Updated Submission
16 November 2021

We refer to the Consultation Conclusions on Proposals to (1) implement an investor identification regime ("Hong Kong Investor Identification Regime") at trading level for the securities market in Hong Kong and (2) introduce an over-the-counter securities transactions reporting regime ("OTC Securities Transaction Reporting Regime") for shares listed on the Stock Exchange of Hong Kong (the "Consultation Conclusion").

The Asia Securities Industry and Financial Markets Association ("ASIFMA"), its members and Simmons & Simmons ("S&S") would like to express our gratitude to the Securities and Futures Commission (the "Commission") for accepting a number of our proposals.

Following the publication of the Consultation Conclusion, ASIFMA, its members and S&S have discussed the Consultation Conclusion and we would be grateful if the Commission could clarify the following issues by way of "Frequently Asked Questions" or other means as the Commission consider to be appropriate.

Terms not defined in this letter shall have the meaning ascribed to them in the Consultation Conclusion.

- **Bonds** – we would be grateful if the Commission could confirm bonds which are listed on the Stock Exchange of Hong Kong but are traded on an over-the-counter basis (i.e. off exchange) are not in-scope of the HKIDR and the OTC Securities Transaction Reporting Regime. This confirmation is of critical importance, as majority of our members transact listed bonds on an over-the-counter basis.

- **Trade Give-Up** – We expect that Relevant Regulated Intermediaries may assign BCAN in accordance with their own practices and operational procedures for trade give-up, provided that there are reasonable basis to justify the manner in which the Relevant Regulated Intermediaries assign BCAN for trade give-up.

  For Relevant Regulated Intermediaries who choose to amend the BCAN to reflect the change in beneficial ownership, we would be grateful if the Commission could collaborate with the Stock Exchange of Hong Kong to create an additional way to amend the BCAN which caters for trade give-up. ASIFMA, its members and S&S appreciate the SFC taking into account the industry's submission by allowing amendment of BCAN; however, the need to file "error reports" is somewhat misleading in the case of trade give-up as the amendment is not caused by error;

- **Assignment of BCAN –** we understand from the Consultation Paper and paragraph 72 of the Consultation Conclusion that one of the key purposes of introducing the Hong Kong Investor Identification Regime is to "identify the legal person who has control and responsibility over the issuance of the relevant order" (commonly referred to as the "order originator"). We agree with the Commission's proposal. With that said, in paragraph 73 of the Consultation Conclusion, the Commission stated that Relevant Regulated Intermediaries should assign BCAN to the "person whose securities trading account is used for placing the order" (commonly referred to as the "account holder"). As the Commission appreciates, the order originator and the account holder may not be the same person. For example:[1]:

  - **authorised trader and account holders**: two entities have opened accounts with a Relevant Regulated Intermediary, but all of the orders relating to these two entities are executed by one entity. For example, company A and company B have opened

[1] We appreciate the Commission drafted paragraphs 72 and 73 in the context of discretionary investment management account. However, in our view, this will not affect the clarifications which we would like to seek.

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accounts with the Relevant Regulated Intermediary. Company B appoints company A as its authorised trader and company A trades for itself and for company B. Applying paragraph 72 of the Consultation Conclusion, it appears Company A should be assigned with BCAN but if we were to apply paragraph 73 of the Consultation Conclusion, both Company A and Company B should be assigned with BCAN;

- **advisory accounts**: after clients consider advice of their investment advisers, they will place orders with their investment advisers. It is relatively common for the investment advisers to open accounts in their own names with their affiliates to execute clients' orders. Again, applying paragraph 72 of the Consultation Conclusion, it appears that the clients should be assigned with BCAN; however, if we were to apply paragraph 73 of the Consultation Conclusion, the investment advisers should be assigned with BCAN; and

- **trust accounts**: under the relevant client asset protection rule in the jurisdiction in question, custodians will open accounts with Hong Kong Relevant Regulated Intermediary, but orders will be placed by investment managers which the Hong Kong Relevant Regulated Intermediary does not have any relationship with. Again, applying paragraph 72 of the Consultation Conclusion, it appears that the asset managers should be assigned with BCAN (but the practical difficulty is that the Hong Kong Relevant Regulated Intermediary does not have any relationship, and therefore it is impossible to obtain CID and any other documents from such asset managers); however, if we were to apply paragraph 73 of the Consultation Conclusion, the custody account should be assigned with BCAN.

In the above scenarios or any other scenarios which our members will come across in the future, we would be grateful if the Commission could confirm our industry proposition that the Relevant Regulated Intermediary should be given the flexibility to determine whether to assign BCAN to the order originators or account holders, provided that there are reasonable basis to justify the manner in which the Relevant Regulated Intermediaries assign BCAN.

For the scenarios relating to authorised traders and account holders, as well as advisory accounts, our members are inclined to assign BCAN to the order originators, as this is in line with one of the stated objectives of the Hong Kong Investor Identification Regime, which is to identify the order originators.

- **Head Office/Branch** – we have received a number of queries in this regard. In our view, whilst the branch does not have legal personality, the Hong Kong Investor Identification Regime should only apply to the Hong Kong branch which carries out securities brokerage activities. We would be grateful if the Commission could confirm our interpretation. We respectfully submit that whilst technically, the Commission's licence or registration applies to the entity as a "whole", the most sensible interpretation is that only Hong Kong branch which carries out "specified activities" (as defined in paragraph 5.6 (xvi) of the draft Code of Conduct) should be in-scope of the Hong Kong Investor Identification Regime, as the Commission only have oversight of the branch's regulated activities. To support our view, the Commission's Code of Conduct (and other relevant guidelines and circulars) will only apply to the Hong Kong branch.

  In addition, it is very common for clients of the head office of a Hong Kong financial institution (or other branches in major financial center) to place trades and the head office will execute such trades through its affiliates which are exchange participants in Hong Kong. Drawing on the fact that clients of an exchange participant's overseas affiliates are out of scope of the Hong Kong Investor Identification Regime (as stated in paragraph 56 of the Consultation Conclusion), in our view, clients of the head office or overseas branches of a Hong Kong Relevant Regulated Intermediary should be out of scope of the Hong Kong Investor Identification Regime. When interpreting the application of BCAN in this scenario, our members are well aware of the Commission's policy intention, as stated in paragraphs 61-64 of the Consultation Conclusion. We would be grateful if the Commission could confirm our interpretation.

- **Suspension of BCAN:** Under Stock Connect, if any abnormal trading activity is identified in the orders of a specific BCAN, the Mainland exchanges may take the relevant measures including rejecting all orders associated with that BCAN. We would be grateful if the Commission could advise whether the Stock Exchange of Hong Kong will be granted similar powers under the Hong Kong Investor Identification Regime to suspend all trades relating to a specific BCAN.

- **Definition of "relevant licensed or registered person":** We respectfully submit that Chapter 5.6 (a) (xiv) (2) should be amended as follows (amended in bold, underlined and italics): "carries out an off-exchange order ***in its capacity as an exchange participant of the SEHK***". The reason is that without the added phrase, there may be a situation where a non-exchange participant only executes "off-exchange orders" and "off-exchange trades" (both terms as defined in Chapter 5.6(xii) and Chapter 5.6 (xiii) respectively) will still be required to comply with the requirements as set out in Chapter 5.6 (c), which in our view is not the Commission's policy intent. To illustrate this point, as the Commission is aware, the SEHK only requires exchange participants to notify the SEHK of any reportable off-exchange orders under the Rules of the Exchange. For example, if company A and company B enter into an off-exchange order, where company B is an exchange participant, only company B – and not company A - is required to notify the SEHK of such off-exchange order. We agree that company B should be required to comply with the requirements as set out in Chapter 5.6(c), but it is not clear to us on what basis company A will be required to comply with these requirements. Moreover, if company B notifies the SEHK and complies with the requirements as set out in Chapter 5.6 (c), it will be duplicative if company A is required to submit information relating to the same trade to the SEHK again.

- **Others:** Our members would like to clarify the following:

  (i) whether the SFC will collaborate with the Stock Exchange of Hong Kong to have an agreed FIX tag for passing BCANs, given there will be scenarios where the Relevant Regulated Intermediary would need to assign the BCANs for their clients and pass them to other Relevant Regulated Intermediary or exchange participants for execution;

  (ii) would there be an agreed approach for scenarios where the exchange participant receives an order from a Relevant Regulated Intermediary but the Relevant Regulated Intermediary did not include the BCAN – as the exchange participant will not know whether the Relevant Regulated Intermediary is placing orders for itself or for its clients? Given that the exchange participant can't be responsible for the internal compliance of the Relevant Regulated Intermediary, we believe that the exchange participant should then use its assigned BCAN for the Relevant Regulated Intermediary and send to the Stock Exchange of Hong Kong for execution?

  (iii) for CID information, if a direct client (as defined in paragraph 5.6(b)(v) of the draft Code of Conduct) is not from an English or Chinese speaking country where the English name may not be contained in the CID documents in accordance with the waterfall requirements, whether it is acceptable for the Relevant Regulated Intermediary to "translate" the relevant information into English on best effort basis (such as referring to other official information as we deem appropriate)? Also, considering the numerous writing systems in the world (such as Cyrillic script, Hebrew alphabet and Korean alphabet), if the identity document of the person contain any non-English or non-Chinese name, we suggest that we are only required to input the English name as mentioned above, while we will try to input the non-English and non-Chinese name on best effort basis where we can. We believe that this should not jeopardize the regulatory function of the SFC, as we are under obligation to provide CID information in accordance with the waterfall requirements (such as national ID) and the CID documents should be readily available for SFC; and

  (iv) we understand it was raised during the Q&A of the SFC's briefing to the industry where an industry participant requested the SFC to clarify whether the HKIDR and the OTC Securities Transactions Reporting requirements are applicable to primary market creation and redemption orders submitted by participating dealers (by instruction from their clients) in respect of exchange-traded-funds. Unfortunately, the recording of the Q&A session is no longer available. We would therefore be grateful if the Commission could respond to us.

Please kindly note that the ASIFMA Asset Management Group may have some additional buy-side related questions which they may seek the SFC's clarification.

If you have any queries on this response, please do not hesitate to contact Patrick Pang, Managing Director – Head of Compliance and Tax (+852 2531 6520; ppang@asifma.org).