



**SECURITIES AND FUTURES COMMISSION**  
證券及期貨事務監察委員會

**Consultation conclusions on proposals to amend  
the Code of Conduct for Persons Licensed by or  
Registered with the Securities and Futures  
Commission in relation to the establishment of  
the Financial Dispute Resolution Centre Ltd and  
the enhancement of the regulatory framework**

May 2012



# Table of Contents

|                                             |                                                                                                                        |    |
|---------------------------------------------|------------------------------------------------------------------------------------------------------------------------|----|
| Introduction                                |                                                                                                                        | 1  |
| Part I                                      | Responses to comments received on the proposed amendments to the Code in connection with the establishment of the FDRC | 3  |
|                                             | Inclusion of a provision obliging licensees to participate in the FDRC process                                         | 3  |
|                                             | Enhancement of the complaints handling procedures in paragraph 12.3                                                    | 4  |
|                                             | Enhancement of the reporting obligations in paragraph 12.5                                                             | 6  |
|                                             | Inclusion of a “full and frank disclosure” provision in dealing with the FDRC                                          | 8  |
| Part II                                     | Responses to comments received on the proposed miscellaneous amendments to the Code                                    | 10 |
|                                             | Proposal to extend the telephone recording retention period                                                            | 10 |
|                                             | Proposal to prohibit the use of mobile telephones for receiving client orders                                          | 11 |
|                                             | Proposal to retain Internet Protocol address (IP address) records                                                      | 13 |
|                                             | Proposal to require third party authorization in writing                                                               | 14 |
|                                             | Extension of notification requirement in paragraph 12.5                                                                | 15 |
|                                             | Proposal to require firms not to prohibit staff from performing expert witness services                                | 18 |
| Conclusion and way forward                  |                                                                                                                        | 20 |
| Appendix A: List of respondents             |                                                                                                                        |    |
| Appendix B: Proposed amendments to the Code |                                                                                                                        |    |



## Introduction

1. On 8 November 2011, the Securities and Futures Commission (**SFC**) issued a Consultation paper on proposals to amend the Code of Conduct for Persons Licensed by or Registered with the SFC in relation to the establishment of the Financial Dispute Resolution Centre Ltd and the enhancement of the regulatory framework (**Consultation Paper**).
2. The SFC sought views from the public on:
  - (a) the proposed amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC (**the Code**) in connection with the establishment of the Financial Dispute Resolution Centre Ltd (**FDRC**); and
  - (b) the miscellaneous amendments to the Code for enhancing the existing regulatory framework and strengthening effective enforcement against market misconduct.
3. A two-month public consultation period was given and it ended in January 2012. The SFC received written submissions from a total of 27 respondents, including industry practitioners, financial institutions and trade and professional associations.
4. This paper comprises two main parts.
5. Part I sets out the major comments received from respondents concerning four specific questions raised in the Consultation Paper in connection with the establishment of the FDRC. The proposed amendments relate to:-
  - (a) inclusion of a provision obliging licensees to participate in the FDRC process;
  - (b) enhancement of the complaints handling procedures in paragraph 12.3 of the Code;
  - (c) enhancement of the reporting obligations in paragraph 12.5 of the Code; and
  - (d) inclusion of a “full and frank disclosure” provision in dealing with the FDRC.
6. Part II sets out the major comments received from respondents concerning six specific questions raised in the Consultation Paper in relation to the miscellaneous amendments. The proposed amendments relate to:-
  - (a) changes to the order recording requirements in paragraph 3.9 of the Code;
  - (b) changes to the form of third party authorization in paragraph 7.1 of the Code;
  - (c) extension of the reporting obligations in paragraph 12.5 of the Code; and
  - (d) inclusion of a new provision regarding expert witness services.



7. A list of the respondents who sent in submissions is set out at Appendix A to this paper. The Consultation Paper, the submissions (which can be published) and this Conclusions Paper are available on the SFC's website at [www.sfc.hk](http://www.sfc.hk). The SFC would like to take this opportunity to thank all respondents for their feedback and comments.
8. A mark-up version of the relevant paragraphs of the Code incorporating appropriate amendments in response to comments received is set out at Appendix B to this paper. The relevant paragraphs of the Code will be gazetted by 1 June 2012.



## **Part I Responses to comments received on the proposed amendments to the Code in connection with the establishment of the FDRC**

9. The SFC consulted on the following amendments to the Code in connection with the establishment of the FDRC:
- (a) inclusion of a provision obliging licensees to participate in the FDRC process. This will require licensed or registered persons to become and remain members of the FDRC scheme (**FDRS**) and be bound by the dispute resolution processes established by the FDRC;
  - (b) enhancement of the complaints handling procedures in paragraph 12.3 of the Code. This will require licensed or registered persons to:
    - seek to resolve complaints internally and, failing resolution, to inform clients of the right to make a complaint to the FDRC;
    - consider the subject matter of the complaints. If the subject matter relates to other clients, or raises issues which may be of broader concern, licensed or registered persons should take steps to investigate and remedy the matter;
  - (c) enhancement of the reporting obligations in paragraph 12.5 of the Code. This will require licensed or registered persons to:
    - notify the SFC upon receipt of a complaint to the FDRC;
    - provide the SFC with all documentation and information in connection with the FDRC process (if so requested by the SFC);
    - provide the SFC with details of the outcome of a complaint including detailed terms of settlement;
  - (d) inclusion of a “full and frank disclosure” provision in dealing with the FDRC. This will require licensed or registered persons to make full and frank disclosure before mediators and/or arbitrators, and to render all reasonable assistance to the FDRC process.

### **Inclusion of a provision obliging licensees to participate in the FDRC process**

10. It has been decided by the Government that the Code will be used as the means for obliging licensed and registered persons regulated by the SFC and the Hong Kong Monetary Authority (**HKMA**) to engage in the FDRC process.
11. The SFC will proceed with the proposed amendment to provide that licensed and registered persons should comply with the FDRS in full and be bound by the dispute resolution processes provided for under the FDRS.



## **Enhancement of the complaints handling procedures in paragraph 12.3**

### **Firms should seek to resolve complaints internally, etc.**

#### **Proposed amendment in the Consultation Paper**

12. Following the establishment of the FDRC, the primary regulatory objective will remain that licensed and registered persons should seek to resolve complaints internally. If the complaints cannot be resolved satisfactorily through internal resolution processes, eligible clients may choose to refer their complaints to the FDRC.
13. The Consultation Paper therefore proposed that the Code be amended to require a licensed or registered person to seek to resolve complaints internally and, failing resolution, to inform clients of their right to make a complaint to the FDRC.

#### **Comments received**

14. Most respondents agreed with the proposal. One respondent opined that clients should be informed of this right as soon as they lodge complaints with firms, not after the firms fail to resolve the complaints internally, and that firms should explain to clients the mediation and arbitration procedures of the FDRC, including the fact that the FDRC process may not involve any fault finding.
15. A small number of respondents considered the proposal unnecessary as the FDRC itself will launch publicity campaigns to raise the awareness of the public. Others commented that it is for the SFC to promote the FDRC to the investing public.

#### **SFC's response**

16. The SFC will proceed with the proposal.
17. Although publicity campaigns will be launched to raise the public awareness of the establishment of the FDRC, the SFC is of the view that firms should be obliged to inform clients of their right to go to the FDRC to resolve their disputes as part of the resolution process. This is in line with the international practices.
18. As far as the mediation and arbitration procedures of the FDRS are concerned, the FDRC will cover them in its rules and procedures.

### **Firms should consider the subject matter of complaints**

#### **Proposed amendment in the Consultation Paper**

19. As a matter of good practice, licensed or registered persons should carefully consider the subject matter of complaints from clients.



20. The Consultation Paper proposed that firms should consider the subject matter of a complaint received from a client. If the subject matter of the complaint relates to other clients, or raises issues of broader concern, firms should take steps to investigate and remedy these issues notwithstanding that the other clients may not have filed complaints with the licensed or registered persons and/or the FDRC.

### **Comments received**

21. The number of respondents who agreed with the proposal outweighs those who disagreed.
22. Industry associations and brokers expressed concerns on costs and resources.
23. Some respondents expressed that the decision as to whether to investigate and remedy issues, which relate to other clients or are of broader concerns, should depend on the specific circumstances of a complaint. A respondent commented that the requirement should apply only where a complaint raises issues of serious misconduct or compliance failures.
24. It was also suggested that a clearer scope should be set out, such as requiring firms to take into account all relevant factors in assessing a complaint (including similarities with other complaints received). Where firms identify any recurring or systemic problems from the complaints, they should conduct an investigation to identify the root cause of the problem and rectify it accordingly.
25. Some respondents expressed that there are existing requirements for firms to have procedures in place to protect clients from financial loss arising from fraud, misconduct, etc. and to handle complaints promptly under the Code (such as paragraph 4.3 on Internal control, financial and operational resources and paragraph 12.3 on Complaints) and the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC (paragraph 5 under section V on Compliance). Further, the proposed requirement is more stringent than that of other jurisdictions.

### **SFC's response**

26. Currently, the complaint handling requirements are set out in paragraph 12.3 (Complaints) of the Code. In paragraph 12.3(b) of the Code, firms are required to take steps to investigate and respond promptly to complaints. In other words, the duty to inquire into a complaint does not depend on the circumstances of a complaint. Rather, every client complaint should be investigated and responded to. The proposed requirement that the subject matter of a complaint should be properly reviewed is a major step that firms need to take before responding to a complaint.
27. The extended obligation applies when the subject matter of the complaint relates to other clients or raises issues of broader concern. Then, firms will need to investigate and remedy the issues. This practice will enable firms to detect potentially serious misconduct or compliance failure before the matter aggravates and affects operations or financial resources of the firms. This will minimise the occurrence of systemic issues.



28. The SFC notes the concerns about costs and resources implications. However, the SFC believes that the proposal is beneficial to firms in the long run. This will enable firms to detect and respond to potential systemic problems at an early stage, instead of allowing any potential problem to grow undetected. Firms should have procedures in place to identify risks before they crystallise into significant problems for firms and their clients. This proposal will ensure that detectable problems will be addressed sooner. Further, the proposal is only a natural extension of the existing complaint handling process and is consistent with the international practices.
29. The SFC will proceed with the proposed amendment to require firms to properly review the subject matter of a complaint received from a client and if the subject matter of the complaint relates to other clients, or raises issues of broader concern, firms should take steps to investigate and remedy these issues.

## **Enhancement of the reporting obligations in paragraph 12.5**

### **Proposed amendment in the Consultation Paper**

30. The link between the FDRC and regulators is a key element in the FDRS. The inclusion of express reporting obligations on firms in the Code will provide a means for the SFC to be properly apprised of matters which are before the FDRC.
31. The Consultation Paper proposed that the Code be amended to impose new obligations in connection with the establishment of the FDRC, requiring licensed or registered persons:
  - (a) to notify the SFC upon receipt of a complaint to the FDRC;
  - (b) to provide the SFC with all documentation and information in connection with the FDRC process (if so requested by the SFC); and
  - (c) to provide the SFC with details of the outcome of a complaint including detailed terms of settlement, if any.

### **Notification upon receipt of a complaint to the FDRC**

#### **Comments received**

32. Almost all respondents objected to the proposal that firms should notify the SFC upon receipt of a complaint to the FDRC.
33. Industry associations and firms were generally of the view that the proposal is inefficient, costly and unduly burdensome.
34. Some respondents commented that most of the disputes handled by the FDRC do not involve regulatory issues, and SFC should be more concerned about potential systemic issues, material breaches and fraudulent conduct. Many respondents opined that as the FDRC will be the central party to receive information regarding customer complaints, the SFC should obtain this information from FDRC directly.
35. Some respondents also proposed that the SFC should require firms to submit summary report or complaint statistics annually.



36. One respondent expressed the proposal is contrary to the intention that professional mediators can resolve disputes under a confidential and voluntary environment.

#### **SFC's comments**

37. The SFC has decided not to proceed with the proposal at the moment.
38. As some respondents pointed out, the FDRC will be the central party to receive certain information. The FDRC intends to ask firms to consent to the FDRC notifying and/or submitting such information within its knowledge relating to systemic issues (which relate to issues that have affected or have the potential to affect other customers of the relevant firm or members of the public) and/or suspected serious misconduct to the SFC. The SFC expects firms will not withhold consent and will facilitate the disclosure of the relevant information to the SFC. Any exchange of information between the FDRC and SFC will be governed by a Memorandum of Understanding. Further, the FDRC will also publish data for research, evaluation or educational purposes.
39. The SFC reserves its position in relation to this proposal and may consult again if there are difficulties in resolving any regulatory issues arising in relation to disputes handled by the FDRC.

#### **Provision of documentation and information in connection with the FDRC process**

##### **Comments received**

40. The majority of respondents agreed with the proposal subject to certain qualifications.
41. A few respondents commented that the proposed requirement places a heavy reporting burden on firms, and thus suggested that the SFC and FDRC should liaise with each other directly for exchange of information. Two respondents were of the view that the SFC should use its existing powers to obtain the information.
42. Some respondents expressed concerns over confidentiality of FDRC process. As the agreement and terms of settlement reached through the FDRC process are private and confidential, any disclosure of details of the outcome of a complaint might undermine credibility of the FDRC. The SFC was urged to ensure that the proposed disclosure will not result in any breach of confidential obligations arising under the FDRC process.
43. The proposal was accepted on the assumption that the SFC would clarify "*documents and information in connection with the FDRC process*" is limited to documents filed or exchanged between the parties or with the FDRC as part of the FDRC process.
44. Other respondents were concerned that the FDRC mediator/arbitrator's views may be prejudiced if regulators start an investigation in parallel. Further, in relation to mediation cases, firms may be discouraged from offering favourable terms to clients so as to prevent the regulator from drawing adverse inference that the firms are willing to compensate the clients because they are at fault.



### **SFC's comments**

45. The SFC considers that firms should be required to provide details of any determination or settlement of complaints in connection with the FDRC process upon the SFC's request.
46. The SFC understands the concerns about reporting burden. In order to ease this reporting burden, firms may request that the FDRC provides on their behalf certain specified information directly to the SFC including the Agreement to Mediate, the Mediated Settlement Agreement, the Mediation Certificate, the Notice to Arbitrate and the Arbitral Award.
47. The proposed reporting requirement will not prejudice the FDRC process as the FDRC is not a regulator and is independent from the SFC.
48. Regarding concerns about confidentiality, there will be nothing in the FDRC rules that will prevent a firm from disclosing any information to the SFC as requested by the SFC.

## **Inclusion of a “full and frank disclosure” provision in dealing with the FDRC**

### **Proposed amendment in the Consultation paper**

49. To help achieve fairness and consistency in the dispute handling process, licensed or registered persons should provide mediators and/or arbitrators with all necessary information during FDRC process.
50. The Consultation Paper proposed that the Code should require licensed or registered persons to make full and frank disclosure before mediators and/or arbitrators and to render all reasonable assistance to the FDRC process.

### **Comments received**

51. Some respondents do not think the proposed amendment is necessary since obligations of firms and clients should be covered in the FDRC's rules and procedures. These rules and procedures (including those in relation to disclosure) should apply equally to all participating parties. As the proposal applies only to firms but not clients, this is not consistent with the fundamental principle in any dispute resolution process that all participating parties should be treated equally.
52. A respondent is concerned that the phrase “*full and frank disclosure*” is not clearly defined. It only applies to civil proceedings conducted on an *ex parte* basis, and the duty requires a claimant to disclose all the facts it knows, or which it should know if proper inquiries were made, which are material for the judge to know including points which could be made against it by the respondent. As the FDRC proceedings will be conducted on an *inter partes* basis, the proposal would place an unduly onerous disclosure obligation burden on a regulated entity unilaterally. Thus, some respondents commented that, instead of requiring licensed persons to make “*full and frank disclosure*”, the SFC should require them to “*act in good faith*”, and to provide “*all relevant and available information*”.



53. Another respondent was of the view that it would be unsatisfactory for the SFC to monitor and potentially investigate compliance with the FDRC's rules. The FDRC and the appointed arbitrator/mediator will be in the best position to resolve question of whether those rules have been complied with. If there is a concern of non-compliance, the matter could be referred to the SFC by the FDRC.

#### **SFC's comments**

54. Some respondents correctly pointed out that the FDRC's rules and procedures in relation to disclosure will apply to both firms and clients instead of firms only.
55. The SFC considers that the objections to this proposal are misplaced. The ability of the FDRC to successfully resolve disputes between firms and clients depends on proper disclosure by firms which are required to maintain proper records of the relevant transactions. The proposal is designed to ensure this will be the case. In light of the potential uncertainty that can be created by the phrase "*full and frank disclosure*", the SFC will instead use the phrase "*honest and diligent disclosure*". This will be consistent with General Principle (GP) 1 (Honesty and fairness) and GP 2 (Diligence) of the Code.
56. GP1 requires that:
- "In conducting its business activities, a licensed or registered person should act honestly, fairly, and in the best interests of its clients and the integrity of the market."*
57. GP2 requires that:
- "In conducting its business activities, a licensed or registered person should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market."*
58. The FDRC process is part of the complaint handling process, which is also a matter of business conduct. Failure to disclose honestly and diligently by licensed or registered persons in connection with the FDRS may be viewed seriously as breaches of the above principles.
59. The SFC's aim of introducing the amendment is to ensure the dispute handling process is fair and efficient in that it will not be prejudiced by selective disclosure, taking into account the relative differences in the resources that can be employed by firms and individual clients for conducting FDRC process. The SFC does not intend to monitor and investigate compliance with the FDRC's rules in each and every case. To safeguard co-operation, the FDRC will also notify the SFC if firms fail to comply with its rules and procedures. The SFC will only take follow-up action in appropriate cases.



## **Part II Responses to comments received on the proposed miscellaneous amendments to the Code**

60. The SFC consulted on the following miscellaneous amendments to the Code:

- (a) changes to the order recording requirements in paragraph 3.9;
- (b) changes to the form of third party authorization in paragraph 7.1;
- (c) extension of the reporting obligations in paragraph 12.5; and
- (d) inclusion of a new provision regarding expert witness services.

### **Proposal to extend the telephone recording retention period**

#### **Proposed amendments in the Consultation Paper**

61. The Consultation Paper proposed to amend paragraph 3.9 of the Code to require intermediaries to retain the telephone recordings of their clients' order instructions for at least six months.

#### **Comments received**

- 62. Respondents were generally supportive of the proposal to extend the retention period for telephone recordings of client order instructions from three months to six months.
- 63. One respondent noted that the proposal serves to protect the interests of firms in disputed transactions and to better detect and prevent market abuse. Another respondent suggested telephone recordings of client order instructions should be retained for at least 12 months.
- 64. Some respondents raised concerns that the new measure would increase operational costs for firms and requested the SFC review the costs of implementation vis-à-vis the overall benefit of the measure.

#### **SFC's response**

- 65. In view of the general support from respondents, the SFC will proceed with the proposal to extend the retention period for telephone recordings from three months to six months.
- 66. We are mindful that the extension of the retention period may result in increased costs to some firms' operations due to additional storage costs for retaining the recorded data. We understand that additional costs would vary between individual firms. However, we are not aware of firms having to implement wholesale changes to their business operations, other than making provisions for additional recording and storing of telephone conversations on telephone recording systems that should already be in place. We also consider the costs of maintaining telephone recordings for another three months would not be significantly onerous to firms given the costs of maintaining telephone recording systems have considerably reduced over the past decade due to technological advances. We understand that some firms, for internal purposes, are already effectively following the new measure by maintaining their recordings for longer



than the proposed six months. On balance, we consider the benefits of this measure outweigh any potential increased costs to firms.

67. We consider, at this stage, the ratio of benefits to costs may not be proportionate if a 12 months' recording retention period is imposed on the market. However, our proposals do not prevent firms from recording telephone conversations for a period longer than six months should they wish to do so.

## **Proposal to prohibit the use of mobile telephones for receiving client orders**

### **Proposed amendments in the Consultation Paper**

68. The Consultation Paper proposed to amend paragraph 3.9 of the Code to ban the use of mobile telephones for accepting client orders.

### **Comments received**

69. The majority of respondents opposed the proposal to ban the use of mobile telephones for accepting client orders and urged the SFC to reconsider this proposal.
70. Some respondents voiced concerns that the blanket ban on the use of mobile phones to take client orders is not in client interests or convenience and would frustrate client expectations and client service. In particular, they were concerned that client convenience would be affected if clients could not place orders to their brokers when their brokers were travelling and this would risk delay or errors to the execution of their instructions. It was also suggested that dissatisfied clients may switch to firms in other jurisdictions such as Singapore where there is no such blanket ban and that the proposal would make Hong Kong far less competitive. There were also concerns that the ban is too restrictive for private banking sector clients who demand greater service and efficiency from their relationship managers.
71. Some respondents queried the enforceability of the measure given the widespread use of mobile phones in Hong Kong for placing calls and sending SMS texts and emails. Other respondents opined there would be even greater reliance on mobile phones by licensed or registered persons to keep in contact with clients after the introduction of extended trading hours and a further futures trading session after market close.
72. One respondent requested the SFC to clarify whether the proposed ban on mobile phones extended to orders placed by clients using SMS.
73. Some respondents, in response to the SFC's request for comments on alternative measures to prohibiting the use of mobile phones, advanced the following suggestions:
- (a) require brokers only to accept client orders on a recorded telephone system when in the office, i.e. prohibit the use of mobile phones in the office;
  - (b) require brokers to promptly record in other formats, clients orders placed during unrecorded conversations;



- (c) allow mobile phones to be used in exceptional situations where telephone recording systems are not available such as during power outages or disaster situations;
- (d) allow the use of corporate mobile phones that are linked to the firm's telephone recording system (although one respondent expressed concerns over their potential costs);
- (e) require all client orders taken on mobile phones to be reconfirmed via a recorded telephone line and/or emails on the same business day; and
- (f) ensure firms have sufficient systems and controls in place to monitor and prevent the abusive use of mobile phones when accepting client orders instead of banning their use.

### **SFC's response**

- 74. We understand the concerns expressed by respondents to the proposal to ban the use of mobile phones for accepting client orders.
- 75. After careful consideration and in response to the feedback received, we have decided to limit the scope of the prohibition on the use of mobile phones for accepting client orders only to their use when on the trading floor, trading room, usual place of business where order is received or usual place where business is conducted.
- 76. We expect firms to implement appropriate internal policies and procedures to facilitate and ensure the prohibition on the use of mobile phones for taking client orders on the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, is effective. We will allow an adequate transitional period for firms to make the necessary changes to their internal procedures and anticipate a transitional period of six months from the time a decision is made to change the rules sufficient. We understand some firms already have in place procedures banning the use of mobile phones on the trading floor and procedures governing the recording of client order instructions when accepted on mobile phones outside of the trading floor.
- 77. We believe the ban on the use of mobile phones for accepting client order instructions on the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, will make it logistically more difficult for traders to circumvent a licensed or registered person's telephone recording system. The compulsory recording of client orders will also help the SFC in monitoring, investigating and countering market abuse. We have therefore revised the proposed paragraph 3.9 of the Code to reflect the reduced scope of the prohibition on the use of mobile phones.
- 78. We would also like to take the opportunity to clarify our expectations on recording client order instructions that are received on mobile phones. We expect firms to put in place policies and procedures, where client order instructions are received on mobile phones either verbally, by SMS or personal email, to require employees to immediately call back to the firm's telephone recording system to record details and the time of the order. Other formats, such as handwritten notes or emails, should be used for recording client order instructions only if the firms' telephone recording system is not working. This will ensure consistency, as far as possible, that client orders are recorded on the firm's telephone recording system and for such recordings to be retained for six months. We



expect firms to give sufficient training to employees to ensure they are aware of the recording requirements when using mobile phones. We have revised the Notes in paragraph 3.9 of the Code to give the market further guidance on this point.

79. We see merit in the suggestion for using corporate mobile phones linked to the licensed or registered person's telephone recording system for accepting client orders. It seems few firms have adopted mobile recording technology in Hong Kong. We will continue to monitor the use of mobile phones in receiving client instructions and where appropriate will explore and consult with the industry on the cost and viability of adopting this suggestion.

## **Proposal to retain Internet Protocol address (IP address) records**

### **Proposed amendments in the Consultation Paper**

80. The Consultation Paper proposed to require licensed or registered persons to retain the IP address records of their clients for all online transactions for a minimum of six months.

### **Comments received**

81. Most respondents objected to this proposal and queried the effectiveness of using IP addresses to establish the identity of a person originating an order over the internet because an IP address would only show the location of a computer but not the identity of its user. Respondents further commented that the location of a computer identified by an IP address is unreliable, given:
- (a) the widespread use of Network Address Translation means many private computers are connected to a single router (acting as a proxy between the internet and a local network) and which results in a single IP address being shared by a large number of internet users;
  - (b) clients could place orders from computers operating outside Hong Kong with a Hong Kong IP address by using proxy services available over the internet; and
  - (c) clients could also access their security accounts and place orders using WIFI and other public access points with different IP addresses which would pinpoint their location but not the ultimate identity of the user.
82. Some respondents expressed concern that clients who use vendor order management systems or service providers for connecting to the internet may have dynamic IP addresses and that it is administratively burdensome to require these clients to track every IP address. Some respondents also expressed concerns over the potential costs involved in implementing this requirement.
83. One group respondent recommended that institutional and professional investors be exempted from the application of this proposal given many of them do not connect directly to a broker but to third party vendor hubs such as Bloomberg. Consequently, the firm would have access to the hub's IP address but not access to their client's IP address. The respondent also recommended a firm need only be required to retain the IP addresses of clients directly connected to its trading systems through the internet.
84. Some respondents noted that there is no similar requirement in the UK, Australia or Singapore.



### **SFC's response**

85. The SFC is aware of the technical issues raised by the respondents. In addition, the SFC is aware that the IP address may not constitute definitive evidence of the source of the order or the location of the computer. Nonetheless, the SFC considers that an IP address constitutes an important record forming part of the factual matrix and, as such, is relevant evidence. In light of the responses, the SFC will not implement this proposal at this stage but reserves its position to consult again as technology develops.
86. The SFC encourages all firms to retain IP addresses wherever possible to ensure that its online transaction facilities are not a vehicle for market misconduct.

## **Proposal to require third party authorization in writing**

### **Proposed amendments in the Consultation Paper**

87. The Consultation Paper proposed to amend paragraph 7.1 of the Code to require licensed and registered persons not to accept orders placed by a third party for a client's account unless that third party is authorized by the client in writing. The SFC also proposed to amend paragraph 7.1(b) to improve its clarity.

### **Comments received**

88. Most respondents supported this proposal. One respondent requested the SFC provide clarification that "*a person designated by the client*" is someone other than an employee of the client (if the client is other than an individual). Another respondent requested the SFC provide guidance on the handling of verbal authorizations that were already in place as well as the time allowed for firms to comply with this new requirement.

### **SFC's response**

89. Given the overwhelming support received on this proposal, we will proceed with the proposed amendments to paragraph 7.1 of the Code as set out in the Consultation Paper.
90. We confirm "*a person designated by the client*" comprises any person authorized by the client in writing including employees of the client.
91. In response to the request for guidance for verbal authorizations already in place, we expect firms to take reasonable steps to replace existing verbal authorizations with written authorizations from clients. We consider the proposed requirement straightforward and anticipate a transitional period of six months from the time a decision is made to change the rules will be sufficient for firms to ensure compliance.



## Extension of notification requirement in paragraph 12.5

### Proposed amendments in the Consultation Paper

92. The Consultation Paper proposed that the duty on licensed or registered persons in paragraph 12.5 of the Code to report any actual or suspected material breach, infringement or non-compliance with applicable law, rules, regulations and codes by themselves or their employees should be extended to the reporting of their clients as well.

### Comments received

93. Most respondents objected to this proposal. Respondents were, on the whole, concerned that the reporting of their clients to the SFC would conflict with their contractual duty of confidentiality to clients.
94. Respondents were also of the view that the Code, having no force of law, would not protect them from potential liability to clients that may arise as a result of their disclosure of clients' confidential information to the SFC. Some respondents cited the safe harbour provisions in anti-money laundering legislation (Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) (**DTROP**) and Organized and Serious Crimes Ordinance (Cap. 455) (**OSCO**)) where an informant is expressly protected from liability from any loss resulting from the disclosure of suspicious transactions to the Joint Financial Intelligence Unit (**JFIU**) and complained of the lack of an equivalent provision in the Code.
95. The respondents expressed further concern that the SFC is not an "*authorized officer*" under the DTROP and OSCO and a concurrent obligation to report to both the SFC and the JFIU may be inconsistent with the "tipping-off" offence under such legislation and may raise questions of criminal liability for a firm. Some respondents sought clarification on the correct reporting protocol given the apparent overlap in reporting obligations to the SFC and the JFIU.
96. Some respondents were concerned about the broadness of the reporting requirement which appears to require them to report clients even for suspected extra-territorial breaches of foreign exchange/clearing house rules with no nexus to Hong Kong. Respondents also queried the proposed reporting duty appears far broader than the approaches taken in comparable overseas jurisdictions.
97. Concerns were also raised about the practical difficulties that firms may encounter in making reliable and informed assessments of a client's compliance with applicable rules, particularly as some clients may give incomplete information to firms. Some respondents raised concerns about additional costs and resources in training staff members to identify and report suspected misconduct to the SFC. Some respondents argued the low "suspicion" threshold for reporting clients to the SFC might damage their relationship with clients and may result in "over-reporting". Some respondents were concerned the proposal might make issuers less willing to share sensitive and confidential information with credit agencies for credit rating purposes. Some respondents were concerned whether an investor in a fund would be considered a "client" of a fund manager for the purpose of the reporting obligation.



98. Some respondents suggested the reporting requirement be revised to:
- (a) make the reporting obligation legislative rather than a code obligation to alleviate concerns regarding breach of client confidentiality;
  - (b) reduce the scope of the legislative obligation to report actual or suspected market misconduct by clients;
  - (c) report actual or suspected breaches by clients on a voluntary basis to a specific hotline set up for this purpose;
  - (d) report clients only if there is no breach of legal or contractual obligations and the reporting will not expose a firm to legal action; and
  - (e) report clients only if a firm has reasonable grounds to believe a material breach of applicable rules has occurred and such conduct meets the reporting threshold, or when a firm receives credible information from a third party to suggest a breach has occurred.

#### **SFC's response**

99. We consider the proposed requirement for licensed or registered persons to report suspected market misconduct of their clients to the SFC a very important measure to maintain the integrity of our market.
100. We recognize the concerns expressed by respondents in relation to the duty of confidentiality to clients. However, we consider such concerns have been misplaced given the law is clear that the duty of confidentiality to clients is not an absolute one and can be overridden in situations where:
- (a) a firm is compelled by law to disclose the information;
  - (b) a firm has a public duty to disclose the information;
  - (c) the firm's own interests requires disclosure; and
  - (d) the customer has agreed to the information being disclosed<sup>1</sup>.

We are of the view that the law is clear in recognizing that a firm may have an obligation to disclose information to the proper authorities in the public interest.<sup>2</sup>

101. In response to the request to clarify the protocol for reporting to the SFC and the JFIU, we require a report be made concurrently to the SFC and the JFIU if the matter is within the jurisdiction of both parties. We expect firms to inform the SFC and the JFIU, at the time the report is made, that it has also reported the matter to the SFC or the JFIU as the case may be. While we expect firms to take care to avoid committing the "tipping-

---

<sup>1</sup> See *Tournier v National Provincial and Union Bank of England* [1924] 1KB 461

<sup>2</sup> See *Initial Services Limited v Putteril* [1968] 1 QB 396. See also *A.G. v Guardian Newspapers Ltd (No. 2)* [1988] UKHL 6 (13 October 1988)



off” offence<sup>3</sup> under the DTROP and OSCO, we do not consider a concurrent report made by the firm to both the SFC and the JFIU give rise to criminal liability<sup>4</sup>. We consider the proposed reporting requirement supplements the anti-money laundering legislation currently in place.

102. We believe firms should already have in place internal policies and procedures to identify possible suspicious market activities and to report such activities to the relevant authorities. We therefore envisage firms need only make limited changes to its internal procedures in order to comply with this reporting requirement.
103. In response to the concerns that the scope of the reporting requirement is too broad, we have modified the proposed paragraph 12.5 to the effect that licensed or registered persons are only required to report clients to the SFC if they suspect their clients may be involved in market misconduct or offences as defined in Part XIII and Part XIV of the SFO. This approach is consistent with the reporting requirements adopted in comparable overseas jurisdictions.
104. We recognize that licensed or registered persons may be reluctant to report client misconduct to the SFC for fear of harming client relationship, in particular, where the disclosure may ultimately prove unfounded. We believe the SFC’s policy and practice to treat all information disclosed by licensed or registered persons as confidential and non-public should allay concerns on this point. Furthermore, the SFC only permits authorized officers to release enforcement related information to persons outside the SFC in accordance with applicable laws and regulations.
105. In response to feedback concerning the threshold for reporting clients and difficulties in determining whether clients have complied with applicable laws and regulations, we wish to clarify that we do not require firms to conduct any investigation or make any decision on whether or not a client has been guilty of misconduct. We simply require firms to report the facts or matters indicating that a client may be guilty of misconduct. This would include credible information received by a firm from a third party suggesting a breach or suspected breach has occurred. We would add that there is no duty on firms to report clients to the SFC based merely on unsupported speculation or vexatious comment.
106. We do not agree with the suggestion that client misconduct should only be reported to the SFC on a voluntary basis or in circumstances where such reporting does not expose a firm to legal action. We believe a firm will naturally be hesitant in reporting client misconduct to the SFC for fear of damaging the relationship or breaching client confidentiality. We therefore consider the reporting of client misconduct would be more effective if a positive obligation is placed on firms to assist the SFC. The duty to report client misconduct should also assist in putting beyond doubt the availability of the defence of public interest to firms in any action for breach of confidentiality.

---

<sup>3</sup> Sections 25A(5) of the DTROP and OSCO provides “A person commits an offence if, knowing or suspecting that a disclosure has been made... he discloses to any other person any matter which is likely to prejudice any investigation which might be conducted following that first-mentioned disclosure.”

<sup>4</sup> Sections 25A(6) of DTROP and the OSCO provides “... for an offence under subsection (5) it is a defence to prove... he did not know or suspect the disclosure concerned was likely to be prejudicial... or that he had lawful authority or reasonable excuse for making that disclosure.”



107. To the extent clarification was sought regarding the reporting of investors in a fund, we confirm an investor in a fund would be considered a “client” of a fund manager for the purpose of this reporting requirement.

## **Proposal to require firms not to prohibit staff from performing expert witness services**

### **Proposed amendments in the Consultation Paper**

108. The Consultation Paper proposed to insert a new provision in the Code requiring licensed and registered persons not to prohibit their employees from performing expert witness services for the SFC or the HKMA.

### **Comments received**

109. We received a mixed response to this proposal.
110. Respondents who did not support the proposal expressed concerns that the proposed provision does not provide a qualification to allow firms to reasonably reject their employee’s request to provide expert witness services for the SFC or the HKMA. A number of respondents argued it should be reasonable for a firm to prohibit an employee from providing expert witness services in situations where there are actual or potential conflicts of interest, confidentiality issues or resource constraints for the firm. Another respondent argued firms have legitimate interests to ensure the provision of expert witness services does not interfere with their employees’ normal work duties.
111. Some respondents opined it should be the firm’s prerogative to decide whether an employee should provide expert witness services to the SFC and the HKMA. Two respondents queried the appropriateness of impugning a firm’s “fitness and properness” only because it does not permit employees to provide expert witness services to the SFC or the HKMA.
112. Some respondents also made a series of suggestions relating to amending the proposed provision, including that we should:
- (a) add the words “*without reasonable excuse*” to give firms a discretion to decide on an individual basis whether there are reasonable grounds to prohibit an employee from acting as an expert witness;
  - (b) impose a positive duty on firms to support employees who wished to serve as expert witnesses; and
  - (c) include a non-retaliation clause to prevent firms from retaliating against employees who insist on providing expert witness services.

### **SFC’s response**

113. In response to the concerns, we have amended the proposed provision to include the words “*without reasonable excuse*” to provide greater clarity to firms concerning their right to prohibit an employee from providing expert witness services to the SFC and HKMA. What constitutes “*reasonable excuse*” will depend on the facts of each individual case.



114. We reiterate the objective of the proposal is not to impose a positive obligation on firms to make their employees available as expert witnesses to the SFC and the HKMA. Rather the proposed provision is to ensure employees who have no conflicts of interests, are qualified and willing to provide expert witness services to the SFC and the HKMA, are not unreasonably prevented from doing so by their employers. We believe the proposed obligation as drafted is a reasonable one as “fitness and properness” issues will only arise if firms are found to have unreasonably prohibited employees from providing expert witness services. We have not added a non-retaliation clause as we expect firms and employees to frankly discuss the nature and extent of the expert witness services to be provided and any concerns that may arise from the performance of such services.



## **Conclusion and way forward**

115. Having considered the responses received and the regulatory objectives of the proposals, the SFC will implement the proposals where appropriate and adopt the revisions made to the Code. A mark-up version of the relevant paragraphs of the Code incorporating appropriate amendments is set out at Appendix B to this paper.
116. The amendments to the Code will be gazetted by 1 June 2012. The amendments in connection with the establishment of the FDRC will come into effect on 19 June 2012 and the miscellaneous amendments will come into effect on 1 December 2012.
117. The SFC would like to take this opportunity to thank all respondents for their submissions.



## Appendix A

### List of respondents

(in alphabetical order)

1. ABN AMRO Clearing Hong Kong Limited ( 荷蘭銀行結算 ( 香港 ) 有限公司 )
2. Celestial Securities Limited / Celestial Commodities Limited ( 時富證券有限公司 / 時富商品有限公司 )
3. Clifford Chance on behalf of itself and 17 institutions ( 高偉紳律師行，並代表十七間機構作出回應 ) :
  - (a) BOCI Securities Limited ( 中銀國際證券有限公司 )
  - (b) BNP Paribas Hong Kong Branch ( 法國巴黎銀行香港分行 )
  - (c) BNP Paribas Wealth Management Hong Kong Branch ( 法國巴黎財富管理銀行 ( 香港分行 ) )
  - (d) BNP Paribas Securities (Asia) Limited ( 法國巴黎證券 ( 亞洲 ) 有限公司 )
  - (e) Citigroup Global Markets Asia Limited ( 花旗環球金融亞洲有限公司 )
  - (f) Credit Suisse AG ( 瑞士信貸集團 )
  - (g) Credit Suisse (Hong Kong) Limited ( 瑞士信貸集團 )
  - (h) Deutsche Securities Asia Limited ( 德意志證券亞洲有限公司 )
  - (i) Goldman Sachs (Asia) L.L.C. ( 高盛 ( 亞洲 ) 有限責任公司 )
  - (j) J.P. Morgan Securities (Asia Pacific) Limited ( 美國摩根大通銀行 )
  - (k) Macquarie Capital Securities Limited ( 麥格理資本證券股份有限公司 )
  - (l) Merrill Lynch (Asia Pacific) Limited ( 美林 ( 亞太 ) 有限公司 )
  - (m) Morgan Stanley Asia Limited ( 摩根士丹利亞洲有限公司 )
  - (n) Nomura International (Hong Kong) Limited ( 野村國際 ( 香港 ) 有限公司 )
  - (o) Renaissance Capital (Hong Kong) Limited ( 晉新資本 ( 香港 ) 有限公司 )
  - (p) Societe Generale ( 法國興業銀行 )
  - (q) UBS AG ( 瑞士銀行 )
4. CompliancePlus Consulting Limited ( 天智合規顧問有限公司 )



5. Hong Kong Investment Funds Association ( 香港投資基金公會 )
6. Hong Kong Securities Association Limited ( 香港證券業協會有限公司 )
7. Hong Kong Securities Professionals Association ( 香港證券學會 )
8. Hong Kong Telecommunications (HKT) Limited ( 香港電訊有限公司 )
9. iFAST Financial (HK) Limited ( 奕豐金融 ( 香港 ) 有限公司 )
10. Institute of Financial Planners of Hong Kong ( 香港財務策劃師學會 )
11. ipac financial planning Hong Kong limited ( 安睿理財策劃 ( 香港 ) 有限公司 )
12. Mazars Corporate Recovery & Forensic Services Limited ( 瑪澤企業重整及法証服務有限公司 )
13. Standard & Poor's Hong Kong Limited
14. Standard & Poor's Investment Advisory Services Hong Kong Limited
15. Suen Chi Wai ( 孫志偉 )
16. The Alternative Investment Management Association Limited (Hong Kong Branch) ( 另類投資管理協會 ( 香港分部 ) )
17. The Hong Kong Association of Banks ( 香港銀行公會 )
18. The Law Society of Hong Kong ( 香港律師會 )
19. Submissions of 7 respondents are withheld from publication upon requests



## **Appendix B**

### **Proposed amendments to Code of Conduct**



## Draft changes to the Code of Conduct

### 3.9 Order recording

- (a) Except as otherwise provided in Schedule 3 and Schedule 6 to the Code, a licensed or registered person should record and immediately time stamp records of the particulars of the instructions for agency orders and internally generated orders (such as proprietary accounts and staff accounts).
- (b) Where order instructions are received from clients through the telephone, a licensed or registered person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least ~~three~~six months.
- (c) A licensed or registered person should prohibit its staff members from receiving client order instructions through mobile phones when they are on the trading floor, in the trading room, usual place of business where order is received or usual place where business is conducted, and should have a written policy in place to explain and enforce this prohibition.

#### Notes

*The Commission notes that mobile telephones are widely used in Hong Kong. ~~In this regard, the Commission expects licensed or registered persons to arrange for the use of a telephone recording system in their offices. Although use of mobile phones for receiving client order instructions is discouraged, where orders are accepted by mobile phones, the time of receipt and the order details should be recorded immediately (e.g. by a call to the office system or in writing by hand).~~ The use of mobile phones for receiving client order instructions is strongly discouraged. However, where orders are accepted by mobile phones outside the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of receipt and the order details. The use of other formats (e.g. in writing by hand) to record details of clients' order instructions and time of receipt should only be used if the licensed or registered person's telephone recording system cannot be accessed.*

### 7.1 Authorization and operation of a discretionary account

- (a) A licensed or registered person should not effect a transaction for a client unless before the transaction is effected (i) the client, or a person designated in writing by the client, has specifically authorized the transaction; or (ii) the client has authorized in writing the licensed or registered person or any person employed by the licensed or registered person (who ~~should~~must in turn be a licensed or registered person) to effect transactions for the client without the client's specific authorization.
- (b) Where a client wishes to grant an authority described under paragraph 7.1(a) (ii), the licensed or registered person or a person employed by it should explain the terms of the authority to the client. If an authority is granted to an employee or agent of the licensed or registered person, the authority should state that the person is an employee or agent of the licensed or registered person. ~~If an authority is granted to a person who is not an employee or agent of the licensed~~



~~or registered person, the authority should state that the person is not an employee or agent of the licensed or registered person.~~ The licensed or registered person should also confirm with the client at least on an annual basis whether that client wishes to revoke such authority. For the avoidance of doubt, it will be acceptable for the licensed or registered person to send a notification to the client before the expiry date of its discretionary authority and inform the client that such authority is automatically renewed unless the client specifically revokes it in writing before the expiry date.

- (c) If a licensed or registered person has obtained an authority described under paragraph 7.1(a)(ii), the Client Agreement and the licensed or registered person's records should designate such accounts as "discretionary accounts".
- (d) Senior management should approve the opening of discretionary accounts.
- (e) A licensed or registered person should implement internal control procedures to ensure proper supervision of the operation of discretionary accounts.

## 12A Obligations under the FDRS

A licensed or registered person should comply with the Financial Dispute Resolution Scheme ("FDRS") for managing and resolving disputes administered by the Financial Dispute Resolution Centre Ltd ("FDRC") in full and be bound by the dispute resolution processes provided for under the FDRS. The FDRS will apply to licensed or registered persons other than firms which carry on Type 10 regulated activity under the SFO i.e. provision of credit rating services.

### 12.3 Complaints

A licensed or registered person should ensure that:

- (a) complaints from clients relating to its business are handled in a timely and appropriate manner;
- (b) steps are taken to investigate and respond promptly to the complaints; ~~and~~
- (c) where a complaint is not remedied promptly, the client is advised of any further steps which may be available to the client under the regulatory system including the right to refer a dispute to the FDRC; and;
- (d) where a complaint has been received, the subject matter of the complaint is properly reviewed. If the subject matter of the complaint relates to other clients, or raises issues of broader concern, a licensed or registered person should take steps to investigate and remedy such issues, notwithstanding that the other clients may not have filed complaints with the licensed or registered person and/or the FDRC.

### 12.5 Notifications to the Commission

A licensed or registered person, as a firm, should report to the Commission immediately upon the happening of any one or more of the following:



- (a) any material breach, infringement of or non-compliance with any law, rules, regulations, and codes administered or issued by the Commission, the rules of any exchange or clearing house of which it is a member or participant, and the requirements of any regulatory authority which apply to the licensed or registered person, or where it suspects any such breach, infringement or non-compliance whether by:
  - (i) itself; or
  - (ii) persons it employs or appoints to conduct business with clients or other licensed or registered persons,giving particulars of the breach, infringement or non-compliance, or suspected breach, infringement or non-compliance, and relevant information and documents;
- (b) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the appointment of a receiver, provisional liquidator, liquidator or administrator or the winding-up, re-organisation, reconstruction, amalgamation, dissolution or bankruptcy of the licensed or registered person or any of its substantial shareholders or the making of any receiving order or arrangement or composition with creditors;
- (c) the bankruptcy of any of its directors;
- (d) the exercise of any disciplinary measure against it by any regulatory or other professional or trade body or the refusal, suspension or revocation of any regulatory licence, consent or approval required in connection with its business;  
~~and~~
- (e) any material failure, error or defect in the operation or functioning of its trading, accounting, clearing or settlement systems or equipment;  
~~and~~
- (f) any material breach, infringement or non-compliance of market misconduct provisions set out in Part XIII or Part XIV of the Securities and Futures Ordinance that it reasonably suspects may have been committed by its client, giving particulars of the suspected breach, infringement or non-compliance and relevant information and documents; and
- (g) any determination or settlement of a complaint in connection with the FDRS (including the details of the determination or settlement), if so requested by the Commission.

## **12.6 Co-operation under the FDRS**

A licensed or registered person should:

- (a) make honest and diligent disclosure before mediators and/or arbitrators in connection with the FDRS; and
- (b) render all reasonable assistance to the FDRS.



## **12.7 Expert witness**

A licensed or registered person, as a firm, should not, without reasonable excuse, prohibit persons it employs from performing expert witness services for the Commission and the Hong Kong Monetary Authority.



## Schedule 4      **Additional requirements for licensed or registered persons dealing in futures contracts and/or options contracts traded on Hong Kong Futures Exchange Limited**

The provisions in this Schedule apply to all licensed or registered persons in the course of their dealing in Futures Contracts and/or Options Contracts traded on Hong Kong Futures Exchange Limited ("HKFE") except as otherwise specified in certain paragraphs which do not apply to licensed or registered persons which are not exchange participants of HKFE.

For the purposes of this Schedule, the defined terms and expressions set out below have the meanings assigned to them under the rules of HKFE. Where such defined terms and expressions are applied to exchange participants of HKFE, they are deemed to apply with the same meaning to licensed or registered persons which are not exchange participants wherever the context so permits.

### **Books and accounts**

...

- 1A. Where confirmations of executed trades are made to clients through the telephone, a licensed or registered person should use a telephone recording system to record such confirmations and maintain telephone recordings as part of its records for at least ~~three~~six months.
- 1B. A licensed or registered person should prohibit its staff from confirming executed trades through mobile phones when on the trading floor, in the trading room, usual place of business where order is received or usual place where business is conducted, and should have a written policy in place to explain and enforce this prohibition.

### **Notes**

*The Commission notes that mobile telephones are widely used in Hong Kong. ~~In this regard, the Commission expects licensed or registered persons to arrange for the use of a telephone recording system in their offices. Although use of mobile phones for receiving client order instructions is discouraged, where orders are accepted by mobile phones, the time of receipt and the order details should be recorded immediately (e.g. by a call to the office system or in writing by hand).~~ The use of mobile phones for confirming executed trades is strongly discouraged. However, where executed trades are confirmed by mobile phones outside the trading floor, trading room, usual place of business where order is received or usual place where business is conducted, staff members should immediately call back to their licensed or registered person's telephone recording system and record the time of confirmation and the details of executed trades. The use of other formats (e.g. in writing by hand) to record details of executed trades and time of confirmation should only be used if the licensed or registered person's telephone recording system cannot be accessed.*



## **Schedule 6      Additional requirements for licensed persons engaging in leveraged foreign exchange trading**

The provisions in this Schedule apply to the carrying on of Type 3 regulated activity, namely leveraged foreign exchange trading, by persons licensed to conduct such activity.

### **Part I**

#### **General conduct of business requirements**

...

#### **Taping**

35. Without prejudice to paragraph 3.9 of the Code, a licensed person should install at its place of business a centralized tape recording system to record all telephone conversations conducted by it or its representatives with prospective clients, clients and recognized counterparties.
36. All telephone lines used by employees or representatives of the licensed person responsible for making calls, confirming orders, executing contracts, transferring funds, or carrying out instructions incidental thereto, should be routed through the centralized tape recording system.
37. Tapes from the centralized tape recording system should be kept for at least ~~3~~six months.

...