

17 September 2013

Clerk to Bills Committee
Legislative Council,
Legislative Council Complex,
Legislative Council Road,
Central, Hong Kong

Attn: Angel Shek

Dear Ms. Shek,

Bills Committee on Securities and Futures (Amendment) Bill 2013
Meeting to be held on Monday, 30 September 2013

Thank you for inviting us to submit comments on the captioned proposed amendment bill to the Securities and Futures Ordinance (“SFO”).

We would like to take this occasion to reiterate again the financial industry practitioners’ concerns as of the increasing complexity of the laws and regulations governing financial market as a result of the increasing operational complexity of the international financial market. Apart from the general concerns of the likely unintended consequences of the new laws and regulations, we are of the view that new laws and regulations (i.e. the proposed amendment bill) would lead to increasing compliant cost for financial institutions with very limited resulting benefit to the society as a whole. We urge the regulator and the government to conduct necessary research and evaluation of potential economic impact and effect to the financial industry and take into account the aspiration of Hong Kong as an international financial centre before enactment of such new law and regulation. Most market practitioners and commentators are doubtful as of the potential benefit of the amendment bill of achieving anything that are good for Hong Kong and we are in general supportive of the view that the existing licensing and regulatory framework (and if necessary with minor changes/adjustments to the Type 1 and/or Type 2 regulatory activities) can already cover very well all the over-the-counter derivative market transactions in Hong Kong, and the introduction of two new regulatory activities, i.e. Type 11 and Type 12 is not necessary.

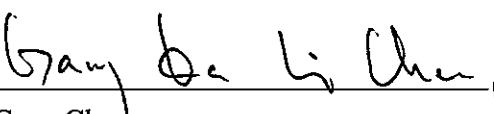
That being said, we have gone through the proposed amendment bill and we are glad that the Administration has taken the view of not imposing a mandatory trading requirement on over-the-counter derivative at the outset, and be that as it may, we have a few comments to make –

On Clause 20, it proposes to add a Section 184A to SFO which provides for investigative powers to the Monetary Authority (“MA”). In particular, it gives power to MA to invoke its investigative power when it has “reasonable cause to believe” that an authorised financial institution or an approved money broker may have contravened the reporting, clearing or trading obligations. We understand that this is a common “requirement” which an enforcement agency which needs to satisfy before invoking similar powers in similar legislations, however, we understand in practice that this would normally mean “a complaint by some unknown person who does not dignify his/her complaint by revealing identity to an enforcement agent, let alone the provision of credible evidence. We understand that it would be difficult for the Administration to include an explicit list on what constitutes “reasonable cause to believe” but we urge that the Administration will direct MA to issue guidelines on this on commencement of this piece of legislation.

We have comment similar to the above to the proposed Section 184B which, if abused, could become an unfettered discretion in “disciplining” financial institutions and money brokers and become the Hong Kong version of the infamous “double designations” (雙規) disciplinary mechanism.

We do not have other comments to the rest of the amendment bill but would take this opportunity to urge the Administration to be mindful in appointing a date on which this piece of legislation comes into operation. Additional reporting, clearing or trading obligations mean that financial institutions, money brokers or licensed corporations will have to add headcounts on legal and compliance work. These would also entail review of current practices and internal control systems. Sufficient preparation time should be given to cater for these arrangements and the set up of required system infrastructure.

Yours Sincerely,



Gary Cheung
Senior Vice President
SinoPac Securities (Asia) Limited