Re: Response on 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 Securities and Futures Commission for Associated Entities

Dear Sirs,

We are in principal supportive of the acts of RAs in combating ML. Our principal comments on the ML guidelines are as follows :

(i) We do not see the ML guidelines as very business-friendly. The objectives of FIs are survival and profit making, not regulation. If FIs are required to take up the role of RAs to request their customers to provide information / confirmations / proof, this is definitely an additional financial burden, as this requires additional work and expertise. In addition, if the RAs shift the regulatory works to FIs, this could discourage customers from using the service of FIs, and this will in particular affect those small scale FIs.

(ii) It is impracticable for the ML guidelines to shift the burden of detecting, determining and reporting suspicious ML transactions to FIs. In addition, this will affect the relationships between FIs and their customers. When determining whether a transaction constitutes a suspicious ML transaction, FIs have to make numerous personal judgments as if they were regulators. Since FIs are not regulators, they do not have the necessary professional training, knowledge and expertise to make these judgments, and their judgments will be subject to challenge by customers.

(iii) At present, RAs (for example the SFC) are legally empowered to request FIs to provide information about their clients, and then FIs respond to RAs accordingly. However, there is no legal backing for FIs to disclose details of their customers on their own initiative as requested under the ML guidelines. Voluntary disclosure of clients' information by FIs may breach the provisions of Personal Data (Privacy) Ordinance. IFs could face significant legal consequences and be the subject of legal action by their clients, especially when suspicious reported ML transactions prove to be non-ML transactions subsequently.

Regarding the questions as set out in the consultation paper issued in September 2011, we consider that in respect of Question no. 3, doing searches on certain overseas incorporated companies (e.g. British Virgin Islands) would outweigh the costs and is impossible as some jurisdictions simply do not have a company registry search system. As for Question no. 5 relating to staff training, it would be much efficient and effective for the SFC to provide training programs and seminars from time to time.

Last but not the least, we would like to draw your attention to our following concerns on some items listed on the Sept 2011 consultation paper:

1. Section 1.5: "Guideline will be kept under review and it may be necessary to issue amendments from time to time". We suggest setting the frequency of the reviews/amendments and that a committee consisting of representatives of FIs should be set up for the review.

2. In order to allow FIs to participate in AML/TF actions while at the same time to minimize interference on their daily operations or increase their cost of operation, easy and affordable access to reliable sources of terrorist suspects and PEPs information is of paramount important. The current practice of large FIs to rely on commercial databases is not ideal, as the reliability of these databases is questionable and its price is beyond the reach of smaller FIs. Therefore, in the interest of the structural integrity of our system in AML/TF actions, we propose that a central AML database should be set up and maintained by government bodies/RAs, which is accessible by all FIs free of charge. The initial outlay in setting up the AML database should be financed by the government, and the running/maintenance costs would be financed out of the levies charged by the SFC on transactions conducted in HKEx.

3. Credit Rating Agencies (CRA) have a large database of information which could be used for verification purposes. We suggest that the AML would consider having CRA be part of the AML program.

4. Non resident customers high-risk situations (EDD) should be applicable for certain countries only (such information should be included in the AML database as mentioned in point 2 above). This provision would not only has significant impact on the financial industry but also interferes the daily operation of FIs. When non-resident customers are classified as EDD in Schedule section 15, monitoring works should arise only when there is any trigger event for those non-residents.

5. To avoid unnecessary confusion and duplication of efforts, a list of equivalence jurisdictions should be kept by RA, accessible by FIs via internet (4.20)

Yours respectfully,

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