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15 January 2018

By post and email

Ms. LEUNG Fung Yee, Julia, SBS
Executive Director
Securities and Futures Commission
35/F Cheung Kong Centre
2 Queen's Road Central
Hong Kong

Dear Julia,

Further Consultation Paper on Proposed Disclosure Requirements Applicable to Discretionary Accounts

We appreciate the opportunity to provide further comments on the proposed changes to the Fund Manager Code of Conduct (FMCC) and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) in relation to disclosure requirements applicable to discretionary accounts.

In general, the Hong Kong Association of Banks supports the SFC's proposed disclosure requirements applicable to discretionary accounts. We submit that some proposals may require further clarification and that a transition period of 12 months may be more realistic to allow time for implementation of the changes.

We enclose with this letter our members' views in response to the consultation paper and look forward to receiving further information on the proposals as they are finalised and/or the revised drafts of the FMCC and the Code of Conduct.

Yours sincerely,

Enc.

Chairman The Hongkong and Shanghai Banking Corporation Limited
Vice Chairman Standard Chartered Bank (Hong Kong) Limited
Bank of China (Hong Kong) Limited
Secretary Steve Choi

主席 香港上海滙豐銀行有限公司
副主席 渣打銀行（香港）有限公司
中國銀行（香港）有限公司
秘書 蔡兆昌

The Securities and Futures Commission (SFC)

**Proposed enhancements to the Fund Manager Code of Conduct and Code of Conduct for
Persons Licensed by or Registered with the Securities and Futures Commission**

Consolidated response of the Hong Kong Association of Banks (HKAB)

15 January 2018

A. Introduction

Assisted by Hogan Lovells, this response paper sets out the consolidated responses that have been received from HKAB's members to questions 1 to 3 of the SFC's Consultation Conclusions on Proposals to Enhance Asset Management Regulation and Point-of-sale Transparency and Further Consultation on Proposed Disclosure Requirements Applicable to Discretionary Accounts dated November 2017 (the "Consultation"), dealing with the Disclosure Requirements in particular.

All paragraph references made are to relevant paragraphs in the Consultation unless stated otherwise.

B. HKAB's consolidated responses

1.1 Question 1: Do you have any comments on the proposed disclosure requirement in relation to monetary and non-monetary benefits for discretionary accounts set out above?

- (a) Paragraph 216 of the Consultation provides that "all the proposed disclosures are to be made to investors at the account opening stage or prior to entering into a discretionary client agreement". We consider it practical for the proposed disclosure requirement to apply once at the account opening and mandate signing stage, but not at a transaction level basis or at regular intervals. For the avoidance of doubt, we would be grateful if the SFC could clarify whether it would agree with our view.
- (b) If no monetary and non-monetary benefits are received by the discretionary investment manager from the transactions executed for the discretionary investment account/portfolio and there is no non-explicit remuneration arrangement, we are of the view that a "Nil" disclosure is not necessary and would not add value to the customers. For the avoidance of doubt, we would be grateful if the SFC could clarify whether it would agree with our view.

1.2 Do you have any comments on the suggested manner of disclosure set out above? Do you have any other suggestions to ensure the disclosure will be clear, fair, meaningful and easy to understand for investors?

- (a) We would like to suggest that, of the disclosure options for discretionary accounts, option 1 (specific disclosure by type of investment product) is preferable to option 2 (specific disclosure of the aggregate amount in percentage terms). This is because the investment mix may change from time to time, whether that be due to the exercising of discretion by the portfolio manager, market movement or a change in the investment objectives or guidelines. Option 2, therefore, may not give a good estimate of the monetary benefits to clients and may require changes from time to time. Option 1, on the other hand, would be easier to implement given that disclosure is at the asset class level.

- (b) We are of the view that a "Nil" disclosure is not necessary for either of the options presented and would not add value to the customers. For the avoidance of doubt, we would be grateful if the SFC could clarify whether it would agree with our view.

1.3 Do you think a six-month transition period following the gazettal of the final form of the amendments to the Code of Conduct is appropriate? If not, what do you think would be an appropriate transition period and please set out your reasons.

Member banks think that the six-month transition is too short as there will be system, procedural or documentation changes to the discretionary business to ensure compliance with the new requirement on an on-going basis. Therefore, we propose to extend the transition period to 12 months to allow time for expected changes and system development.

1.4 Other Comments

We seek clarification of the following points:

- (a) In a situation where the licensed person is remunerated under an incentive framework which is not on a transactional basis but a discretionary basis with criteria for judgment of performance on both transactional and conduct elements (i.e. where the number of transactions is only one of the factors determining the discretionary amount of the incentive), how the proposed Code will apply. This clarification is needed because the disclosure requirement assumes that the monetary or non-monetary benefits will be calculated solely on "a transactional basis".
- (b) Whether when a person licensed by or registered with the SFC is conducting MPF business, but not other SFO regulated activities, in his capacity as MFP intermediary, is also subject to the Code of Conduct. Such clarification is needed in particular in response to paragraphs 195 and 199 of the Consultation. For example, for a licensed person whose frontline regulator is either SFC or HKMA, but who is also a subsidiary intermediary ("SI") with MPFA license in order to conduct regulated activities under MPFSO, we would appreciate SFC's clarification whether this licensed person is subject to the proposed Code of Conduct, given that the SI is already subject to the disclosure requirements under MPFA Code of Conduct /Guidelines.

C. Closing remarks

HKAB and its members look forward to working with the SFC in relation to the finalisation of the proposed enhancements in relation to the FMCC and the Code of Conduct. HKAB and its members are keen to be closely involved with the consultations in respect of the revised drafts of the codes.