

21 November 2011

Intermediaries Supervision Department
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

By email: Email: aml_guideline@sfc.hk

Dear Sirs,

The Hong Kong Trustees' Association welcomes the opportunity to provide comments to the Securities and Futures Commission on its 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 SFC for Associated Entities ("Proposed Guideline").

Some of our comments respond specifically to questions 1 and 3 in the consultation paper. Other comments regarding the Proposed Guideline are also provided in the second part of this letter.

Responses to Specific Questions

Question 1: Do you think paras 4.4.1, 4.4.3 and 4.9.19 together provide sufficient guidance to assist FIs to comply with the requirement of taking reasonable measures to verify the identity of persons purporting to act on behalf of customers? If not, please suggest further examples or alternative measures with reasons.

It is often impractical to verify the identity of a long list of authorized signatories for persons purporting to act on behalf of customers. Perhaps a risk based approach can be adopted.

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Question 3: Do you agree that the benefits of performing a company registry search as an independent, effective means of confirming a corporate customer's current status and verifying the names of its directors and shareholders outweigh the costs?

The requirements in 4.9.12 may be too onerous in terms of costs. FIs should have the flexibility to determine whether a company registry search is useful or required and if not, to alternatively accept other substitutes (e.g. certificate of good standing, certificate of incorporation, etc).

For many overseas entities/ corporation, not all the required information is available in public company registry; especially as regard the most relevant information – the identity of shareholders. The SFC should clarify that, where the information of names of directors and shareholders and registered address is not available in overseas public company registry, FIs may adopt a risk-based approach to determine the need and appropriate measure to verify the information,

Other Comments on the Guidelines

(i) Simplified Due Diligence

The Customer Due Diligence ("CDD") requirements as set out in paras 4.2 to 4.9 should all be expressly made subject to Simplified Due Diligence ("SDD") as and when SDD is applicable under the terms of para 4.10 of the Proposed Guideline (such as when the due diligence is being carried in respect of the specific products set out in para 4.10.16 (which products include provident, pension retirement or superannuation scheme)). Many of the requirements set out in paras 4.2 to 4.9 are currently worded as blanket requirements and, to cater for the flexibility of allowing SDD to apply as and when appropriate, they should all be expressly stated as being subject to SDD.

(ii) Para 4.10.17 & the Pension industry

Para 4.10.17 provides:

"For the purpose of item (a) of paragraph 4.10.16, FIs may treat the employer, the trustee and any other person who has control over the business relationship including the administrator or the scheme manager, as the customer. FIs are not required to apply the provisions of section 2(1)(b) of Schedule 2 where the customer is a scheme falling within item (a) of paragraph 4.10.16. This means that they need not normally identify the beneficial owners of the scheme, i.e. the employees and verify their identities. It is only necessary to conduct CDD on the customer of the FI."

In the context of the Pension Industry, the last sentence of Para 4.10.17 would seem to have the effect of applying SDD to a pension scheme in such a way as to (i) remove the need to carry out due diligence on the relevant employees but (ii) require CDD (instead of SDD) to be carried out in respect of the employer. We submit that SDD as it is provided for under section 4(3) of Schedule 2 of the AMLO would apply in the above-mentioned context as to also allow SDD (instead of CDD) to be applied to the employer if appropriate. Para 4.10.17 should be amended accordingly.

(iii) "High risk customers"

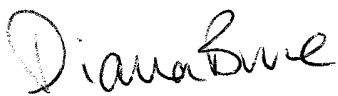
Para 4.11.1 includes non-resident customers, private banking, trusts that are personal assets holding vehicles and companies that have nominee shareholders as higher risk customers.

Many of our members operate exclusively in the private banking space, or work exclusively with trusts that are used as part of personal asset holding structures. We do not agree that such FIs should treat all their customers as high risk and be required to undertake enhanced due diligence. In particular, it would be burdensome for such FIs to obtain senior management approval to commence/ continue the relationship, and to conduct enhanced monitoring for all their customers. A risk based approach would be appropriate even for clients in these 'high risk' industries.

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The Hong Kong Trustees' Association looks forward to continuing the dialogue with the SFC and other regulators on this important issue that directly impacts the trust industry in Hong Kong.

Yours faithfully,



P.C. Carolyn Butler
Chairman,
Hong Kong Trustees' Association Ltd