



10 May 2017

By email: bc_03_16@legco.gov.hk

Hon. Kenneth LEUNG

Chairman

Bills Committee on Inland Revenue (Amendment) (No. 3) Bill 2017

Legislative Council Complex

1 Legislative Council Road

Central, Hong Kong

Dear Hon. Leung

Inland Revenue (Amendment) (No. 3) Bill 2017

- **Automatic Exchange of Financial Account Information in Tax Matters (“AEOI”) in Hong Kong – Expansion of the List of Reportable Jurisdictions**

The Hong Kong Association of Banks (“HKAB”) and Private Wealth Management Association (“PWMA”) (collectively referred to as “we”) refer to the Inland Revenue (Amendment) (No. 3) Bill 2017 (“Bill”) gazetted on 24 March 2017 and subsequently introduced to the Legislative Council on 29 March 2017. We welcome and thank you for the opportunity to give views on the Bill.

With mounting pressure from the OECD and European Union for Hong Kong to expedite delivery on its AEOI commitments, we understand the drivers of this Bill and that amendment to the legislation will have to be implemented as soon as practicable. In this regard, we have been having ongoing communication with the Financial Services and the Treasury Bureau (“FSTB”) and the Inland Revenue Department (“IRD”) regarding the proposed expansion of the list of reportable jurisdictions for AEOI (“proposal”). During a recent meeting with the FSTB and IRD, on 24 April 2017, we highlighted concerns raised and presented suggestions by the industry set out in the HKAB submission dated 15 March 2017 (Annex 1) and PWMA submission dated 28 March 2017 (Annex 3).

We are cognizant of the “new world” of international taxation and the accompanying expectation that has emerged around information exchange. Indeed, we appreciate the Government’s desire to conclude as many AEOI agreements with interested appropriate partners as soon as possible so as to uphold Hong Kong’s reputation as an international financial centre. For this reason, we would lend our general support to the proposal.

Considering the timing of the Bill, disseminating up-to-date and consistent messages to the general public and financial institutions (“FIs”) alike is crucial. To reflect the practical significant changes and impacts, the Government should take steps to update its official information sources, such as posters, API, taxpayer pamphlets, guidance for financial institutions, etc. in a timely manner upon passage of the Bill.

The FSTB letter dated 22 March 2017 (Annex 2) reiterates that all financial accounts opened after 1 January 2017 should be treated as new accounts. Therefore, among other things, the IRD guidance for financial institutions should clarify that, *with respect to the 72 newly-added reportable jurisdictions*, FIs are required to:

- complete due diligence for new accounts, if not already performed, to identify reportable accounts;
- complete the review of high value accounts before the end of 2017;
- furnish 6-month financial account data, such as income received (e.g. interest, dividend), with respect to the period from 1 July to 31 December 2017 for the first round of reporting in 2018.

With the anticipated passage of the Bill, the Government will have made great strides in demonstrating Hong Kong’s commitment to AEOI. We trust that the Government will take measures as needed to accelerate the expansion of the Comprehensive Double Tax Agreement network with our current and prospective trading partners. The resulting new tax treaties will help enhance Hong Kong’s economic growth potential.

Again from the meeting with the FSTB and IRD on 24 April 2017, we recognise that adopting some of our suggestions may not be immediately feasible. However, this will not detract from the fact that FIs will struggle with an expected surge in demand on human, system and financial resources necessary to implement the proposal *within a very short space of time* i.e. second half of 2017. Consequently, FIs will likely face the risk of experiencing operational, compliance and customer related issues to various degrees in the lead up to the first reporting in May 2018 (“risk factors”). Given the importance and significance of the Bill, we summarise below our views and rationale shared in the meeting for the benefit of the Bills Committee:

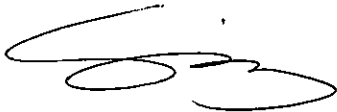
- FIs be made responsible for holding the relevant data for all reportable jurisdictions and only provide the data to the IRD for those jurisdictions with which Hong Kong has signed a bilateral competent authority agreement.
- The Government should consider allowing FIs, as an option, to submit data for the full year of 2017 for all of the 72 newly-added reportable jurisdictions. This will lessen the heavy burden of the need to manage and submit 6-month data on a one-off basis, as opposed to the usual full-year reporting thereafter.

- FIs that adopt the required targeted approach will be strained in completing pre-existing customer due diligence for a much larger pool of high value accounts in six months with respect to the 72 newly-added reportable jurisdictions, as opposed to Japan and the UK only.
- The risk factors will affect FIs that adopt the targeted and optional wider approaches alike. While we recognise the rapid pace at which the new AEOI provisions have to be legislated, we urged the Government to recognise that banks will have made their best efforts to implement the requisite changes within a very short timeframe from compliance monitoring and sanctions application points of view.

We would be pleased to support the Bills Committee in its consideration of the Bill. Going forward, we look forward to continuing engagement with the Government in this matter. Should you have any questions, please do not hesitate to contact Ivy Wong of HKAB Secretariat at 2521-1169.

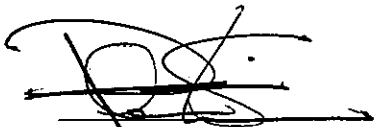
Yours sincerely

For and on behalf of the Hong Kong Association of Banks



Celia Shing
Secretary

For and on behalf of the Private Wealth Management Association



Peter Stein
Managing Director

Enclosures:

- Annex 1. HKAB's letter to FSTB dated 15 March 2017
- Annex 2. FSTB's letter to HKAB dated 22 March 2017
- Annex 3. PWMA's letter to FSTB dated 28 March 2017



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15 March 2017

By email: dsts2@fstb.gov.hk

Mr LAI Chi Wah, Andrew, JP
Dep Secy for Financial Services and the Treasury (Treasury)2)
Financial Services and the Treasury Bureau
The Treasury Branch
24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Mr Lai

AEOI - Expansion of List of Reportable Jurisdictions

The Hong Kong Association of Banks (“HKAB” or “we”) refer to the HKSAR Government’s proposed legislative amendments to the Inland Revenue Ordinance (“IRO”) to expand the current list of “reportable jurisdictions” for the purpose of Automatic Exchange of Financial Account Information (“AEOI”). We would like to take the opportunity to submit our views on the proposal.

We note that under the proposal “reportable jurisdictions” will expand from the current 2 to 74 jurisdictions, including those jurisdictions with which Hong Kong has not signed a tax treaty or a tax information exchange agreement (“TIEA”), with financial institutions (“FIs”) being required to collect and furnish financial account information for the period 1 July to 31 December 2017 for the newly added 72 jurisdictions in addition to information for the period 1 January to 31 December 2017 in relation to Japan and the UK in the first AEOI reporting in May 2018. The additional 72 jurisdictions are (i) those which have expressed an interest to the OECD in conducting AEOI with Hong Kong, (ii) HK's tax treaty/TIEA partners which have committed to AEOI, and (iii) all EU Member States.

We recognise the increasing international pressure on implementing AEOI in a sufficiently broad manner including the ability to exchange financial account information for the year 2017. In this connection, we appreciate the present constraints of Hong Kong not being a party to the Multilateral Convention on Mutual Assistance in Tax Matters, which as a result requires the Government to conduct AEOI on a bilateral basis with its tax treaty or TIEA partners on an individual basis, and of the IRO mandating only the targeted approach to customer due diligence.

Chairman Bank of China (Hong Kong) Limited
Vice Chairman The Hongkong and Shanghai Banking Corporation Limited
Standard Chartered Bank (Hong Kong) Limited 1
Secretary Celia Shing

主席 中國銀行（香港）有限公司
副主席 香港上海滙豐銀行有限公司
渣打銀行（香港）有限公司
秘書 盛思怡



With the above being said, we believe it is necessary to address the impact of the proposals on Hong Kong's standing as an international financial centre and its future ability to negotiate tax treaties and TIEAs. It is also of paramount importance that the Government recognises the operational challenges of the proposed changes on FIs, which are not limited only to those that adopt the targeted approach. We have set out in the Appendix to this letter the key areas which we believe should be addressed in the proposed legislative amendments.

If you have any questions, please contact Ivy Wong of HKAB Secretariat at 2526-8895.

Yours sincerely

A handwritten signature in black ink, appearing to be "Celia Shing", written in a cursive style.

Celia Shing
Secretary

Enc.

c.c. Inland Revenue Department (Attn: Mr Brian Chiu)

Appendix - Detailed views and comments on the proposed amendments to the Inland Revenue Ordinance

Hong Kong as an international financial centre

With AEOI already in place with 74 jurisdictions, there is likely to be little economic incentive on the part of prospective partners to enter into tax treaties/TIEAs with Hong Kong. There would also be a possible loss of leverage at negotiations over tax treaties/TIEAs. Both will not only affect Hong Kong's international standing but will also have an adverse impact on the level of foreign investment and business establishment in Hong Kong. We believe these very valid concerns would already have been carefully considered by the Government and request that the Government communicate its views to make its position more publicly known.

Further, we believe a more concrete timetable for Hong Kong to seek the application of the Multilateral Convention on Mutual Assistance in Tax Matters, and how it will do so, is crucial for enabling Hong Kong to conduct AEOI with partner jurisdictions expeditiously.

Finally, with the expansion of the reportable jurisdictions list, we ask the Government to consider also amending the legislative framework to make the wider approach to the identification and collection of information a mandatory requirement.

Phasing in the inclusion of the 72 additional jurisdictions

While we appreciate the AEOI commitment that Hong Kong needs to demonstrate to the OECD, EU and wider international community, we ask that the Government consider adopting a staggered approach to including the 72 additional jurisdictions in the list of "reportable jurisdictions", for example, starting with tax treaty/TIEA partners followed by EU jurisdictions and then the rest. This would be on the basis, and as acknowledge by the Financial Services and the Treasury Bureau in the 3 March 2017 briefing, of the practical difficulty of entering into Competent Authority Agreement ("CAA") with such a large number of jurisdictions within the year 2017. Such an approach would alleviate the strain that would otherwise be placed on broadly all businesses and functions within FIs.

Operational burden on FIs

The Government should not underestimate the additional operational compliance obligations arising from the proposed amendments, particularly for FIs that are adopting the targeted approach. Specifically, we expect that new layers of impact assessment/ gap analysis on aspects of policies and procedures, processes and controls, systems, governance, training, internal and external communications would need to be inserted into existing ones.

All the above will lead to a significant surge in resource (people, budget) demands, squeezed within the very short time period of April to June, resulting in challenging logistics and perhaps less than ideal state of readiness and quality assurance levels – examples being activities needing to be carried out in parallel, reduced testing time. In

most cases, project teams that implemented and delivered CRS within the FI have been or are being disbanded, thus further aggravating the drain on resources. The complexity multiplies many-folds for an FI that adopts the targeted approach, for example with pre-existing customer identification already having taken place on 31 December 2016.

Separately, we would ask that the Government align the high value and low value pre-existing individual account holder due diligence timeframes for the 72 additional jurisdictions. If this is not possible, reporting should be for those accounts that have been remediated by year end (eg. high value pre-existing accounts). We note the IRD's comment that FIs may ask for extension (presumably for high value pre-existing accounts) if remediation cannot be completed on time but we believe that the realignment approach is preferable to ensure a level playing field for FIs.

Impact on reporting

Reporting is a significant undertaking, usually with its own operating model. In addition, international banks are generally building centralised reporting capabilities for all AEOI regimes for the period 1 January to 31 December. A new, one-off, requirement for six-month customer data as opposed to the usual 12 months would again be inefficient use of FIs' resources, budget and time, requiring substantial additional enhancements to data extraction and the underlying systems and controls. The only way to operationalise this would be to either (1) build automation, which is likely to be a one-off expense for a limited benefit; or (2) build a manual workaround, which increases the operational risk and jeopardise the quality of the data. Further, this issue would impact how FIs source and report closed accounts (similar adjustments would need to be made to FIs' infrastructure to do this). As a result, we request that the Government consider including in the proposed amendment the option (but not as a mandatory requirement) of reporting 12-month data for 2017 for the additional 72 jurisdictions if an FI has adopted the wider approach and collected the requisite information.

A related question would be whether FIs would be obliged to maintain the collected financial account information for the 72 jurisdictions for the period 1 January to 30 June if the above option is not included in the proposed amendment.

As a practical matter, as FIs are to submit one return at each reporting year, we assume the Government will issue detailed instructions or revise the reporting schema on how to submit different periods of financial account information in one XML file to cover Japan and the UK and the 72 additional jurisdictions for the year 2017.

Clarification required

As there is to be no change to the definition of "pre-existing account" and new account opening procedures with respect to the 72 additional jurisdictions apply from 1 July 2017, can the Government please advise the status of customers from these jurisdictions who are onboarded between 1 January and 30 June and the type of due diligence procedures that should be applied to them. This is of particular importance to FIs which have adopted the targeted approach.

Privacy and confidentiality of information collected and reported to the IRD

The proposed amendment will require FIs to file returns for reportable jurisdictions that have not signed a CAA with Hong Kong and the IRD has suggested that it will retain the data until such time as when a CAA is in place. We would like the IRD to explain how it will assure the public that it has sufficiently robust data protection and information security infrastructure in place to safeguard such data.

For an amendment as important as expanding the list of reportable jurisdictions, we believe that FIs will need assurance that the Privacy Commissioner for Personal Data has been consulted and that no specific steps are required to be taken in relation to the Personal Data (Privacy) Ordinance with respect to the expanded list.

Other matters

We assume the IRD will revise/update all information including Guidance for Financial Institutions, AEOI pamphlets, FAQ, contained in the Automatic Exchange of Financial Account Information webpage in the IRD website, in time for the “go live” date of 1 July 2017. In addition, riding on the API being aired, we trust the Government will release a revised version to specifically mention the expanded list of reportable jurisdictions to help FIs manage public/customer expectation.

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By email
(info@hkab.org.hk)

22 March 2017

Ms Celia Shing
Secretary
The Hong Kong Association of Banks
Room 525, 5/F, Prince's Building
Central, Hong Kong

**Automatic Exchange of Financial Account Information
in Tax Matters (“AEOI”) in Hong Kong –
Expansion of the List of Reportable Jurisdictions**

Dear *Celia*,

Thank you for your letter dated 15 March 2017, providing valuable views on the above matter.

As set out in our letter dated 16 February 2017 and explained at the briefing held on 3 March 2017, Hong Kong is under mounting pressure from both OECD and the European Union to expedite the conduct of AEOI with more jurisdictions and to be able to exchange information dating back at least from the second half of 2017. We are indeed very grateful for the

understanding and support from the Hong Kong Association of Banks (“HKAB”) and its members in this regard. We are mindful that Hong Kong would continue to adopt a facilitating approach and to keep the compliance burden of financial institutions to the minimum. Our revised implementation strategy has indeed been formulated on this basis.

While Hong Kong is taking progressive steps to expand its AEOI network, we will continue to convince more jurisdictions to enter into bilateral tax treaties with us so as to foster closer trade and economic links between Hong Kong and the respective economies. On this, I am pleased to inform you that we signed Comprehensive Double Taxation Agreements (“CDTAs”) with Belarus and Pakistan in January and February respectively bringing the total number of CDTAs to 37. Views from HKAB on the choice of negotiating partners are most welcomed. We are also actively considering the possibility of seeking the application of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters in Hong Kong and will keep you posted of new developments.

As regards data collection by financial institutions in Hong Kong, our AEOI regime allows for both the targeted approach and the wider approach. Financial institutions may choose the approach according to their needs. In order to manage the additional work for financial institutions, we propose to add 72 additional reportable jurisdictions to the Inland Revenue Ordinance in one go in the coming legislative exercise while other due diligence procedures under the AEOI regime remain intact. Hence any financial accounts opened and maintained by financial institutions after 1 January 2017 should be treated as a new account in accordance with the legislative amendments passed by the Legislative Council in June 2016.

According to our latest work plan, the first round of reporting by financial institutions to the Inland Revenue Department (“IRD”) will be due in May 2018 so that IRD could conduct the first exchanges with our treaty partners in September 2018. The period of data so required by IRD in the return would be in-line with the commitments that Hong Kong has undertaken. The collection of data for second half of 2017 will be an essential arrangement to address the latest requirement imposed by OECD on Hong Kong so as to avoid information loss. Thereafter, we will go for

the full-year reporting. Further, for the reporting in 2018, financial institutions are required to complete the review of individual high-value preexisting accounts and report the relevant information. Information of individual low-value preexisting accounts and preexisting entity accounts is to be reported only if the relevant accounts have been already identified as reportable when due diligence is performed.

All along, we attach great importance to data privacy and confidentiality. Please be assured that the same high level of data protection and confidentiality safeguards will apply to any information furnished to the IRD, be it relates to Hong Kong's confirmed AEOI partners or prospective AEOI partners. At the domestic level, information from financial institutions would be transmitted via the IRD's AEOI Portal system and stored in the IRD's back-end system with encryption under a high level of security. In the international arena, Hong Kong would only conduct AEOI with jurisdictions which have fulfilled OECD's established requirements on data safeguards. Explicit requirements on data protection and safeguards are provided both under the Competent Authority Agreements as well as the tax treaties concerned.

I attach our Legislative Council Brief issued today for your reference. We thank once again for your valuable views and active participation in the matter. We look forward to the continued support from HKAB and its members on this initiative.

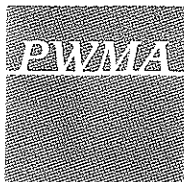
Yours sincerely,

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(Andrew Lai)

Deputy Secretary for Financial Services and
the Treasury (Treasury)

c.c. Commissioner of Inland Revenue (Attn: Mr KK Chiu)



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28 March 2017

Mr LAI Chi Wah, Andrew, JP
Dep Secy for Financial Services and the Treasury (Treasury) 2
Financial Services and the Treasury Bureau
The Treasury Branch
24/F, Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

Dear Sir,

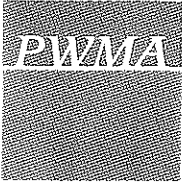
The Private Wealth Management Association (“PWMA” or “we”) refers to the HKSAR Government’s proposed legislative amendments to the Inland Revenue Ordinance (“IRO”) to expand the current list of reportable jurisdictions for the purpose of Automatic Exchange of Financial Account Information (“AEOI”).

We appreciate that a briefing session was held on 3 March 2017 to explain the Government’s proposal. We are supportive of the view that the Hong Kong Government should take necessary steps to comply with international standards and maintain Hong Kong’s reputation as an international financial centre.

At the same time, we believe the current proposal will impose additional operational burden on financial institutions (“FIs”) with additional efforts being required on impact assessment, governance, systems and processes, training and communication. We set out in this letter our views and comments on the proposal and recommend that the Government consider these refinements to increase the practical benefits of the proposal:

Hong Kong’s approach to entering into bilateral agreements

- We understand that Hong Kong is facing mounting international pressure to expand its AEOI network and respect the Government’s need to define its priority jurisdictions. We would nevertheless welcome an orderly pace in entering into the bilateral agreements, and in a manner that will not jeopardise Hong Kong’s negotiation of future economic terms with prospective Comprehensive Double Tax Agreement (“CDTA”) partners (e.g. India), given the possible loss of leverage at negotiations over CDTAs without having AEOI as an incentive.
- In this regard, among the list of prospective reportable jurisdictions, a large number of EU states are traditionally Hong Kong’s CDTA partners and the Government has previously expressed the intention to select AEOI partners from its existing CDTA

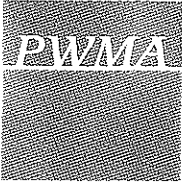


network that has data security safeguard in place. In alignment with this, we suggest the Government to put EU states as priority partners, followed by CDTA jurisdictions. For certain other non-EU jurisdictions (in particular jurisdictions where local AEOI legislation is not effective yet), entering into an exchange arrangement may not be in line with the OECD's framework. Furthermore, we propose the Government to consider extending the AEOI network (in particular the APAC countries) in alignment with other financial centres such as Singapore, Switzerland etc. to provide a level playing field.

- We note that there are one or two prospective reportable jurisdictions for which the with volume of data to be collected is great and with a particularly large volume of pre-existing high value accounts that FIs may have difficulty remediating within the timeframe envisaged by the Government. We propose that the Government consider deferring the conclusion of bilateral agreements with such jurisdictions until their AEOI legislation becomes effective and in line with the OECD's framework in order to reduce the operational burden on FIs and ensure the smooth remediation of pre-existing accounts. If a bilateral agreement is reached with such jurisdictions for exchange of information in 2018, we would propose that FIs be allowed to only provide the information of remediated accounts in 2018, while committing that the reportable information from July 2017 will be kept within FIs and can be provided to the IRD from 2019 onwards once all pre-existing accounts are remediated.

Data retention and scope of IRD reporting

- The addition of 72 reportable jurisdictions will pose considerable operational challenges to FIs, including the challenge of making a significant volume of data available on demand at one time. We would therefore suggest that FIs be made responsible for holding the relevant customer data for all reportable jurisdictions, and to only provide the customer data to the IRD for those jurisdictions with which Hong Kong has concluded a bilateral AEOI agreement.
- In addition, some of our members note that there will be particular operational challenges in providing CRS data for certain reportable jurisdictions on a full-year basis, while providing the same CRS data for other reportable jurisdictions for only the second half of 2017. This new, one-off requirement of 6-month customer data (versus the usual 12 months) will give rise to the need for process and system changes, as well as enhanced controls and governance. Given the minimal return from making this one-off investment, and AEOI exchange partners would normally prefer more rather than less data, we suggest the Government to consider allowing FIs to submit data for the full year of 2017 for all the 72 to-be-confirmed reportable jurisdictions, while still allowing some FIs to submit data only with respect to the 72 reportable jurisdictions for the second half of 2017 if that is their preference.



Pre-existing account due diligence and reporting timeline

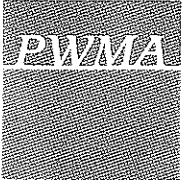
- Ideally, our members would like the pre-existing due diligence completion timeline to be realigned for the 72 jurisdictions. Although the IRD has suggested that FIs may apply for an extension for furnishing the required information for the newly added reportable jurisdictions, given that high-value account remediation needs to be completed by 31 December 2017, we believe a realigned timeframe is preferred to ensure a level playing field for FIs. If realignment is not possible, at a minimum, as suggested above, we would like the Government to consider reporting in 2018 be limited to remediated accounts only.

Clarification required

- We would like to seek the Government's guidance on how FIs should cope with the scenario where a customer domiciled in the prospective jurisdiction does not provide his/her TIN with the reason that an AEOI agreement has not been concluded. We would like the Government to confirm whether FIs should proceed with reporting the account without TIN as a corroborating data.
- For the expanded 72 reportable jurisdictions, we would like to seek clarification on the due diligence requirements of customers on-boarded during the period of 1 January 2017 to 30 June 2017 (for instance, whether they should follow the due diligence timeline for pre-existing customers). This clarification is particularly important for FIs following a targeted approach.
- With the 72 to-be-confirmed reportable jurisdictions, we would like the Government to confirm the mandatory outreach scope for pre-existing account due diligence.
- We would also like the Government to confirm that the new definition of reportable jurisdictions will receive explicit coverage from the Personal Data (Privacy) Ordinance ("PDPO") perspective.

Support from the Government

- We understand the Government attaches significant importance to the retention of the second half of 2017 data as demonstration of its AEOI commitment to the OECD (even if the data is not immediately exchanged in 2018). In anticipation of customer enquiry on their data treatment in the Government's system, we believe it is vital for the Government to provide clarity in its official information source on this matter (e.g.



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taxpayer pamphlets, e-Guidance). This includes the Government's data protection and information security infrastructure and measures, the duration of data retention, the data correction mechanism (if any), how data will be dealt with in the unexpected event that a bilateral agreement is never concluded, etc. This will enable a consistent and accurate message to be delivered to the general public.

- The operational burden that will be imposed on FIs during this very short implementation period is likely to result in challenging logistics and less than ideal quality readiness assurance level. We suggest the Government to consider providing an explicit transitional period (e.g. 6 to 12 months) from a compliance and sanctions viewpoint, allowing FIs to make a best effort approach in demonstrating AEOI compliance.

We would be pleased to engage in further discussions with you in relation to the Government's proposal and provide further clarification on industry views and comments, as appropriate. Should you have any questions, please do not hesitate to contact me at 2537-1661.

For and on behalf of
Private Wealth Management Association

A handwritten signature in black ink, appearing to read 'Peter Stein', is written over a horizontal dashed line.

Peter Stein
Managing Director