

Clerk of Bills Committee  
Legislative Council Secretariat  
1 Legislative Council Road  
Central, Hong Kong

By email: [yspang@legco.gov.hk](mailto:yspang@legco.gov.hk)

17 September 2015

Dear Sirs,

**AIMA comments on Part 3 of the Securities and Futures (Amendment) Bill 2015**

The Alternative Investment Management Association Limited<sup>1</sup> (AIMA) welcomes the opportunity to provide the Bills Committee of the Legislative Council with our comments on the Securities and Futures (Amendment) Bill 2015 (the 'Bill').

AIMA recognises that the Security and Futures Commission (the 'SFC')'s current powers in respect of acquiring information from licensed corporations in order to assist overseas regulators in a non-enforcement context are limited, and agree with the objectives of the Bill. We further note that they appear to be consistent with international standards and expectations. For example, general principle 4 the [International Organization of Securities Commissions \(IOSCO\) Final Report on Principles Regarding Cross-Border Supervisory Cooperation](#) provides that "Authorities should consult, cooperate and, to the extent possible, share information regarding entities of systemic significance or whose activities could have a systemic impact on markets".

AIMA recognises the increasing importance of global regulatory cooperation as it ultimately enables more consistent regulation and helps to maintain market and financial stability simply by having better regulated and supervised markets. AIMA is also mindful that the SFC has entered into a number of memoranda of understanding (MOUs), including with various European Economic Area (EEA) states pursuant to the Alternative Investment Fund Manager's Directive (AIFMD)<sup>2</sup>, a piece of European legislation that is of particular relevance to members of AIMA. These MOUs call for, amongst other things, the exchange of certain information.<sup>3</sup> Whilst we recognise the need for the proposals, and welcome the SFC's cooperation efforts with overseas regulators noting the potential reciprocal benefits for both the SFC and licensed corporations under current MOUs, we are mindful that the proposals have arisen as a result of these specific circumstances and the importance of the legislative framework being adequately detailed and suitable to also deal with developments, such as future MOUs with securities regulators of emerging markets jurisdictions, and not just existing requirements.

<sup>1</sup> As the global hedge fund association, the Alternative Investment Management Association (AIMA) has over 1,500 corporate members (with over 9,000 individual contacts) worldwide, based in over 50 countries. Members include hedge fund managers, fund of hedge funds managers, prime brokers, legal and accounting firms, investors, fund administrators and independent fund directors. AIMA's manager members collectively manage more than \$1.5 trillion in assets.

<sup>2</sup> And, more recently, an MOU with the European Securities and Markets Authority in relation to monitoring ongoing compliance by Hong Kong-established central counterparties with the recognition conditions under the EU regulation on over-the-counter derivatives, central counterparties and trade repositories (EMIR).

<sup>3</sup> Article 3 (4) of the MOU states "To supplement informal consultations, each Authority intends to provide the other Authority, upon written request and as far as its national or domestic law permits, with assistance in obtaining information not otherwise available to the Requesting Authority, and, where needed, with assistance to enable the Requesting Authority to interpret and assess compliance with its Laws and Regulations."



The Hong Kong hedge fund industry is reliant on an investor base that resides outside of the Asian region - with roughly 70% or more of AUM being based in North America and Europe. AIMA is concerned that, without the cooperation as required by the AIFMD, access to pools of capital from hedge fund investors based in the EEA by hedge fund managers in Hong Kong will be increasingly restricted and that this will significantly limit the ability of Hong Kong hedge fund managers to grow their assets under management which will in turn, have a negative impact on Hong Kong continuing to develop as a global alternative investment management market.

Whilst recognising that the requirements contained in the Bill are incremental changes to existing processes of enforcement and supervisory exchange of information, AIMA's principal concern with the original proposals as set out in the SFC's [Consultation Paper on Proposed Amendments to the Securities and Futures Ordinance for Providing Assistance to Overseas Regulators in Certain Situations](#) was the breadth of the SFC's proposed information-gathering powers on behalf of overseas regulators, including the purposes for which such information may be sought, and ultimately used, by the overseas regulators. AIMA therefore welcomes the introduction of the protections set out in Part 3 of the Bill in Sections 186(2D)<sup>4</sup> and 186 (2E)<sup>5</sup>. These protections are in addition to extending existing protections (adequate secrecy provisions and need for the public interest to be satisfied) to the new powers being proposed. AIMA also notes that the written undertaking is consistent in spirit with powers of the Hong Kong Monetary Authority (HKMA) when sharing information with overseas regulators.<sup>6</sup>

Finally AIMA recognises that the operation of the new powers will, as with existing information sharing powers, rely on the exercise of the SFC's opinion and discretion. For example, it will be for the SFC to assess whether the request is one that can be dealt with under the new powers, and that the necessary conditions are met. Our working assumption in this regard is that the SFC will act in line with the Principle 12 of the IOSCO Final Report on Principles Regarding Cross-Border Supervisory Cooperation<sup>7</sup> and requests from overseas regulators will be sufficiently detailed and adequately explained.

We are grateful for the opportunity to provide our thoughts on the Bill and would be pleased to discuss these comments in further detail.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Philip Tye".

Philip Tye  
Chairman, Hong Kong Branch  
The Alternative Investment Management  
Association Limited

A handwritten signature in black ink, appearing to read "Heide Heiden-Blunt".

Heide Heiden-Blunt  
Managing Director, Head of Asia-Pacific  
The Alternative Investment Management  
Association Limited

<sup>4</sup> Which sets out the requirement for an overseas regulator to provide a written statement as to the need for the information in order to fully ascertain the matters of concern and that the information could not reasonably be ascertained in another way

<sup>5</sup> Which requires a written undertaking from the overseas regulator that they will use the information solely for the purpose of satisfying the reason for its request, will preserve the confidentiality of the material received and, importantly in AIMA's view, will not use the information in any proceedings in the jurisdiction of the overseas regulator or elsewhere without making separate request of the SFC and the SFC has provided the material to the overseas regulator in response to the investigation request (which we assume would follow the process that currently exists under section 186).

<sup>6</sup> Section 121(3) of the Banking Ordinance allows the HKMA to attach conditions so disclosure of information and in the case of individual clients, a condition that the info will not be shared.

<sup>7</sup> Principle 12 states "Requests for information should make clear the supervisory reasons underlying the requesting authority's interest so that the requested authority is better able to understand the nature, scope and purpose of the request, whether it has a related interest in the matter, and whether it may have additional unsolicited information that may be of assistance to the requesting authority"