



29<sup>th</sup> November 2011

Hon CHAN Kam-lam, SBS, JP  
Chairman of Financial Affairs Panel  
Legislative Council of Hong Kong  
C/- Legislative Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Chairman,

**Securities and Futures (Professional Investor) (Amendment) Rules 2011 (“PI Amendment Rules”)**

We understand that the PI Amendment Rules have been submitted by the Securities and Futures Commission (the “SFC”) to the Legislative Council (“LegCo”) for negative vetting in September 2011, following an examination of the same by the Subcommittee on Securities and Futures (Professional Investor) (Amendment) Rules 2011.

We have concerns if a motion is put forward during the upcoming meeting of LegCo to further amend the Securities and Futures (Professional Investor) Rules (Cap 571D) (the “PI Rules”), including shifting the qualitative accreditation requirements for professional investors (“Qualitative PI Requirements”) currently incorporated in paragraph 15.3 of the Code of Conduct for Persons Licensed by or Registered with the SFC (the “SFC Code of Conduct”) to the PI Rules and/or adding further requirements into the PI Rules.

We take the view that such transition of the Qualitative PI Requirements from the SFC Code of Conduct to the PI Rules is neither necessary nor desirable in the present context. As a regulatory body supervising various licensed corporations and registered institutions (the “Regulated Institutions”), the SFC has been issuing various codes and guidelines on investors’ protection since the global financial crisis. The SFC has

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been quick and adaptive to financial events and changes and has been reviewing and publishing new codes and guidelines to enhance investors' protection and financial market integrity.

The SFC Code of Conduct does not have the force of law. However, it sets out of the requisite standards expected from Regulated Institutions and failure to comply with the SFC Code of Conduct would cast doubt on the capacity of the Regulated Institutions to remain "fit and proper" and undermine its ability to continue to carry out regulated activities in Hong Kong.

To codify the SFC Code of Conduct and to incorporate it into legislation could have great impact on the operations of the Regulated Institutions. Legislation imposes rigid obligations on the Regulated Institutions and places the Regulated Institutions in a position of inflexibility. Under the current regime, the SFC Code of Conduct serves as guidance on best practice and the Regulated Institutions are given the room to interpret and determine the right approach to take to fulfill the requirements. This leaves the Regulated Institutions with ultimate flexibility and this is desirable in the ever-changing financial world.

Moving the Qualitative PI Requirements into the PI Rules entails lengthy and complicated legislative review before any changes could be incorporated. This definitely brings about serious obstacles in achieving flexibility and efficiency. This would also change the role of the SFC in the sense that it will be left with very limited power to provide guidance on the Qualitative PI Requirements because rights to interpretation and execution of the same would be reserved to the Courts of Hong Kong. This would undermine the capacity of the SFC as a supervisory body to respond efficiently and effectively to enquiries and emerging events and to provide interpretative guidance to Regulated Institutions.

We strongly believe that maintaining the current status of the SFC and empowering it to continue to issues guidance and perform monitoring on the Regulated Institutions on Qualitative PI Requirements would help preserving flexibility in the financial market, which signifies the attractiveness of Hong Kong as a prime international financial centre. We therefore sincerely urge the LegCo to seek public consultation

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and to consider the opinions of the industry participants on the issue and to protect the current structure of the Hong Kong regulatory framework for professional investors.

We should be much obliged to have a further discussion on the issue with LegCo. Should you have any queries in relation to our response, please contact Mr. Oliver Ng at 2718-9180.

Yours sincerely,

Oliver Ng  
Chairman  
The Hong Kong Association of Online Brokers

cc. Hon CHIM Pui-chung  
Hon Jasper TSANG Yok-sing  
Ms Yvonne Mok