



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

**Consultation Conclusions on the Proposed  
Amendments to the Professional Investor Regime  
and Further Consultation on the Client Agreement  
Requirements**

25 September 2014



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## Foreword

On 15 May 2013, the Securities and Futures Commission (**SFC**) issued a Consultation Paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements (**Consultation Paper**). This paper summarises the comments received to the Consultation Paper, provides the SFC's responses to the feedback and also further consults the public on the proposed amendments to the Client Agreement Requirements which have been modified having regard to the market feedback.

Interested parties are invited to submit written comments by one of the following methods **on or before 24 December 2014**:-

Written comments may be sent

By mail to: Intermediaries Supervision Department  
Securities and Futures Commission  
35/F, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

By fax to: (852) 2284 4660

By on-line submission: <http://www.sfc.hk>

By e-mail to: [client\\_agreement@sfc.hk](mailto:client_agreement@sfc.hk)

Any person wishing to submit comments on behalf of any organisation should provide details of the organisation whose views he represents.

**Please note that the names of commentators and the contents of their submissions may be published by the SFC on its website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this paper.**

**If you do not wish your name and/or submission to be published by the SFC, please state your wish that your name and/or submission to be withheld from publication in your submission.**

## Executive Summary

1. On 15 May 2013, the Securities and Futures Commission (**SFC**) issued a Consultation Paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements (**Consultation Paper**) for a three-month consultation period which ended on 14 August 2013.
2. The Consultation Paper invited comments on the following:
  - (a) possible reforms to the existing professional investor regime for private placement<sup>1</sup> activities;
  - (b) proposed amendments to intermediaries' conduct regulation under the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code**) which include (i) dis-applying all the existing exemptions available to intermediaries when serving Individual Professional Investors<sup>2</sup> under the Code; (ii) treating Corporate Professional Investors<sup>3</sup> that are investment vehicles wholly owned by Individual Professional Investors and by family trusts the same as individuals; and (iii) refining the existing "knowledge and experience" assessment for Corporate Professional Investors;
  - (c) possible reforms on the Suitability Requirement<sup>4</sup>; and
  - (d) proposed amendments to the client agreement requirements under the Code which require client agreements (i) to incorporate the Suitability Requirement as a contractual term; (ii) to accurately and clearly set out the actual services to be provided to the client; and (iii) not to contain any terms which are inconsistent with the Code.
3. The SFC received a total of 51 written submissions from various market participants and professional bodies, including industry associations, law firms and individuals and approximately 300 signed template submissions. By far the vast majority of respondents are from the industry.
4. In summary, the responses are as follows:
  - (a) The majority of respondents agreed that Individual Professional Investors and Corporate Professional Investors should continue to be allowed to participate in private placement activities if they meet the prescribed monetary thresholds under the Securities and Futures (Professional Investor) Rules (Cap. 571D) (**Professional Investor Rules**) and such monetary thresholds should be maintained at current levels.

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<sup>1</sup> "Private placement" refers to offerings where the marketing documentation does not require authorisation by the SFC. Please see paragraph 5 of the Consultation Paper.

<sup>2</sup> "Individual Professional Investors" refers to any individual who (either alone or with his/her spouse or child on a joint account) has a portfolio of not less than \$8 million (or its equivalent in any foreign currency).

<sup>3</sup> "Corporate Professional Investors" refers to (a) any trust corporation having been entrusted with total assets of not less than \$40 million (or its equivalent in any foreign currency); (b) any corporation or partnership having (i) a portfolio of not less than \$8 million (or its equivalent in any foreign currency); or (ii) total assets of not less than \$40 million (or its equivalent in any foreign currency); and (c) any corporation the sole business of which is to hold investments and is wholly owned by any one or more of the Individual Professional Investors or such persons described in (a) or (b) above.

<sup>4</sup> "Suitability Requirement" refers to the requirement under paragraph 5.2 of the Code that intermediaries should, when making a recommendation or solicitation, ensure that the suitability of the recommendation or solicitation for the client is reasonable in all the circumstances.

- (b) The majority of respondents did not support the proposal that intermediaries must comply with all Code requirements without exemptions when serving Individual Professional Investors or investment vehicles wholly owned by individuals and by family trusts.
  - (c) The majority of respondents supported that a principles-based approach should be adopted when assessing the knowledge and investment experience of Corporate Professional Investors before waiving certain Code requirements.
  - (d) Views on the reforms of the Suitability Requirement were diverse.
  - (e) Most of the respondents also did not support the amendments to the client agreement requirements.
5. The SFC has carefully considered all responses and comments and has decided to proceed with the following:
- (a) to continue allowing Individual Professional Investors and Corporate Professional Investors to participate in private placement activities if they meet the prescribed monetary thresholds under the Professional Investor Rules and to maintain such monetary thresholds at current levels;
  - (b) not to allow intermediaries to be exempt from the Suitability Requirement or rely on the other existing Code exemptions that are inherently linked with the Suitability Requirement and/or have significant bearing on investor protection (e.g., the need to enter into a written client agreement) when serving Individual Professional Investors;
  - (c) to assess investment vehicles wholly owned by Individual Professional Investors and by family trusts in the same manner as other Corporate Professional Investors under the Code. Accordingly, investment vehicles would be subject to the same assessment as other Corporate Professional Investors and only those qualified would be eligible for the relevant Code exemptions (including the Suitability Requirement);
  - (d) to adopt the proposed principles-based assessment for Corporate Professional Investors (**CPI Assessment**);
  - (e) to effect consequential amendments to paragraphs 5.1A and 8.3A of the Code;
  - (f) to conduct a detailed internal study (including the gathering of industry views) of the Suitability Requirement, particularly to consider whether it is necessary for further guidance to be issued in relation to the requirement;
  - (g) in respect of the proposed amendments to the client agreement requirements,
    - (i) not to import the Suitability Requirement into client agreements and instead to propose a new clause to be incorporated into client agreements. The SFC invites comments on the proposed wording of the new clause;
    - (ii) not to require client agreements to contain a description setting out in clear terms the actual services to be provided to the client; and
    - (iii) to require client agreements not to contain terms which are inconsistent with the Code obligations or misdescribe the actual services to be provided to the client.

6. The conclusions set out in paragraph 5(b) to (d) above are reflected in the revised paragraph 15 of the Code, as shown in **Appendix A** to this paper, which will replace the current paragraph 15 in full. Consequential amendments to paragraphs 5.1A and 8.3A of the Code are also shown in **Appendix A**. All the proposed amendments set out in **Appendix A** will be effective 18 months from the date of this paper. Separately, the conclusions set out in paragraph 5(g)(iii) above are reflected in a new paragraph 6.5 of the Code, which is set out in **Appendix B** to this paper. The SFC also seeks comments on a proposed new clause as referred to in paragraph 5(g)(i) above which is now shown as paragraph 6.2(i) of the Code in **Appendix B** to this paper. Following the consultation on the new clause, the SFC will inform the market of the implementation timetable of all the Code amendments in relation to client agreements (including the new paragraph 6.5 of the Code). The main comments and concerns raised, together with the SFC's responses to these, are discussed in greater detail below. A list of the respondents who sent in submissions is at **Appendix C** to this paper, and the full text of the submissions can be viewed at the SFC's website at [www.sfc.hk](http://www.sfc.hk). Of the 51 respondents who made submissions, two requested that their names and comments not be published and eight requested that their submissions be published without disclosing their names.

## Comments received and the SFC's responses

### Private placement activities

#### The SFC's proposal in the Consultation Paper:

7. Under the current regime, offers of investments made only to professional investors (including (i) Institutional Professional Investors<sup>5</sup> such as banks and insurance companies as well as (ii) Individual Professional Investors and Corporate Professional Investors who are classified as professional investors based on their asset value or portfolio size under the Professional Investor Rules) are exempt from the prospectus requirements under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) and the SFC authorisation requirements under the Securities and Futures Ordinance (Cap. 571) (**SFO**). Given that Individual Professional Investors and Corporate Professional Investors might not be financially sophisticated in practice, and information disclosure in private placements is not subject to mandatory content requirements equivalent to those applicable to marketing documentation in public offerings that require SFC approval or authorisation, there may be a concern that these investors are vulnerable and may not be in a position to make appropriately informed investment decisions.
8. In order to better protect the interests of Individual Professional Investors and Corporate Professional Investors in the private placement market, the SFC sought views on (i) whether these investors should continue to be allowed to participate in private placement activities; and (ii) whether the \$8 million minimum portfolio threshold for Individual Professional Investors and Corporate Professional Investors and the \$40 million minimum total assets threshold for Corporate Professional Investors under the Professional Investor Rules should be increased.

#### Public comments:

9. The majority of respondents were of the view that Individual Professional Investors and Corporate Professional Investors should continue to be allowed to participate in private placement activities. Many of them believed that the private placement regime is well established in Hong Kong and the current practice is in line with other major jurisdictions. A few respondents further commented that there are other investor protections available to these investors, e.g., through transaction documentation and conduct requirements applicable to the intermediaries under the Code.
10. The majority of respondents believed that the minimum monetary thresholds to qualify as a professional investor under the Professional Investor Rules should remain unchanged. Many of them were of the view that the current thresholds are similar to other major jurisdictions and there are no substantial reasons to alter the 2010 consultation conclusions<sup>6</sup> on this issue.
11. Some respondents were of the opinion that monetary thresholds should not be the only criteria in classifying professional investors and other factors such as knowledge and investment experience should also be taken into account.

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<sup>5</sup> "Institutional Professional Investors" refers to persons who fall within paragraphs (a)-(i) of the definition of "professional investor" under Schedule 1 to the SFO.

<sup>6</sup> Please refer to the *Consultation Conclusions on Proposals to Enhance Protection for the Investing Public* issued by the SFC in May 2010 for details (<http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/conclusion?refNo=09CP3>).

12. A few respondents supported an increase of the monetary thresholds citing reasons such as inflation and the thresholds not having been changed since they were introduced.

**The SFC's response:**

13. The SFC agrees with the comments that changes to the existing private placement regime would have an impact on the private placement market which would affect issuers and distributors as well as investors. The SFC believes that the private placement regime in Hong Kong is well established and it is comparable to other overseas jurisdictions, including the United States, Australia and Singapore, which allow investors to access private placements solely by reference to monetary criteria.
14. The SFC also understands that it is common in private placements to have private placement memoranda, subscription agreements and related transaction documentation which create contractual rights and obligations between issuers and investors. Such documentation usually covers information disclosure, product terms and related risks. Further, if private placements are conducted through intermediaries, the conduct of the intermediaries is subject to the applicable Code requirements.
15. In respect of the minimum monetary thresholds to qualify as a professional investor under the Professional Investor Rules, the SFC observes that the existing thresholds are similar to other major jurisdictions (e.g., the minimum threshold for Individual Professional Investors is higher than that in the United Kingdom though lower than that in Singapore and Australia). The SFC also notes the comments on the potential adverse impact of any increase in the thresholds on private placement activities in Hong Kong. (For example, an excessive increase in the thresholds may unduly restrict the market practice of the direct placement of a newly listed company's shares in an initial public offering to professional investors in Hong Kong).
16. The SFC notes the comments from some respondents seeking the inclusion of other criteria in the professional investor assessment. The SFC emphasises that the monetary thresholds only operate, as a threshold matter, for the purpose of classifying professional investors under the Professional Investor Rules. For an intermediary to be exempt from certain Code requirements (e.g., the Suitability Requirement) when dealing with a Corporate Professional Investor, the intermediary is required to make a further assessment on the corporate structure, investment process and controls, and risk awareness of this Corporate Professional Investor and the background of its decision makers.
17. For the above reasons and taking into consideration the respondents' comments, the SFC concludes that Individual Professional Investors and Corporate Professional Investors should continue to be allowed to participate in private placement activities and the minimum monetary thresholds for them to qualify as a professional investor under the Professional Investor Rules should also remain unchanged.

**Intermediaries' conduct regulation**

*Individual Professional Investors*

**The SFC's proposal in the Consultation Paper:**

18. Under the current Code, when dealing with Individual Professional Investors and Corporate Professional Investors who have been assessed to have sufficient knowledge, expertise and investment experience in relevant products and markets (assuming all other procedural requirements, e.g., obtaining informed consent, are all complied with), intermediaries are exempt from the following Code requirements:

- (a) the Suitability Requirement<sup>7</sup>;
  - (b) the need to establish a client's financial situation, investment experience and investment objectives<sup>8</sup>;
  - (c) the need to assess a client's knowledge of derivatives and characterise the client based on his knowledge of derivatives<sup>9</sup>;
  - (d) the need to disclose certain transaction-related information<sup>10</sup>;
  - (e) the need to enter into a written agreement and the provision of relevant risk disclosure statements<sup>11</sup>;
  - (f) for discretionary accounts, the need to obtain from the client an authority in written form prior to effecting transactions for the client without his specific authority, the need to explain the authority and the need to confirm it on an annual basis<sup>12</sup>;
  - (g) the need to inform the client about itself (e.g., information about its business including contact details, services available to clients) and the identity and status of its employees and others acting on its behalf<sup>13</sup>;
  - (h) the need to confirm promptly with the client the essential features of a transaction after effecting a transaction for a client<sup>14</sup>; and
  - (i) the need to provide the client with documentation on the Nasdaq-Amex Pilot Program<sup>15</sup>.
19. Given that most selling misconduct cases dealt with by the SFC involved individual investors, the SFC is of the view that, in general, Individual Professional Investors merit greater protection than Corporate Professional Investors.
20. The SFC therefore proposed to amend the current Code so that intermediaries must comply with all Code requirements (including the Suitability Requirement) without any of the above exemptions when dealing with individuals (no matter if they qualify as Individual Professional Investors via the \$8 million minimum portfolio threshold) and hence all individuals shall be treated in the same manner as retail investors under the Code.

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<sup>7</sup> Please see footnote 4. Please also refer to the existing paragraph 15.5(a)(ii) of the Code (the same paragraph will appear as paragraph 15.4(a)(ii) of the amended Code (see Appendix A to this paper for details)).

<sup>8</sup> Please refer to paragraph 5.1 of the Code and paragraphs 2(d) and 2(e) of Schedule 6 to the Code.

<sup>9</sup> Please refer to paragraph 5.1A of the Code.

<sup>10</sup> Please refer to paragraph 8.3A of the Code.

<sup>11</sup> Please refer to paragraph 6.1 of the Code and paragraph 2 of Schedule 3, paragraph 2 of Schedule 4 and paragraph 1 of Schedule 6 to the Code.

<sup>12</sup> Please refer to paragraphs 7.1(a)(ii) and 7.1(b) of the Code.

<sup>13</sup> Please refer to paragraph 8.1 of the Code.

<sup>14</sup> Please refer to paragraph 8.2 of the Code and paragraph 4 of Schedule 3 and paragraph 18 of Schedule 6 to the Code.

<sup>15</sup> Please refer to paragraph 1 of Schedule 3 to the Code.

### **Public comments:**

21. A few respondents supported the proposal citing reasons such as the Suitability Requirement being the cornerstone of investor protection and a fundamental requirement. Nevertheless, the majority of respondents did not support the proposal.
22. Some respondents pointed out that there are groups of Individual Professional Investors who have significant financial resources and who are sufficiently sophisticated in terms of knowledge and investment experience to evaluate and make their own investment decisions, and these investors should be able to opt out of protections under the Code. In addition, many respondents were of the opinion that various stringent safeguards have already been built into the existing regime to protect Individual Professional Investors which include (i) assessing their knowledge, expertise and investment experience; (ii) providing written explanations on the risks and consequences of the Code exemptions and obtaining their written consent to be treated as professional investors under the Code; and (iii) granting and informing them of rights of withdrawal from being treated as professional investors under the Code.
23. Some respondents commented that there are further investor protections available to all clients for whom the Code requirements as specified in paragraph 18 above are waived, e.g., intermediaries still have to comply with other regulatory requirements under the Code such as the general principles as well as the “know your client” requirements under paragraph 5.3 of the Code when providing services in relation to derivative products.

### **The SFC’s response:**

24. The SFC has considered the views of the respondents carefully in arriving at a balanced outcome. The SFC proposes to distinguish Code requirements that are fundamental to investor protection which cannot be waived for Individual Professional Investors (and Corporate Professional Investors who do not fulfil the criteria in the CPI Assessment (please see details in paragraph 37 below)), and others that are more administrative in nature which can be waived. The SFC remains of the view that the Suitability Requirement is the cornerstone of investor protection, especially for individual investors, and therefore intermediaries should not be exempt from it when serving individuals. Further, the SFC is also of the view that some of the other existing Code exemptions, which are currently available to intermediaries when serving professional investors, are inherently linked with the Suitability Requirement and/or have significant bearing on investor protection (i.e., those listed as items (b) to (f) in paragraph 18 above) and hence such exemptions should also not be available to intermediaries when serving Individual Professional Investors.
25. In respect of the other existing Code exemptions (i.e., those listed as items (g) to (i) in paragraph 18 above), the SFC takes the view that these should continue to be available to intermediaries when serving Individual Professional Investors provided that intermediaries explain the risks and consequences of these Code exemptions and obtain written client consent.
26. The SFC has decided to proceed with changes to paragraph 15 of the Code, the final version of which is set out in **Appendix A** to this paper.

### *Investment vehicles*

### **The SFC’s proposal in the Consultation Paper:**

27. The SFC proposed that the existing Code exemptions which are available to intermediaries when serving professional investors shall not be available to

intermediaries when serving Corporate Professional Investors that are investment vehicles wholly owned by Individual Professional Investors and by family trusts in order to offer them the same protection as proposed for individual investors.

**Public comments:**

28. The majority of respondents did not agree with the proposal. Many of them pointed out that many investment vehicles, especially those wholly owned by sizable family trusts or family offices, engage investment professionals or other third party experts to manage their investments, and therefore the decision makers are sophisticated in terms of knowledge and investment experience. For such reasons, they believed that these types of investment vehicles should not be treated differently from other Corporate Professional Investors.

**The SFC's response:**

29. After considering the responses, the SFC is of the view that not all investment vehicles that are investment vehicles wholly owned by Individual Professional Investors and by family trusts should be carved out from the Corporate Professional Investor classification under the Code. Instead, the proposed CPI Assessment (please see details in paragraph 37 below) would apply to identify those investment vehicles with proper structures and investment processes (e.g., those with a team of competent and suitably qualified investment professionals making investment decisions for the investment vehicle). The SFC expects that only in these cases the Code exemptions listed as items (a) to (f) in paragraph 18 above would be available to intermediaries when serving such investment vehicles.

*Corporate Professional Investor Assessment*

**The SFC's proposal in the Consultation Paper:**

30. Under the current Code, intermediaries are required to conduct an assessment for each Individual Professional Investor and Corporate Professional Investor to determine whether he or it is sufficiently knowledgeable and experienced in relevant products and markets to then allow the intermediaries to apply the Code exemptions. The SFC has currently set out in the Code the following factors as relevant considerations (**Relevant Factors**):-
- (a) the type of products in which the person has traded;
  - (b) the frequency and size of trades (not less than 40 transactions per annum);
  - (c) the person's dealing experience (active in the relevant market for at least two years);
  - (d) the person's knowledge and expertise in the relevant products; and
  - (e) his awareness of the risks involved in trading in the relevant products and/or markets.
31. The SFC understands that the bright line tests included in the current assessment are not used frequently; intermediaries mentioned that many clients might not in practice be able to meet the Relevant Factors.

32. In addition, bright line tests as listed in the Relevant Factors, for example, the number of transactions per annum and years of activities in the relevant market, may not be good indicators of knowledge and investment experience if taken in isolation.
33. Therefore, the SFC proposed that a principles-based assessment should dispense with bright line tests to determine whether a Corporate Professional Investor is eligible for certain Code exemptions (including the Suitability Requirement) to be dis-applied.

**Public comments:**

34. The proposed principles-based assessment was supported by the majority of respondents as it provides more flexibility and encourages a more holistic approach. In addition, some respondents believed that it could produce a more comprehensive and accurate assessment. Some respondents further pointed out that bright line tests are unrealistic, rigid and difficult to fulfil.
35. Nevertheless, a number of respondents opposed the proposal, citing reasons such as practical difficulties in getting information on the structure of a corporate client, its investment process and the background of personnel, etc. as well as lack of certainty and the risks of inconsistent application. Some of them were of the view that the bright line tests are clearer, objective and consistent in application.

**The SFC's response:**

36. Given there is no objective, one-size-fits-all test that can cater for differences in the profiles, structures and processes of corporate investors as well as the different range of products and services offered by intermediaries, the SFC considers that a principles-based assessment free of bright line tests would be more appropriate.
37. The new CPI Assessment has three criteria namely that (i) the Corporate Professional Investor has the appropriate corporate structure and investment process and controls; (ii) the person(s) responsible for making investment decisions has(have) sufficient investment background; and (iii) the Corporate Professional Investor is aware of the risks involved. These factors are more reliable indicators of the financial sophistication of a corporation.
38. The SFC, therefore, concludes that a principles-based CPI Assessment should be adopted so as to determine whether the Code exemptions listed as items (a) to (f) in paragraph 18 above could apply when an intermediary is serving a Corporate Professional Investor.
39. All the above changes to the professional investor regime under the Code will be effective 18 months from the date of this paper.

**The Suitability Requirement**

**The SFC's proposal in the Consultation Paper:**

40. Paragraph 5.2 of the Code sets out the key investor protection obligation of intermediaries to ensure, when making a recommendation or solicitation, that the suitability of the recommendation or solicitation for the client is reasonable in all circumstances (i.e., the Suitability Requirement). The Suitability Requirement is a cornerstone of investor protection.
41. The SFC sought views on the Suitability Requirement.

### **Public comments:**

42. Comments received from the respondents were extensive, many of which came from small and medium-size agency brokers. The majority requested the SFC to give more guidance and clarification on the Suitability Requirement.
43. The main issues are:
  - (a) when is the Suitability Requirement triggered and what amounts to a “solicitation” or a “recommendation”; and
  - (b) if the Suitability Requirement is triggered, what steps should an intermediary take to satisfy the obligations under the Suitability Requirement (e.g., how the documentation standards should be applied in light of different operational types or services provided to clients and whether these standards can be more principles-based, holistic and less document intensive).

### **The SFC’s response:**

44. The Suitability Requirement is a fundamental concept in the overall regulatory regime for the conduct of intermediaries. The Suitability Requirement is a principles-based and comprehensive requirement applying to all intermediaries regardless of different types of operations and services provided.
45. With a view to giving further guidance on the Suitability Requirement, the SFC will conduct a detailed internal study (including the gathering of industry views) of the Suitability Requirement. The SFC would also like to emphasise that the study of the Suitability Requirement is separate and distinct from the proposal of introducing a new contractual obligation to client agreements (please see paragraphs 53 to 55 below for details) as the new contractual obligation is a self-contained contractual term and does not cross-refer to the Suitability Requirement which is a regulatory requirement. The timetable of the study therefore does not depend on and in fact has no relevance to the timetable of the consultation (or conclusions) of the proposed new contractual obligation.

### **Client agreement requirements**

#### **The SFC’s proposal in the Consultation Paper:**

46. While the Suitability Requirement is a key investor protection measure, it is currently only a regulatory obligation under the Code. Breaches of it can lead to disciplinary actions being taken by the SFC against an intermediary. However, the SFC cannot require the intermediary to pay compensation to aggrieved clients for losses arising from Code breaches. Breaches of the Suitability Requirement also do not, of themselves, enable clients of an intermediary to claim compensation or bring any other claims against the intermediary.
47. The SFC has observed that some intermediaries include clauses in client agreements which are designed to restrict the scope of their potential contractual liability to clients by misdescribing the actual services to be provided. Others request their clients to sign declarations or acknowledgements enabling intermediaries to disclaim potential liability. These clauses may prevent aggrieved clients from successfully seeking redress from the intermediary in contractual claims or other legal proceedings.
48. Consequently, the SFC proposed that amendments be made to the client agreement requirements in the Code. The SFC proposed that:

- (a) the Suitability Requirement should be incorporated into client agreements as a contractual term;
- (b) client agreements should contain a description setting out in clear terms the actual services to be provided to the client; and
- (c) client agreements should not contain terms which are inconsistent with the Code obligations or misdescribe the actual services to be provided to the client.

**Public comments:**

49. The majority of respondents did not support the proposals, pointing out, amongst other things, that the proposals will increase compliance costs. They also provided other comments as follows:
- (a) With respect to the proposal in paragraph 48(a) above, some respondents were of the view that importing the Suitability Requirement into client agreements is inappropriate for the following reasons: (i) the Suitability Requirement is a principles-based requirement which lacks certainty in its interpretation and therefore should not be a contractual term. The courts may not be the appropriate forum to make determinations on suitability; (ii) the proposal is against the legal principle of freedom of contract; (iii) regulatory and contractual liabilities are distinct concepts; (iv) the proposed change is a major change and should be done by way of legislation; (v) the existing legal framework is adequate for investor protection as there are other common law and statutory remedies available; and (vi) this may open the floodgates to vexatious and frivolous litigation.
  - (b) With respect to the proposal in paragraph 48(b) above, some respondents considered that it would present practical difficulties for the reasons that (i) intermediaries may provide a wide range of services (and therefore it is impractical to set out all services some of which are not required by the client); (ii) a client's needs may change over time and it is impossible to envisage the services to be provided to a client at the time when the client agreement is entered into (and therefore client agreements may need to be amended from time to time); and (iii) the proposal would also restrict intermediaries' ability to provide ad hoc or ancillary services. In addition, some respondents further suggested that the existing requirement under paragraph 6.2(d) of the Code for intermediaries to set out the nature of services to be provided to or available to the client is appropriate and should not be amended as it provides intermediaries with the appropriate balance between operational flexibility and clear disclosure to clients.
  - (c) Respondents generally agreed with the principle behind the proposal in paragraph 48(c) above but some were also of the opinion that (i) the proposal is against the legal principle of freedom of contract; and (ii) there is adequate investor protection under different legislation in Hong Kong and the Code, especially the Code requirement that client agreements shall not circumvent legal requirements.

**The SFC's response:**

50. Whilst the SFC acknowledges the respondents' comments that the proposals may have additional compliance and administrative implications, it considers that any increased burden is outweighed by the benefits of enhanced investor protection. The SFC has also considered the respondents' comments in detail and its responses are as follows:-

### **The original proposal of importing the Suitability Requirement into client agreements and the revised proposal**

- (a) The SFC disagrees with the proposition expressed by some respondents that prescribing a term in a client agreement would be contrary to the legal principle of freedom of contract. The SFC has been tasked with regulating the securities and futures industry and has been given a range of powers under the SFO to enable it to do so. Freedom of contract simply does not apply in this regulated environment. Of particular importance here are the SFC's objectives (in section 4 of the SFO) to maintain and promote the fairness of the securities and futures industry and to protect the investing public in Hong Kong. The proposal is also consistent with General Principles 1 and 2 of the Code that require intermediaries to act in the best interests of, inter alia, their clients.
- (b) The SFC agrees with the comment that obligations under the Code are distinct from the contractual obligations under a client agreement. The SFC recognises that the Code imposes positive obligations on intermediaries relating to the practices and standards with which they are expected to comply (including the Suitability Requirement) and any breach of the Code by an intermediary can lead to disciplinary action being taken by the SFC. In parallel, terms in a client agreement are contractual and liability for any breach of those terms falls to be determined ultimately by the courts. Hence, the SFC now recommends that instead of requiring each client agreement to cross-refer to the Suitability Requirement, a new self-contained clause that is more amenable to interpretation by the courts should be prescribed for inclusion in client agreements (see paragraphs 51 to 55 below).
- (c) In response to some respondents' comments that the proposed Code change is so significant that it should be done by legislation, the SFC points out that section 169 of the SFO provides that the SFC may publish codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply. In addition, the SFC clarifies that introducing the change by way of Code amendments at this stage by no means precludes the SFC from legislating for this instead in future if it becomes necessary.
- (d) Regarding the respondents' comments that there are adequate legal remedies available to aggrieved investors under common law and other applicable ordinances, the SFC disagrees. There are cases<sup>16</sup> that indicate common law remedies are negated by express contractual terms and the courts are reluctant to imply obligations contrary to express contractual provisions or impose a contractual duty which the intermediary has not expressly undertaken under a client agreement. The potentially relevant ordinances which are associated with consumer protection are not designed specifically for the securities context, and their efficacy would need to be adjudicated in particular cases before the courts. In any event, they have not been effective in the securities context to date. Accordingly, the SFC believes that the current framework should be further enhanced.
- (e) As for potentially opening up the floodgates to vexatious and frivolous litigation, the new clause proposed below is principally aimed at redressing a current imbalance in the way client agreements are being drafted so that they are fairer.

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<sup>16</sup> *Kwok Wai Hing Selina v HSBC Private Bank (Suisse) SA (formerly known as HSBC Republic Bank (Suisse) SA) HCCL 7/2010; DBS Bank (Hong Kong) Limited v San-Hot HK Industrial Company Limited and Hao Ting HCA 2279/2008*

It does not necessarily follow that clients will bring more vexatious and frivolous claims as a result. It is also worth noting that while investors in Singapore and the UK are able to seek redress and damages by exercising their statutory right of action for breaches of similar requirements as in our proposal, no abuse of process has been reported. The proposition that the new clause may open up the floodgates to vexatious and frivolous litigation is not well-founded. In any event, the civil procedures in Hong Kong are well able to weed out vexatious claims.

51. Having thoroughly considered the respondents' views, the SFC now proposes the following new clause (**New Clause**) to be inserted into client agreements:-

***“If we [the intermediary] solicit the sale of or recommend any financial product to you [the client], the financial product must be reasonably suitable for you having regard to your financial situation, investment experience and investment objectives. No other provision of this agreement or any other document we may ask you to sign and no statement we may ask you to make derogates from this clause.”***

52. In the Consultation Paper, the proposal was to incorporate the Suitability Requirement into client agreements as a contractual term. Nevertheless, in order to achieve a clearer distinction between the Suitability Requirement as a regulatory obligation under the Code and the New Clause as a contractual obligation, the SFC has formulated the New Clause with the following key elements:

- (a) The clause will only be triggered upon an intermediary soliciting the sale of or recommending a specific financial product to the client where the solicitation or recommendation is not reasonably suitable for the client. It should be a question of fact that the court is entirely capable of adjudicating.
- (b) The requirement that the financial product must be “reasonably” suitable imports an objective standard which is both sufficiently precise and entirely familiar so as to facilitate adjudication by the court.
- (c) The factors about the client to which an intermediary has to have regard are clearly stipulated, being his financial situation, investment experience and investment objectives.

53. Further, the SFC considers that the wording of the New Clause is clear, certain and readily interpretable by the courts. The New Clause is a self-contained contractual term as it does not link back to any regulatory obligation, while acknowledging the position of the courts that the Code has no bearing on the contractual position. The New Clause is also entirely justifiable as a contractual term as it is not in itself mandating the intermediary to behave in a particular way, and therefore the only connection with the Code is the positive obligation to include the clause in the first place. Furthermore, unlike legislation, the New Clause does not purport to create a new statutory right of action since it would merely be enforced like any other clause in the client agreement in accordance with ordinary contract law.

54. The SFC has also proposed a non-derogation provision in the New Clause so as to ensure that nothing elsewhere in client agreements or in other documents that a client is asked to sign or statements that a client is asked to make would defeat the purpose of the New Clause.

55. As mentioned above, the wording in the New Clause has been reformulated so that it functions as a self-contained contractual term, as opposed to incorporating the Suitability Requirement by reference as proposed in the Consultation Paper. The SFC recognises

that the scope of contractual liabilities on an intermediary vis-à-vis its clients is of importance to intermediaries both legally and commercially. The SFC also notes that the New Clause will affect the contractual obligations of an intermediary if it is in the business of soliciting the sale of or recommending financial products to clients, as well as the extent to which an intermediary may make use of exclusion or limitation provisions in this regard. The SFC therefore would like to consult and invite the public to submit written comments on the proposed wording of the New Clause, to be inserted as a new paragraph 6.2(i) of the Code, **no later than 24 December 2014**.

**The proposals of providing clear descriptions of the actual services and disallowing contractual terms which are inconsistent with the Code obligations or which misdescribe the actual services to be provided to the client**

56. While a clear description of the actual services to be provided is important in defining upfront the mutual understanding between the parties regarding their relationship and the scope of services as well as minimising subsequent disputes, the SFC has also taken into consideration the practical difficulties in describing the actual services to be provided to clients. Accordingly, the SFC has decided that the relevant paragraph under the Code (i.e., paragraph 6.2(d) of the Code) should not be amended, and further guidance will be provided with regards to the application of paragraph 6.2(d) of the Code.
57. As for the inclusion of contrary clauses and disclaimer clauses, etc., the SFC emphasises that it is important that intermediaries must act honestly, fairly, and in the best interests of their clients and the integrity of the market in accordance with General Principle 1 of the Code. The SFC considers that intermediaries are not allowed to have client agreements which include provisions contrary to this General Principle and notes that respondents generally agreed with the reason behind the proposal. On the premise that
- (a) non-reliance provisions in client agreements where clients are asked to acknowledge that they do not rely on any advice given or recommendation made by the intermediaries in making investment decisions; and
  - (b) verbal statements containing contrary clauses and disclaimer clauses etc. which clients are asked to make,

may also neutralise or render redundant investor protection as intended under the Code, the SFC has decided to clarify the proposal in paragraph 48(c) by refining paragraph 6.5 of the Code as proposed and adding a Note thereto (as set out in **Appendix B** to this paper) to elaborate on its application.

58. As the SFC acknowledges that entering into new client agreements will require time and effort, the SFC does not propose to effect amendments to the client agreements in stages. Hence, when the SFC has decided upon the proposal in paragraph 48(c) above, it shall only come into effect on a date stipulated in the subsequent conclusion paper on the proposed New Clause.

## Conclusion and way forward

59. Having considered the responses received and the regulatory objectives of the proposals, the SFC will implement the revised proposals to amend paragraph 15 of the Code. Consequential amendments will also be made. All the amendments are now shown in **Appendix A**. The proposed amendments will be effective 18 months from the date of this paper.
60. The SFC will conduct a separate and detailed internal study (including the gathering of industry views) of the Suitability Requirement.
61. The SFC is also consulting on the proposed New Clause in relation to the proposed changes to the client agreement requirements which will end on 24 December 2014. Following the close of the consultation, the SFC will publish the consultation conclusions as soon as possible. The Code amendments in relation to client agreements (including the new paragraph 6.5 of the Code) shall only come into effect on a date stipulated in the subsequent conclusion paper on the proposed New Clause.
62. The SFC would like to take this opportunity to thank all respondents who have sent in submissions for their time, effort and contribution.

### Paragraph 15 of the Code

(The following will replace the current Paragraph 15 in full)

### Paragraph 15

#### Professional investors

##### 15.1 Professional Investors: in general

- (a) “Professional Investor” is defined in section 1 of Part 1 of Schedule 1 to the SFO. It includes specified entities set out in paragraphs (a) to (i) of the definition (e.g., banks and insurance companies) and persons belonging to a class which is prescribed under the Securities and Futures (Professional Investor) Rules (“Professional Investor Rules”) (paragraph (j) of the definition).
- (b) Notwithstanding that some legal restrictions imposed by the SFO (e.g., the issuance of advertisements, the making of unsolicited calls and the communication of an offer in relation to securities) do not apply to licensed or registered persons in dealing with Professional Investors, all the requirements in the Code (including the general principles such as acting honestly and fairly and in the best interests of clients and the requirement to ensure the suitability of a recommendation or solicitation for a client is reasonable in all the circumstances) must still be strictly observed subject to exemptions.
- (c) For the purposes of setting out exemptions and for ease of reference under the Code, Professional Investors are referred to in the Code in specific terms as set out in paragraph 15.2.

##### 15.2 Overview and terminology

Professional Investors are referred to in the Code in the following terms:

**Institutional Professional Investors-** persons falling under paragraphs (a) to (i) of the definition of “professional investor” in section 1 of Part 1 of Schedule 1 to the SFO.

Licensed or registered persons dealing with Institutional Professional Investors are automatically exempt from the provisions set out in paragraphs 15.4 and 15.5 hereunder.

**Corporate Professional Investors-** trust corporations, corporations or partnerships falling under sections 3(a), (c) and (d) of the Professional Investor Rules.

Should licensed or registered persons wish to be exempt from the provisions set out in paragraph 15.4, they should observe the assessment requirements set out in paragraph 15.3A and comply with paragraph 15.3B. Should licensed or registered persons wish to

be exempt from the provisions set out in paragraph 15.5 only, they should just comply with paragraph 15.3B.

Where a Corporate Professional Investor cannot meet the requirements under paragraph 15.3A in any aspect, the licensed or registered person cannot be exempt from the provisions set out in paragraph 15.4 when dealing with this Corporate Professional Investor. If paragraph 15.3B is not complied with in any aspect, all regulatory obligations should be observed by the licensed or registered persons without any exemption unless stated otherwise.

**Individual Professional Investors-** individuals falling under section 3(b) of the Professional Investor Rules.

Should licensed or registered persons wish to be exempt from the provisions set out in paragraph 15.5, they should comply with paragraph 15.3B.

If paragraph 15.3B is not complied with in any aspect, all regulatory obligations should be observed by the licensed or registered persons without any exemption unless stated otherwise.

### **15.3A Assessment requirements for Corporate Professional Investors**

- (a) If a licensed or registered person has complied with paragraph 15.3B, it is exempt from the provisions set out in paragraph 15.5 and may also be exempt from the provisions set out in paragraph 15.4 if it is reasonably satisfied that the Corporate Professional Investor meets the three criteria set out in paragraph 15.3A(b) in relation to the relevant products and markets.
- (b) In making the assessment on a Corporate Professional Investor in relation to the relevant products and/or markets, the licensed or registered person should assess whether or not the Corporate Professional Investor satisfies all of the following three criteria:
  - (i) the Corporate Professional Investor has the appropriate corporate structure and investment process and controls (i.e., how investment decisions are made, including whether the corporation has a specialised treasury or other function responsible for making investment decisions);
  - (ii) the person(s) responsible for making investment decisions on behalf of the Corporate Professional Investor has(have) sufficient investment background (including the investment experience of such person(s)); and
  - (iii) the Corporate Professional Investor is aware of the risks involved which is considered in terms of the person(s) responsible for making investment decisions.
- (c) The above assessment should be in writing. Records of all relevant information and documents obtained in the assessment should be kept by the licensed or registered person so as to demonstrate the basis of the assessment.
- (d) A licensed or registered person should undertake a separate assessment for different product types or markets.
- (e) A licensed or registered person should undertake a new assessment where a Corporate Professional Investor has ceased to trade in the relevant product or market for more than 2 years.

### **15.3B Procedures for dis-applying provisions under paragraphs 15.4 and 15.5**

- (a) Prior to dis-applying the provisions set out in paragraph 15.4 (when dealing with Corporate Professional Investors only) and/or the provisions set out in paragraph 15.5 (when dealing with Corporate Professional Investors and Individual Professional Investors), a licensed or registered person should also:
  - (i) obtain a written and signed declaration from the client that the client has given consent;
  - (ii) fully explain to the client the consequences (i.e., all relevant regulatory exemptions that the licensed or registered person is entitled to) of being treated as a Professional Investor and that the client has the right to withdraw from being treated as such at any time; and
  - (iii) specify that the client is treated as a Professional Investor in a particular product and market and inform the client that he has a right to withdraw from being treated as a Professional Investor whether in respect of all products or markets or any part thereof.
- (b) A licensed or registered person should carry out a confirmation exercise annually to ensure that the client continues to fulfill the requisite requirements under the Professional Investor Rules. In carrying out the annual confirmation exercise, a licensed or registered person should remind the client in writing of:
  - (i) the risks and consequences (i.e., all relevant regulatory exemptions that the licensed or registered person is entitled to) of being treated as a Professional Investor, in particular, the licensed or registered person is not required to comply with the regulatory requirements set out in paragraphs 15.4 and/or 15.5 of the Code (as the case may be); and
  - (ii) the right for the client to withdraw from being treated as a Professional Investor whether in respect of all products or markets or any part thereof.

### **15.4 Exempt provisions for Corporate Professional Investors where licensed or registered persons have complied with paragraphs 15.3A and 15.3B and Institutional Professional Investors**

- (a) Information about clients
  - (i) the need to establish a client's financial situation, investment experience and investment objectives (paragraph 5.1 and paragraphs 2(d) and 2(e) of Schedule 6 to the Code), except where the licensed or registered person is providing advice on corporate finance work;
  - (ii) the need to ensure the suitability of a recommendation or solicitation (paragraph 5.2 and paragraph 49 of Schedule 6 to the Code); and
  - (iii) the need to assess the client's knowledge of derivatives and characterize the client based on his knowledge of derivatives (paragraph 5.1A of the Code);

- (b) Client agreement
  - (i) the need to enter into a written agreement and the provision of relevant risk disclosure statements (paragraph 6.1, paragraph 2 of Schedule 3, paragraph 2 of Schedule 4 and paragraph 1 of Schedule 6 to the Code);
- (c) Information for clients
  - (i) the need to disclose transaction related information (paragraph 8.3A of the Code);
- (d) Discretionary accounts
  - (i) the need for a licensed or registered person to obtain from the client an authority in a written form prior to effecting transactions for the client without his specific authority (paragraph 7.1(a)(ii) of the Code); and
  - (ii) the need to explain the authority described under paragraph 7.1(a)(ii) of the Code and the need to confirm it on an annual basis (paragraph 7.1(b) of the Code).

(For the avoidance of doubt, a licensed or registered person should still obtain an authorization from a client in order to effect transactions on the client's behalf, however where Professional Investors are concerned the procedures for obtaining such authorizations as described in (i) and (ii) above are relaxed.)

**15.5 Exempt provisions for Corporate Professional Investors and Individual Professional Investors where licensed or registered persons have complied with paragraph 15.3B and Institutional Professional Investors**

- (a) Information for clients
  - (i) the need to inform the client about the licensed or registered person and the identity and status of its employees and others acting on its behalf (paragraph 8.1 of the Code);
  - (ii) the need to confirm promptly with the client the essential features of a transaction after effecting a transaction for a client (paragraph 8.2, paragraph 4 of Schedule 3 and paragraph 18 of Schedule 6 to the Code); and
  - (iii) the need to provide the client with documentation on the Nasdaq-Amex Pilot Program (paragraph 1 of Schedule 3 to the Code).

## Consequential amendments to the Code

### Paragraph 5

#### Information about clients

##### 5.1A Know your client: investor characterization

- (a) ~~Except where a client is a Professional Investor for the purpose of paragraph 15 of the Code,~~ a licensed or registered person should, as part of the know your client procedures, assess the client's knowledge of derivatives and characterize the client based on his knowledge of derivatives.

### Paragraph 8

#### Information for clients

##### 8.3A Disclosure of transaction related information

- (a) Where a licensed or registered person distributes an investment product to a client (including where it sells an investment product to or buys such product from the client) ~~other than a Professional Investor for the purpose of paragraph 15 of the Code,~~ the licensed or registered person should deliver the following information to the client prior to or at the point of entering into the transaction:
  - (i) The capacity (principal or agent) in which a licensed or registered person is acting;
  - (ii) Affiliation of the licensed or registered person with the product issuer;
  - (iii) Disclosure of monetary and non-monetary benefits (*Please refer to paragraph 8.3 of the Code*); and
  - (iv) Terms and conditions in generic terms under which client may receive a discount of fees and charges from a licensed or registered person.

### Paragraph 6 of the Code

#### Client agreement

#### 6.2 Minimum content of client agreement

Subject to paragraph 6.4 and Schedules 1, 3, 4 and 6 to the Code, a Client Agreement should contain at least provisions to the following effect:

....

- (g) if services are to be provided to the client in relation to derivative products, including futures contracts or options, (1) a statement that the licensed or registered person shall provide to the client upon request product specifications and any prospectus or other offering document covering such products and (2) a full explanation of margin procedures and the circumstances under which a client's positions may be closed without the client's consent; and
- (h) the risk disclosure statements as specified in Schedule 1 to the Code; and
- (i) **(proposed New Clause – for public consultation)**

**“If we [the intermediary] solicit the sale of or recommend any financial product to you [the client], the financial product must be reasonably suitable for you having regard to your financial situation, investment experience and investment objectives. No other provision of this agreement or any other document we may ask you to sign and no statement we may ask you to make derogates from this clause.”**

#### **6.5 No inclusion of clauses which are inconsistent with the Code or which misdescribe the actual services provided to clients**

A licensed or registered person should not incorporate any clause, provision or term in the Client Agreement or in any other document signed or statement made by the client at the request of the licensed or registered person which is inconsistent with its obligations under the Code.

Note: This paragraph precludes the incorporation in the client agreement (or in any other document signed or statement made by the client) of any clause, provision or term by which a client purports to acknowledge that no reliance is placed on any recommendation made or advice given by the licensed or registered person.

No clause, provision, term or statement should be included in any Client Agreement (or any other document signed or statement made by the client at the request of a licensed or registered person) which misdescribes the actual services to be provided to the client.

### List of respondents

(in alphabetical order)

1. ABC International Holdings Limited
2. Allen & Overy
3. Baker & McKenzie
4. BOCI Securities Limited
5. Bright Smart Securities International (H.K.) Limited
6. Celestial Securities Limited / Celestial Commodities Limited
7. Chow Sang Sang Securities Limited
8. Clifford Chance
9. CompliancePlus Consulting Limited
10. Complyport (HK) Limited
11. Consumer Council (消費者委員會)
12. Davis Polk & Wardwell
13. FCL Advisory Limited
14. FXCM Asia Limited
15. Hong Kong Investment Funds Association
16. Hong Kong Securities & Futures Employees Union (香港證券及期貨從業員工會)
17. Hong Kong Securities & Futures Professionals Association (香港證券及期貨專業總會)
18. Hong Kong Securities Association (香港證券業協會)
19. Hong Kong Securities Professionals Association (香港證券學會) (with over 300 signed template submissions)
20. Hon Cheung Wah Fung (立法會議員張華峰) / Business and Professionals Alliance for Hong Kong (香港經濟民生聯盟)
21. iFAST Financial (HK) Limited / iFAST Platform Services (HK) Limited
22. Karl-Thomson Securities Company Limited
23. Kinetic Partners (Hong Kong) Limited
24. Linklaters responded on behalf of 26 financial institutions:
  - (a) ABN AMRO Bank N.V.
  - (b) ABN AMRO Clearing Hong Kong Limited
  - (c) Bank of China International Limited
  - (d) BNP Paribas Securities (Asia)
  - (e) CCB International (Holdings) Limited

- (f) China International Capital Corporation Hong Kong Securities Limited
  - (g) CIMB Securities Limited
  - (h) Citigroup Global Markets Asia Limited
  - (i) CLSA Limited
  - (j) Coutts & Co Ltd
  - (k) Credit Suisse (Hong Kong) Limited
  - (l) Credit Suisse AG
  - (m) DBS Bank (Hong Kong) Limited
  - (n) Deutsche Bank AG
  - (o) Goldman Sachs (Asia) L.L.C.
  - (p) J.P. Morgan Securities Asia Pacific Limited
  - (q) Jefferies Hong Kong Limited
  - (r) Macquarie Bank Limited
  - (s) Merrill Lynch Asia Pacific Limited
  - (t) Morgan Stanley
  - (u) Nomura International (Hong Kong) Limited
  - (v) One unnamed financial institution
  - (w) SG Securities (HK) Limited
  - (x) Société Générale Bank & Trust, Hong Kong Branch
  - (y) Standard Chartered Bank (Hong Kong) Limited
  - (z) UBS AG
25. SinoPac Securities (Asia) Limited
  26. Suen Chi Wai
  27. Sun Hung Kai Financial Limited
  28. The Alternative Investment Management Association Limited, Hong Kong Branch
  29. The Hong Kong Association of Online Brokers Limited (香港網上經紀協會)
  30. The Hong Kong Association of Banks (香港銀行公會)
  31. The Hong Kong Society of Financial Analysts (香港財經分析師學會)
  32. The Institute of Financial Planners of Hong Kong
  33. The Law Society of Hong Kong (香港律師會)
  34. Timothy Loh Solicitors
  35. Tung Shing Securities Brokerage (Limited)
  36. Veco Invest (Asia) Limited
  37. Yue Xiu Asset Management Limited
  38. Yue Xiu Securities Company Limited
  39. Yue Xiu Securities Holdings Limited
  40. 陳志華

41. 蔡思聰
42. Two respondents requested that their names and comments not be published.
43. Eight respondents requested that their submissions be published without disclosing their names.

### Personal Information Collection Statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>17</sup> will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

### Purpose of collection

2. The Personal Data provided in your submission to the SFC in response to this paper may be used by the SFC for one or more of the following purposes:
  - (a) to administer the relevant provisions<sup>18</sup> and codes and guidelines published pursuant to the powers vested in the SFC;
  - (b) in performing the SFC's statutory functions under the relevant provisions;
  - (c) for research and statistical purposes;
  - (d) for other purposes permitted by law.

### Transfer of personal data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation on this paper. The names of persons who submit comments on this paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

### Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### Retention

5. Personal Data provided to the SFC in response to this paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

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<sup>17</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

<sup>18</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

## **Enquiries**

6. Any enquiries regarding the Personal Data provided in your submission on this paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

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

7. A copy of the Privacy Policy Statement adopted by the SFC is available upon request.