

31 August 2012

Supervision of Markets Division  
Securities and Futures Commission  
8th floor Chater House  
8 Connaught Road Central  
Hong Kong

Dear Sir,

**Joint consultation conclusions on the proposed regulatory regime for the over-the-counter (OTC) derivatives market in Hong Kong**  
**Supplemental consultation on the OTC derivatives regime for Hong Kong**

We refer to the SFC and HKMA's July 2012 Joint Consultation Conclusions on the captioned subject (Consultation Conclusions). We note from the Consultation Conclusions that the SFC and HKMA intend to consult further on detailed reporting requirements in Q4 2012.

The Hong Kong Trustees' Association is a professional association representing trustees and members of the trust and fiduciary services industry in Hong Kong. We are interested in the present consultation to the extent it affects funds that are structured as trusts.

As you prepare for the further consultation, we would like to highlight one point relating to reporting obligations of a fiduciary for your consideration.

Para 152 of the Consultation Conclusions states that, in the case of funds, your initial thinking was that reporting obligation could rest with the legal owner of the assets of the fund, e.g. the trustee, where the fund is structured in the form of a trust.

While the trustee is the legal owner of the assets of a trust and has to protect the interest of the trust and the unit holders, we wish to make clear that for all product or investment related obligations, the management company or fund manager should have the primary responsibilities, including but not limited to monitoring and reporting obligations. Therefore if the conclusion was that the trustee of funds should be or could be tasked with reporting, the trustee should only be asked to do so in the capacity as agents of the fund manager. In the case of a fund, the primary obligation to maintain, calculate the threshold /exposure etc for OTC derivatives transactions and to report as required under the Code should rest with the fund manager and not the trustee.

We will make further submissions as appropriate when the supplemental consultation on reporting requirements is launched in Q4. In the meantime, we hope our comment above will be considered and reflected in the relevant consultation paper when it comes out.

Yours faithfully,

HK Trustees' Association Ltd