are affiliated.

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custodian such as State Street, there could be a network of sub-custodians, it would therefore be useful if SFC could clarify that the responsibility of the SFC-regulated "top level" trustees and custodians would stop at the level immediately below i.e. for example, only the immediate sub-custodian would be covered. This is in line with the IOSCO principles regarding the custody of CIS assets as well as the European Alternative Investment Fund Managers ("AIFM") and the Undertakings for Collective Investment in Transferable Securities ("UCITS") regulatory regimes, which have not fully imposed the home market standards to global sub-custodian networks, but qualify the sub-custodians' liability based upon standards applicable in the relevant markets.

Question 2: Do you have any comments on the proposed exemption for trustees which only act for MPF products?

We note that trustees already approved by the MPFA, and servicing only pure MPF products, will be excluded from the scope of SFC's RA13, in order to minimise regulatory duplication. SFC also recognizes that they are not required to comply with many of SFC's regulations which apply to retail funds since they are already regulated by MPFA. In the same vein, from State Street's perspective as a custodian, it would be helpful if SFC and MPFA could consider a streamlined approval and supervisory process, if a SFC-approved depository under RA13 would like to apply to start servicing MPF products in future.

Question 4: Do you have any comments on the proposed licensing scope applicable to staff members of RA13 depositories?

We note that SFC expects depository's staff, who perform "more than a clerical role" in a business function directly relating to the depository's regulatory obligations, will need to be licensed or registered. From State Street's experience in investment servicing, in practice, it will be difficult to clearly make a distinction between clerical role and more than so, especially in a dynamic global workforce. Better distinctions could be whether the staff member is "client-facing" and/or has "non-operational decision-making power". It would be helpful if SFC could provide further guidance in this regard, as well as SFC's expectation with respect to overseas-based staff.

Question 10: Do you have any comments on the proposed Schedule 11?

We note that a depository will be expected to notify the management company of (para 6(b)) material exceptions to business continuity plan ("BCP") identified during regular tests. Other than it will be difficult to ascertain what constitutes "material exceptions", the current drafting is broad and covers a whole range of BCP matters that may or may not have any impact to the fund or management company in question. The requirement imposes administrative burden on depositories even in times of regular BCP testing. Yet, from our experience as an investment manager, it does not provide much value to the fund companies or even cause unnecessary alarm.

Similarly, upon activation of its BCP (para 6(c)), a depository should only be required to communicate with the management company if there is expectation that there will be any impact to services provided to the fund or management company in question.

Thank you again for the opportunity to provide our comments. We appreciate your consideration of this letter and the recommendations we propose. Please feel free to contact me if you wish to discuss State Street's submission in further details.

Yours faithfully