

6 February 2010

Division 7, Financial Services Branch
Financial Services and the Treasury Bureau
18/F., Tower I
Admiralty Centre
18, Harcourt Road
Hong Kong

By post and by fax
Fax no. : 2865 6736
Total no. of pages : 3 (inclusive)

Dear Sirs,

Re: Proposed New Legislation on the Customer Due Diligence and Record-Keeping Requirements for Financial Institutions and the Regulation of Remittance Agents and Money Changers –Detailed Proposals (the “Consultation Paper”)

Capitalised terms used in this submission shall have the same meanings as defined in the Consultation Paper unless otherwise defined herein.

As our members are participants of the Stock Exchange, we hereby submit our comments on the Consultation Paper from the perspectives of licensed corporations within the meaning of the SFO (“**Licensed Corporations**”). Our comments on the Consultation Paper are set out below by adopting the numberings as used in the Consultation Paper:

Paragraph no. in the Consultation Paper	
Simplified Due Diligence (SDD) 3.4 to 3.6 Enhanced Due Diligence (EDD) 3.7 to 3.9	The Consultation Paper <i>fails</i> to set out the required standard of or steps to be taken for SDD and EDD, in the absence of which we cannot express our view on SDD and EDD. As the new legislation will affect the business and operations of all the FIs, the government should set out these in details for consultation purpose. It is unacceptable for the government to provide guidance subsequently as stated in paragraph 3.9 of the Consultation Paper.
Ongoing Due Diligence 3.11	<ol style="list-style-type: none"> 1. Disagree. 2. The existing Securities and Futures Ordinance has already required FIs to set up a system for the prevention of anti-money laundering. The SFC also has detailed guidelines for FIs to follow in this respect.



3. Regarding the proposal that all FIs are required to review and update the customer identification records according to the new requirements within 2 years after commencement of the legislation, we are of the view that this proposal is impractical and burdensome. To cater for the situation that FIs may have a number of non-active, dormant and overseas accounts (especially those FIs which have long history of establishment) and in order not to affect their business and daily operations, longer time should be allowed, say 5 years, for FIs to complete the work for those non-active, dormant and overseas accounts. There is no guarantee that clients of those accounts are contactable or willing to provide the required information.
4. Keeping up-to-date identification documents of clients will increase the administrative works of FIs and is impracticable on the following grounds :
 - i. Hong Kong companies are required to renew their business registration certificate annually. This requirement will mean that FIs has to contact their Hong Kong companies clients annually for the latest business registration certificates;
 - ii. overseas clients will use passport as their identification documents. As you may aware passport has an expiry date. This requirement will require FIs to record the expiry date of the passport of such clients so that FIs can contact them for a copy of the renewed passport upon expiration; Also, the passport number will change upon renewal and
 - iii. notwithstanding points i and ii above, clients may replace their identification documents or obtain new identification documents before original expiry date for reasons such as change of address, loss of the original identification documents and change of personal information. In such cases, FIs will NEVER know that the identification documents of their clients are no longer up-to-date but they will be penalised for not having up-to-date identification documents under the new legislation. As such, the burden should be on clients to provide up-to-date identification documents to FIs.
5. Some clients may not be contactable due to change or address or for whatever reason or they may not be responsive to the request of FIs in due diligence process. The legislation should allow FIs to include negative statements that they may deem having obtained a client's consent if they do not receive a client's response within a period of time.
6. Currently there are two different licensing regimes for FIs in Hong Kong, namely Monetary Authority and Securities and Futures Commission. There are substantial difference in the operations, procedures and books recording systems of FIs registered under these two licensing regimes. With the adoption of the new legislation, FIs registered under these two licensing regimes should be subject to the same standard of requirements to avoid any disparity of treatment so that they can work on the same level playing field.



Criminal Offences 5.7 to 5.9	We disagree with the government's view that criminal offences will provide additional deterrence. As the burden of proof on the criminal prosecution must prove that the acts of offenders are on the standard of without reasonable doubt, it will be very difficult to obtain sufficient evidences so that offenders can be prosecuted without reasonable doubt. This means that the new legislation will be of no effect while on the other hand, it will make those medium to small sized FIs even more difficult to recruit competence managerial staff.
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Should you have any queries, please contact the undersigned at 9095 1655.

Yours faithfully,
For and on behalf of
Hong Kong Securities Professionals Association

Jeanne Lee Sai Yin
Chairman