Supplemental consultation on the OTC derivatives regime for Hong Kong – proposed scope of new/expanded regulated activities and regulatory oversight of systemically important players

July 2012

HONG KONG MONETARY AUTHORITY
香港金融管理局

SFC
證監會
SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Table of contents

Foreword

This paper is a follow-up to the Hong Kong Monetary Authority (**HKMA**) and Securities and Futures Commission (**SFC**)'s joint consultation on the proposed regulatory regime for the over-the-counter (**OTC**) derivatives market. The original consultation paper was issued in October 2011 and the Consultation Conclusions were issued in July 2012 (at the same time as the release of this supplemental consultation paper).[1]

This paper sets out the HKMA's and SFC's proposals on how certain new regulated activities relating to OTC derivatives should be cast, and how systemically important players in that market should be regulated. Interested parties are invited to submit written comments by any one of the following methods on or before **31 August 2012**.

By online submission at: http://www.sfc.hk/sfc/html/EN/speeches/consult/consult.html

By email to: mdd@hkma.gov.hk or otcconsult@sfc.hk

By fax to: (852) 2878 7297 or (852) 2521 7917

By post to one of the following:

Market Development Division
Hong Kong Monetary Authority
55/F Two International Finance Centre
8 Finance Street Central
Hong Kong

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

Any person wishing to submit comments on behalf of any organization should provide details of the organization whose views they represent.

Please note that the names of commentators and the contents of their submissions may be published by the HKMA and / or SFC on their respective websites and in other documents to be published by them. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

You may not wish your name and / or submission to be published by the HKMA and / or SFC. If this is the case, please state that you wish your name and / or submission to be withheld from publication when you make your submission.

[1] Copies of both the Consultation Paper and the Conclusions Paper are accessible via the HKMA's and SFC's website at www.hkma.gov.hk and www.sfc.hk respectively.

Personal information collection statement

1. This Personal Information Collection Statement (**PICS**) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data[1] will be used following collection, what you are agreeing to with respect to the HKMA's and / or SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

Purpose of collection

2. The personal data provided in your submission to the HKMA and / or SFC in response to this consultation paper may be used by the HKMA and SFC for one or more of the following purposes –

   (1) to administer –

      (a) in the case of the HKMA, the provisions of the Banking Ordinance (Cap. 155) and guidelines published pursuant to the powers vested in the HKMA; and

      (b) in the case of the SFC, the relevant provisions[2] and codes and guidelines published pursuant to the powers vested in the SFC;

   (2) in performing –

      (a) in the case of the HKMA, statutory functions under the provisions of the Banking Ordinance and the Securities and Futures Ordinance;

      (b) in the case of the SFC, its statutory functions under the relevant provisions;

   (3) for research and statistical purposes; or

   (4) for other purposes permitted by law.

Transfer of personal data

3. Personal data may be disclosed by the HKMA and / or SFC to members of the public in Hong Kong and elsewhere as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the HKMA and / or SFC website and in documents to be published by the HKMA and / or SFC during the consultation period or at its conclusion.

---

[1] Personal data means personal information as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

[2] Defined in Schedule 1 of the Securities and Futures Ordinance (Cap. 571) (**SFO**) to mean provisions of the SFO and subsidiary legislation made under it; and provisions of Parts II and XII of the Companies Ordinance (Cap. 32) so far as those Parts relate directly or indirectly, to the performance of functions relating to prospectuses; the purchase by a corporation of its own shares; a corporation giving financial assistance for the acquisition of its own shares etc.

Access to data

4. You have the right to request access to and correction of your personal data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your personal data provided in your submission on this consultation paper. The HKMA and SFC have the right to charge a reasonable fee for processing any data access request.

Retention

5. Personal data provided to the HKMA and / or SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the HKMA's and SFC's respective functions.

Enquiries

6. Any enquiries regarding the personal data provided in your submission on this consultation paper, or requests for access to personal data or correction of personal data, should be addressed in writing to –

In the case of the HKMA –	In the case of the SFC –
Personal Data Privacy Officer	The Data Privacy Officer
Hong Kong Monetary Authority	The Securities and Futures Commission
55/F Two International Finance Centre	8th floor Chater House
8 Finance Street Central	8 Connaught Road Central
Hong Kong	Hong Kong

7. A copy of the Privacy Policy Statement adopted by the HKMA and SFC is available upon request.

I. Introduction and executive summary

1. In October 2011, the Hong Kong Monetary Authority (**HKMA**) and Securities and Futures Commission (**SFC**) issued a joint consultation paper on the proposed regulatory regime for the over-the-counter (**OTC**) derivatives market (**Consultation Paper**). A joint consultation conclusions paper (**Conclusions Paper**) was subsequently issued in July 2012.

2. The Conclusions Paper confirmed the need to regulate persons who serve as intermediaries (i.e. as dealers, advisers or clearing agents) in the OTC derivatives market, and to have a degree of regulatory oversight in respect of systemically important players (**SIPs**), i.e. players in Hong Kong who are not licensed or registered with either the HKMA or SFC, but whose positions and activities in the OTC derivatives market may raise concerns of potential systemic risk.

3. Specifically, the paper confirmed that –

   (1) Two new regulated activities (**RAs**) would need to be introduced under Schedule 5 to the Securities and Futures Ordinance (**SFO**), namely –

      (a) a new Type 11 RA to cover the activities of dealers and advisers, and

      (b) a new Type 12 RA to cover the activities of clearing agents.

   (2) Additionally, the existing Type 9 RA (asset management) would need to be expanded to cover the management of portfolios of OTC derivatives transactions.

   (3) Authorized institutions (within the meaning of the Banking Ordinance, **AIs**) and approved money brokers (also within the meaning of the Banking Ordinance, **AMBs**) who serve as intermediaries in the OTC derivatives market would continue to be overseen and regulated by the HKMA, and hence would not need to be licensed for the new Type 11 or Type 12 RAs. However, to the extent that their OTC derivatives activities also constitute the carrying on of an existing RA (including the expanded Type 9 RA), they would continue to have to be licensed or registered (as the case may be) as they are today.

   (4) Market players in Hong Kong whose OTC derivatives positions exceed a certain specified threshold (which threshold will be many times higher than both the reporting and clearing thresholds) should notify the SFC, and their names and details should then be entered in a register of SIPs. Additionally, the HKMA and SFC should have power to require SIPs to provide information and take certain action in respect of their OTC derivatives positions and transactions as may be required.

4. This paper sets out the HKMA's and SFC's specific proposals on how the new Type 11 RA and new Type 12 RA should be cast, how the existing Type 9 RA should be expanded, and how the activities of SIPs should be overseen and regulated. Briefly, we propose as follows –

   <u>New Type 11 RA</u>

   (1) As with the existing RAs, the new RAs should be defined by first setting an initial ambit, and then refining this as appropriate by reference to specific exemptions and carve-outs.

(2) The initial ambit of the new Type 11 RA should be cast along the lines of the initial ambit of the existing dealing and advising definitions in the SFO. Carve-outs should be provided for the following –

(a) to deal with any overlaps between the scope of the new Type 11 RA, and the scope of one or more of the existing RAs,[1]

(b) to preserve, as appropriate, some of the carve-outs under the existing RAs, so that the introduction of the new Type 11 RA does not inadvertently remove the benefit of carve-outs that currently exist and should be retained for OTC derivatives transactions, and

(c) to exclude dealing and advising activities undertaken by certain types of persons, or in certain types of situations – e.g. activities undertaken by AIs and AMBs will have to be carved out as they will continue to be regulated by the HKMA and will not have to be licensed for the new Type 11 RA.

<u>New Type 12 RA</u>

(3) The new Type 12 RA should cover the provision of clearing and settlement services where these are provided: (i) in respect of OTC derivatives transaction, (ii) through a central counterparty (**CCP**), and (iii) on behalf of another person. It should therefore encompass the activities of both –

(a) members of a CCP, and

(b) persons that intermediate between such member and a counterparty to the OTC derivatives transaction in respect of which the clearing agency services are provided,

except where such members or persons are clearing their own (proprietary) trades only.

(4) Additionally, carve-outs should be provided to exclude: (i) the CCP itself, (ii) AIs and AMBs, (iii) overseas members of a local CCP (i.e. remote participants) provided certain conditions are met, and (iv) any agent of a clearing member that provides only marketing support and does not handle client monies or assets. With respect to agents of a clearing member, we propose that they should only be required to be licensed for Type 12 RA if they handle client monies or assets. This is in light of recommendations on the segregation and portability of client positions and collateral made in the IOSCO Report on International Standards for Derivatives Market Intermediary Regulation.

<u>Expanded Type 9 RA</u>

(5) The Type 9 RA should be expanded so that it also encompasses the management of portfolios of OTC derivatives transactions. The existing carve-outs that allow persons licensed/registered for Type 1 RA to manage portfolios of

[1] For example, with respect to OTC equity derivatives, there may be some overlap between the new Type 11 RA and the existing Type 1 RA (dealing in securities) and Type 4 RA (advising on securities). Similarly, with respect to foreign exchange derivatives, there may be some overlap with the existing Type 3 RA (leveraged foreign exchange trading).

securities without being licensed / registered for Type 9 RA should be similarly expanded so that AIs, AMBs and persons licensed for Type 11 RA may manage portfolios of OTC derivatives transactions without a licence/registration for the expanded Type 9 RA if such management is incidental to their dealing in OTC derivatives.

Transitional arrangements

(6) To minimise disruption to market participants, we propose to introduce transitional arrangements for the implementation of the new Type 11 and 12 RAs, and the expanded Type 9 RA. Specifically, persons who wish to be licensed/registered for any of these RAs, and submit their applications within a specified period will be deemed to be so licensed or registered until their application is determined. The deeming is however subject to the applicant confirming that it has been engaging in relevant OTC derivatives activities in Hong Kong for an appropriate period of time before the new regulatory regime came into force.

Regulation of SIPs

(7) We propose to use only quantitative criteria to determine if a person should be regarded as an SIP. Persons who meet such criteria will need to notify the SFC and their names and details of their OTC derivatives positions will then be entered in a register of SIPs. We are considering whether the names of SIPs entered in the register should be disclosed to the public.

(8) The HKMA and SFC should have certain regulatory powers in respect of persons whose names are in the register of SIPs. Specifically, they should have powers to require such persons to provide information and take action in respect of their OTC derivatives positions and transactions as specified. Persons who fail to comply with such requirements should be subject to disciplinary action by the SFC, and the sanctions that may be imposed will include public/private reprimand and disciplinary fines of up to HK$10 million. Decisions against SIPs should be subject to appeal before the Securities and Futures Appeals Tribunal.

5. This paper should be read together with the Consultation Paper and the Conclusions Paper.

II. Type 11 RA

6. As with the existing RAs, we propose that the new RAs should be defined by first setting an initial ambit, and then refining this as appropriate by reference to specific exemptions and carve-outs. In the paragraphs below, we set out our proposed initial ambit for the new Type 11 RA and our proposed list of exemptions and carve-outs.

Initial ambit

7. We propose that the initial ambit of the new Type 11 RA should encompass dealing in and advising on OTC derivatives transactions, and that this should be defined to mean any of the following –

(1) entering into or offering to enter into an OTC derivatives transaction,

(2) inducing or attempting to induce another person to enter into, or to offer to enter into, an OTC derivatives transaction, and

(3) giving advice on, or issuing reports or analyses on whether, which, the time at which, or the terms or conditions on which, OTC derivatives transactions should be entered into.

8. The above is largely based on the initial ambit of the existing dealing and advising definitions under Schedule 5 to the SFO. With respect to the advising limb (i.e. paragraph 7(3) above), we have considered whether this should cover both the giving of advice and the issuing of reports and analyses, or only the former. The bespoke nature of OTC derivatives transactions suggests that the issue of reports and analyses may be unusual or rare. However, we note that derivatives transactions can also be standardised. Moreover, with the implementation of the new OTC derivatives regime (including higher margin requirements for transactions that are not centrally cleared), standardisation is likely to increase. This in turn may encourage the issue of reports and analyses. We therefore propose that, for completeness, the advising limb of the new Type 11 RA should include both the giving of advice and the issuing of reports and analyses.

Proposed carve-outs

9. It will be necessary to carve out a number of activities from the initial ambit. These include carve-outs to address overlaps with existing RAs, and carve-outs for specific activities.

Proposed carve-outs to address concerns of overlap

10. To address concerns of overlap between the new Type 11 RA and existing RAs, we propose to carve out the following activities from the scope of the new Type 11 RA –

(1) ***Overlap with existing RAs:*** Activities that also constitute a Type 1 RA (dealing in securities), Type 2 RA (dealing in futures contracts), Type 3 RA (leveraged foreign exchange trading), Type 4 RA (advising on securities) or Type 5 RA (advising on futures contracts) and that are conducted by a person who is licensed to carry on such RA should be excluded from the scope of the new Type 11 RA. Additionally, to complement this carve-out, corresponding carve-outs should be added to each of Types 1, 2, 3, 4 and 5 RA so that persons licensed for a Type 11 RA need not also apply for a Type 1, 2, 3, 4 or 5 RA to the extent that their OTC derivatives activities also fall within the ambit of any of the latter.

This is the main "overlap" carve-out and is intended to avoid persons having to obtain a Type 11 RA if they can conduct the same activities using a Type 1, 2, 3, 4 or 5 RA and they are already licensed or registered to carry on such RA. Likewise, it also means persons who are already licensed for Type 11 RA would not need to apply for a Type 1, 2, 3, 4 or 5 RA as well if the scope of their OTC derivatives activities is covered by both.

Hence, for example, a person that deals in OTC equity derivatives on an agency basis only should be able to carry on that activity by virtue of being licensed for <u>either</u> Type 1 RA or Type 11 RA, i.e. it should not have to be licensed for <u>both</u> Type 1 RA and Type 11 RA. However, if the person wishes to deal in OTC equity derivatives on a principal-to-principal basis, then its existing licence for Type 1 RA will not suffice, and it will have to be licensed for the new Type 11 RA. This is because the scope of the existing Type 1 RA does not cover dealing in OTC equity derivatives on a principal-to-principal basis, whereas the proposed scope of the new Type 11 RA does (see paragraph 11 below).

(2) ***Dealings through a licensed dealer:*** Activities that would also constitute a Type 1 RA (dealing in securities), Type 2 RA (dealing in futures contracts) or Type 3 RA (leveraged foreign exchange trading) but for the carve-out under, respectively, paragraph (iv) of the "dealing in securities" definition, paragraph (ii) of the "dealing in futures contracts" definition and paragraph (xiv) of the "leveraged foreign exchange trading" definition should be excluded.

Currently, persons who fall within the initial ambit of the "dealing in securities" (or "dealing in futures contracts" or "leveraged foreign exchange trading") definition do not need to be licensed for Type 1 RA (or Type 2 or 3 RA) if they conduct their dealing activities for no remuneration, and through another person that is licensed for such RA.

Where such persons deal in products that also fall within the definition of "OTC derivatives transaction" (e.g. OTC equity derivatives may fall within the definition of "securities" and "OTC derivatives transaction"), they should be able to continue doing so without having to be licensed for the new Type 11 RA. Hence, for example, a person dealing in OTC equity derivatives through an LC licensed for Type 1 RA (and for no remuneration) should be entitled to continue doing so without having to be licensed for the new Type 11 RA, or having to go through an LC licensed for Type 11 RA. This carve-out seeks to achieve this.

(3) ***Communication of securities offers:*** Activities that would also constitute a Type 1 RA (dealing in securities) but for the carve-out under paragraph (xiii) of the "dealing in securities" definition should be excluded.

Currently, persons who are licensed for Type 4 RA (advising on securities) or Type 6 RA (advising on corporate finance) can communicate offers of securities without a licence for Type 1 RA (dealing in securities), but only if their communication complies with the requirements of section 175 of the SFO.

We believe this carve-out should apply equally where the offer is of securities that are also OTC derivatives transactions (e.g. where the offer is of OTC equity derivatives). In other words, a person licensed for Type 4 RA or Type 6 RA should be able to continue communicating offers of OTC equity derivatives without having to be licensed for the new Type 11 RA provided the communication complies with section 175 of the SFO. However, if the person wishes to communicate offers of interest rate derivatives, then this carve-out would not apply and the person would need to be licensed for Type 11 RA.

(4) ***Advising incidental to dealing:*** Activities that would also constitute a Type 4 RA (advising on securities) or a Type 5 RA (advising on futures contracts) but for the carve-out under, respectively, paragraph (ii) of the "advising on securities" definition, and paragraph (ii) of the "advising on futures contracts" definition should be excluded.

Currently, licensed dealers (i.e. persons licensed for Type 1 RA (or Type 2 RA)) can advise on securities (or futures contracts) without being licensed for Type 4 RA (or Type 5 RA) but only if their giving of such advice is incidental to their dealing activities.

The giving of such advice may fall within the scope of the new Type 11 RA as well. (For example, the giving of advice on OTC equity derivatives could fall within the scope of both Type 4 RA and the new Type 11 RA.) In view of this, and in order to ensure that the carve-outs described in this sub-paragraph (4) are preserved, we believe it is necessary to exclude them from the new Type 11 RA as well. This will ensure that, for example, a person licensed for Type 1 RA can continue to give advice on OTC equity derivatives without a licence for either Type 4 RA or Type 11 RA provided the giving of such advice is incidental to its securities dealing activities.

This carve-out only applies to licensed persons, and not to AIs who are registered institutions, i.e. carve-outs along the lines of paragraphs (iii) and (iv) of both the definitions of "advising on securities" and "advising on futures contracts" are not proposed. This is deliberate. As AIs' activities are proposed to be carved out completely from the new Type 11 RA (see paragraph 12(2) below), we do not believe it is necessary to incorporate specific carve-outs along the lines of paragraphs (iii) and (iv) of the two advising definitions.

(5) ***Particular types of leveraged foreign exchange contracts:*** Activities that would also constitute a Type 3 RA (leveraged foreign exchange trading) but for the carve-out under paragraph (i), (iii) or (vii) of the definition of "leveraged foreign exchange trading".

Currently, the scope of Type 3 RA excludes activities in respect of certain types of leveraged foreign exchange contracts, namely –

- *contracts that are wholly referable to the provision of property (other than currency), services or employment at a fair market value,*

- *contracts with a money changer that relate to the exchange of different currencies, and*

- *contracts arranged by a central bank, an institution performing the functions of a central bank, or an organization acting on such bank or institution's behalf.*

Such contracts may also fall within the definition of "OTC derivatives transaction" given the fairly wide scope of that definition – see paragraphs 79 to 85 of the Conclusions Paper. In view of this, and in order to ensure that the exclusions described above are preserved, we believe it is necessary to replicate these exclusions in the definition of the new Type 11 RA. This carve-out seeks to achieve this.

11. For completeness, we note here that we do not propose to expressly preserve any of the other existing carve-outs under the definition of "dealing in securities", "dealing in futures contracts" or "leveraged foreign exchange trading". In most cases, this is because they are either inappropriate or are covered by other proposed carve-outs discussed in paragraph 12 below. In particular, we do not consider it appropriate to preserve the "principal" carve-out under paragraph (v) of the "dealing in securities" definition and paragraph (vii) of the "dealing in futures contracts" definition. This is because transactions in the OTC derivatives market are typically conducted on a principal-to-principal basis. Excluding such transactions would therefore exclude a large part of the activity in the OTC derivatives market and thus defeat the rationale for introducing the new Type 11 RA.

Other proposed carve-outs

12. Apart from carve-outs to deal with overlaps between the new Type 11 RA and various existing RAs, we also propose that the scope of the new Type 11 RA should exclude the following activities, many of which are akin to carve-outs under the existing RAs –

(1) the activities of recognized clearing houses (**RCHs**), recognized exchange companies (**RECs**), and **ATS** providers authorized under section 95 of the SFO, in their capacity as such,

These carve-outs aim to ensure that the new Type 11 RA will not capture the activities of RCHs, RECs and authorized ATS providers which may otherwise fall within the initial ambit discussed in paragraph 7 above. Such activities are also currently excluded from the scope of Type 1 RA and, to a lesser extent, from Type 2 RA. (See paragraphs (i) to

(iii) of the "dealing in securities" definition and paragraph (i) of the "dealing in futures contracts" definition.)

(2) the activities of **AIs and AMBs** in their capacity as such,

These carve-outs are to reflect the agreed division of regulatory responsibility between the HKMA and SFC vis-à-vis the OTC derivatives market – see paragraphs 15, 72 to 78, and 237 to 239 of the Conclusions Paper.

A point to highlight here is that neither this carve-out for AIs and AMBs, nor the carve-out described in paragraph 10(1) above, will affect AIs' or AMBs' obligation to be registered for any of the existing RAs to the extent that their OTC derivatives activities also constitute carrying on such existing RAs. Hence, for example, although an AI or AMB's activities in respect of OTC equity derivatives will not require it to be licensed/registered for the new Type 11 RA, this should not affect the fact that the activities may nevertheless fall within the existing Type 1 RA and that the AI or AMB will still need to be licensed/registered for Type 1 RA.

(3) dealing activities that constitute entering into a **market contract** (and for this purpose market contract will be amended as discussed in paragraph 214 of the Conclusions Paper[2]),

This carve-out is akin to the one under paragraph (vi) of the "dealing in securities" definition, and paragraph (v) of the "dealing in futures contracts" definition.

(4) dealing activities **performed through** an AI or through an LC licensed for Type 11 RA, and for no remuneration,

This carve-out is akin to the one under paragraph (ii) of the "dealing in futures contracts" definition and paragraph (iv) of the "dealing in securities" definition. It serves to exclude the activities of end users to some extent, although we acknowledge that it will not cover end users who enter into OTC derivatives transactions directly (i.e. without going through an intermediary).

The proposed carve-out under this sub-paragraph (4) is similar to the one proposed under paragraph 10(2) above, and may therefore appear to be unnecessarily duplicative. However, the two are in fact different – the carve-out here aims to allow for dealings via any AI or an LC licensed for Type 11 RA, whereas the carve-out under paragraph 10(2) above aims to allow for dealings via an LC licensed for Type 1 RA, Type 2 RA or Type 3 RA.

(5) the activities of **price takers** (i.e. persons who do not make markets or offer price quotes for OTC derivatives transactions),

This carve-out aims to exclude end users who enter into OTC derivatives transactions directly (i.e. without going through an intermediary). We are still considering how best to define price-takers and would welcome views in this regard.

(6) the activities of a person licensed or registered for **Type 9 RA** (asset management) for the purposes of carrying on that RA,

This carve-out is akin to the carve-out under paragraph (vi) of the "dealing in futures contracts" definition, paragraph (xiv) of the "dealing in securities" definition, and

[2] As noted in paragraph 214 of the Conclusions Paper, the current proposal is to extend the definition of "market contract" so that it covers OTC derivatives transactions entered into by an RCH in accordance with its rules, but without also requiring that such transactions be novated or traded on any particular platform.

paragraph (iva) of both the "advising on futures contracts" and "advising on securities" definitions. The carve-out aims to avoid fund managers having to obtain a Type 11 RA if they are simply advising on or effecting OTC derivatives transactions for the funds that they are managing. For this purpose, we also propose to expand the Type 9 RA so that it covers portfolios of OTC derivatives transactions as well – see paragraphs 30 to31 below.

(7) advisory activities of corporations where advice is given to its **wholly owned subsidiaries, holding company** or other wholly owned subsidiaries of that holding company,

This carve-out is akin to paragraphs (i) of both the "advising on futures contracts" and "advising on securities" definitions.

(8) advisory activities of **solicitors, counsels, certified public accountants** or **trust companies** where this is wholly incidental to their practice or duty,

This carve-out is akin to paragraphs (v) to (viii) of both the "advising on futures contracts" and "advising on securities" definitions.

(9) advisory activities conducted via published or broadcast **media** and made available to the public otherwise than on subscription, and

This carve-out is akin to paragraph (ix) of both the "advising on futures contracts" and "advising on securities" definitions.

(10) any other activities excluded by subsidiary legislation.

This carve-out is included for flexibility. We consider it would be prudent to include this additional carve-out for flexibility given that the regulation of the OTC derivatives market is a whole new area.

13. Apart from the above, we have also considered whether the scope of the new Type 11 RA should expressly exclude the activities of: (i) funds, (ii) persons entering into intra-group transactions or commercial hedging transactions, (iii) providers of post trade services. Our current thinking is that such carve-outs are unnecessary.

(1) To the extent that a person enters into an intra-group or hedging transaction as a price-taker or end user, the proposed carve-out under paragraph 12(5) above should apply and the person would not need to be licensed. The same goes for transactions entered into by funds. However, to the extent that a person enters into a transaction (including any intra-group or hedging transaction) as a dealer, we believe its activities should be regulated and not excluded from the scope of the new Type 11 RA.

(2) With respect to providers of post trade services, their dealing activities are likely to come within the definition of ATS (which, as noted in the Consultation Paper, will be expanded as appropriate to cover OTC derivatives transactions as well[3]). As a result, they will be covered by the proposed carve-out under paragraph 12(1) above.

14. Lastly, and for completeness, we note that in line with the existing approach under the SFO, employees and officers of an entity that needs to be licensed for the new Type 11

[3] Currently, the definition of ATS only encompasses facilities for the trading or clearing of securities or futures contracts.

RA will also need to be licensed for such RA if their activities constitute a "regulated function". Needless to say, this will not apply to employees and officers of an AI or AMB as the activities of such entities will not constitute Type 11 RA and consequently, the activities of their employees and officers will not constitute a "regulated function" in relation to Type 11 RA.

Q1. Do you have any comments or concerns about our proposals for how the initial ambit of the new Type 11 RA should be cast, and the specific activities to be excluded from its scope? If you consider additional carve-outs are needed, please elaborate with justification.

Implications vis-à-vis Type 7 RA

15. A related issue that arises in the context of the new Type 11 RA concerns the provision of ATS.

16. Under the SFO, providers of ATS must either be –

(1) licensed/registered for Type 7 RA, or

*This option – sometimes referred to as a **Part V ATS**[4] – is essentially for persons who are primarily dealers and wish to provide ATS in connection with their dealing services – e.g. brokers who wish to operate internal crossing engines. The Part V ATS is therefore typically a "bundled" option – i.e. a licence for Type 7 RA is typically bundled with, and granted only to persons who also have (or are seeking), a Type 1 or Type 2 RA.*

(2) authorized under section 95 of the SFO.

*This option – sometimes referred to as a **Part III ATS**[5] – is for persons that are basically platform providers and that intend to offer their ATS to a wider range of market participants rather than just those for whom they provide dealing services. There is therefore no requirement for such providers to also be licensed/registered for any other RA.*

17. As noted earlier and in the Consultation Paper, the definition of ATS will need to be expanded as appropriate to cover OTC derivatives transactions as well.[6] Consequently, persons who wish to provide ATS to facilitate trading in or clearing of OTC derivatives will need to either obtain a Part V ATS (i.e. be licensed/registered for Type 7 RA) or a Part III ATS (i.e. be authorized under section 95 of the SFO). Moreover, in the context of a Part V ATS, we expect that the Type 7 RA may[7] need to be bundled with the new Type 11 RA rather than the existing Type 1 or Type 2 RA.

---

[4] It is called a Part V ATS because the provisions relating to the application for, and approval of, a licence/registration for Type 7 RA are set out in provisions that come under Part V of the SFO.

[5] It is called a Part III ATS because section 95 of the SFO comes under Part III of the SFO.

[6] Currently, the definition of ATS only encompasses facilities for the trading or clearing of securities or futures contracts.

[7] We say "may" here because in some cases the OTC derivatives activities may be covered by the existing RAs (e.g. dealing in OTC equity derivatives on an agency basis may be covered by Type 1 RA), and hence a Type 1 RA would suffice. However, in others cases the activities may not be covered by existing RAs (e.g. dealing in interest rate derivatives), and hence a Type 11 RA will be needed.

18. Because AIs and AMBs will not need to be licensed/registered for the new Type 11 RA, and their OTC derivatives activities will instead be overseen and regulated by the HKMA, the question arises whether they should be allowed to provide ATS for OTC derivatives, and if yes, how their provision of such services should be regulated.

19. Our current thinking in this regard is that so long as –

(1) the AI or AMB provides ATS to facilitate the trading of OTC derivatives, and

(2) the provision of such ATS is incidental to the AI's or AMB's activities of dealing in OTC derivatives,

then –

(3) the AI or AMB should be allowed to provide the ATS without obtaining either a Part III or Part V ATS (i.e. without being licensed/registered for Type 7 RA, or authorized under section 95 of the SFO),

(4) the AI's or AMB's provision of such ATS should be overseen and regulated by the HKMA, and

(5) the SFC and HKMA would then work together to ensure that regulatory requirements applicable to providers of ATS – whether they be AIs, AMBs or LCs – are aligned and consistently applied so as to maintain a level playing field among different market players.

20. The rationale behind this proposal is that since the OTC derivatives dealing activities of AIs and AMBs will be regulated by the HKMA, it makes sense for any incidental ATS activities to be regulated by the HKMA as well. Separating the regulation of the two activities between the two regulators will be inefficient and difficult to manage for both the regulators and the AIs or AMBs. This approach also allows for consistency with the SFC's current approach of requiring the Type 7 RA to be bundled with the relevant dealing RA (i.e. Type 1 or Type 2 RA). However, where an AI's or AMB's provision of ATS is not incidental to its dealing activities, then there appears to be no basis to exempt it from being regulated by the SFC, and in such case the AI or AMB would need to be authorized under section 95, i.e. they would need a Part III ATS.

21. A point to highlight in this context is that if an AI or AMB wishes to provide ATS for trading OTC derivatives, and the provision of such ATS falls within the existing scope of Type 7 RA, it will still need to be licensed or registered for Type 7 RA as it is today. Hence, for example, if an AI or AMB provides ATS for trading OTC equity derivatives, and the provision of such ATS is incidental to its dealing in OTC equity derivatives on an agency basis, the AI or AMB will still need to be licensed/registered for Type 7 RA.

22. For completeness, we also note that if an AI or AMB wishes to provide an ATS platform that facilitates the clearing of OTC derivatives, it will need to be authorized to do so under section 95 of the SFO (i.e. it will need to obtain a Part III ATS). However, in reality, we do not expect AIs or AMBs will want to provide such platforms as a Part III ATS clearing platform provider would essentially be serving as a CCP.

23. We would add here that the operation of a clearing platform is a much more specialised business involving more specific regulatory oversight – e.g. of risk management systems and processes, default arrangements, etc. It also has greater potential for posing systemic risk. Moreover, to the extent that such platforms clear transactions that are subject to the mandatory clearing obligation, they will in any event need to be designated

CCPs and all designated CCPs need to be either an RCH or an authorized provider of ATS under Part III of the SFO. For all these reasons, we consider that AIs and AMBs wishing to offer an ATS platform for clearing OTC derivatives should be required to be authorized under section 95 of the SFO.

Q2. Do you have any comments or concerns about our proposals on how the provision of ATS (for OTC derivatives) by AIs and AMBs should be regulated?

III. Type 12 RA

Initial ambit

24. We propose that the new Type 12 RA should only cover the provision of clearing and settlement services where these are provided –

    (1) in respect of OTC derivatives transactions,

    (2) through a CCP – whether local or overseas[8], and

    (3) on behalf of another person.

25. It follows therefore that the scope of the new Type 12 RA should not in any event catch the clearing and settlement activities of persons who only clear their own (proprietary) trades. Moreover, where the activities relate to the clearing and settlement of another's trades, the intention is that the initial ambit of the new Type 12 RA should catch the activities of not only persons who are members of a CCP, but also those who intermediate between a CCP member and any counterparty to the transaction in question. It would therefore also include the activities of persons who are indirect clearing members of a CCP and provide clearing in respect of another's trades. Ultimately, the objective is to cover persons that handle client assets in the course of providing clearing and settlement services for OTC derivatives transactions.

26. Additionally, in so far as it captures the activities of a CCP member, we propose that the initial ambit should cover the activities of both –

    (1) persons in Hong Kong who are members of the CCP (and irrespective of whether the CCP is a local CCP or an overseas CCP), and

    (2) persons overseas (i.e. outside Hong Kong) who are members of a Hong Kong CCP (although, as will be seen in paragraph 28(3) below, we do propose limited exemptions for such persons).

27. For overseas persons who are members of an overseas CCP, we propose that section 115 of the SFO should apply, i.e. if such persons actively market their provision of

[8] By a local CCP (or Hong Kong CCP), we mean a CCP that is based in Hong Kong. It includes therefore operations that are essentially established in Hong Kong and irrespective of whether they are authorized as ATS providers or recognized as RCHs. By an overseas CCP, we mean a CCP that is essentially based outside Hong Kong. It includes therefore: (i) CCPs that are primarily regulated by an overseas regulator even though they may be authorized as an ATS provider in Hong Kong, and (ii) CCPs outside Hong Kong that are not regulated under the SFO at all.

clearing agency services to the public in Hong Kong, then they will be regarded as carrying on the new Type 12 RA.

Proposed carve-outs

28. We propose however that the following activities should be excluded from the scope of the new Type 12 RA –

(1) The activities of a CCP (whether in Hong Kong or overseas, and whether regulated or not) in its capacity as a CCP.

This carve-out is to ensure that the new Type 12 RA does not capture the activities of CCPs which may otherwise fall within the initial ambit discussed in paragraphs 24 to 26 above.

(2) The clearing agency activities of an AI or an AMB.

This carve-out is to reflect the agreed division of regulatory responsibility between the HKMA and SFC vis-à-vis the OTC derivatives market – see paragraphs 15, 72 to 78, and 237 to 239 of the Conclusions Paper.

(3) The clearing agency activities of a person that –

(a) does not have a place of business in Hong Kong,

(b) is regulated under the laws of an "acceptable overseas jurisdiction" in respect of its provision of clearing agency services,

(c) provides clearing agency services as a member of a local CCP, and

(d) either –

(i) does not provide clearing agency services to persons in Hong Kong, or

(ii) provides clearing agency services to persons in Hong Kong, but any marketing of such services is conducted by a person that is either an AI or an LC.

This carve-out is intended to enable overseas persons to become remote participants of a Hong Kong CCP without having to be licensed for Type 12 RA.[9] The carve-out as proposed would only apply if all of the requirements listed in sub-paragraphs (a) to (d) above are met.

As to what would constitute an acceptable overseas jurisdiction, relevant factors may include: (i) whether the laws of that jurisdiction regulate the provision of clearing agency services in respect of OTC derivatives to a level comparable to that in Hong Kong, and (ii) the adequacy of any regulatory cooperative arrangements or agreements with regulators in that jurisdiction.

Two points are worth highlighting in the context of sub-paragraph (d)(ii) above –

[9] Our reasons for enabling local CCPs to be able to accept overseas clearing members are set out in paragraphs 204 to 208 of the Conclusions Paper.

– *First, it is not intended that a remote participant should be compelled to market its services in Hong Kong. In other words, a remote participant may still benefit from the carve-out under sub-paragraph (d)(ii) above even if its clearing agency services are not marketed to Hong Kong persons at all (and hence no AI/LC is involved).*

– *Secondly, where a remote participant does market its clearing agency services to persons in Hong Kong, we propose that such marketing may be conducted by any AI or an LC licensed for any RA, i.e. it is not necessary that the marketing be conducted by an LC that is itself licensed for Type 12 RA, or by an AI that itself provides clearing agency services for OTC derivatives. The objective is only to ensure that any marketing in Hong Kong is conducted through an entity that is regulated here.*

(4) The clearing agency activities of an agent of a CCP member whose activities as agent do not include handling any client monies or client assets provided in connection with the clearing and settlement of OTC derivatives transactions.

This carve-out is intended to complement the proposed carve-out for remote participants discussed in sub-paragraph (3) above. The remote participant carve-out allows the marketing of clearing agency services to be conducted by an AI or by an LC licensed for any RA. However, if the LC's activities involve more than just marketing, and in particular, if they include the handling of client money or client assets, then the LC will itself need to be licensed for Type 12 RA. In other words, the proposed carve-out for remote participants discussed in sub-paragraph (3) above should not be regarded as allowing an agent of a remote participant to carry on the full range of Type 12 RA without a licence for such RA.

It follows therefore that we propose to require agents of a CCP member to be licensed for Type 12 RA if they do handle client money or client assets. A main reason for this is to ensure that appropriate business conduct requirements can be imposed on such agents, particularly requirements relating to the segregation and portability of client positions and collateral. This would be in line with the recommendations put forward in the IOSCO Report on International Standards for Derivatives Market Intermediary Regulation issued in June 2012. (That report makes recommendations on the business conduct requirements of derivatives market intermediaries, and includes recommendations on the segregation and portability of client positions and collateral.)

29. Lastly, and for completeness, we note that in line with the existing approach under the SFO, employees and officers of an entity that needs to be licensed for the new Type 12 RA will also need to be licensed for such RA if their activities constitute a "regulated function".[10] Needless to say, this will not apply to employees and officers of an AI or AMB for the same reasons discussed under paragraph 14 above in the context of Type 11 RA.

Q3. Do you have any comments or concerns about our proposals for how the initial ambit of the new Type 12 RA should be cast, and the specific activities to be excluded from its scope?

[10] Regulated functions refer to functions relating to an RA other than work ordinarily performed by an accountant, clerk or cashier.

IV. Type 9 RA

30. Currently, the scope of Type 9 RA encompasses only the management of portfolios of securities or futures contracts, or of collective schemes where the underlying property is mainly realty. As noted in the Conclusions Paper, we propose to expand this so that it also covers the management of portfolios of OTC derivatives transactions.

31. We propose that the expanded Type 9 RA should apply to all persons, including therefore AIs and AMBs. However, this should be subject to the following –

    (1) AIs and AMBs should not have to be registered for the expanded Type 9 RA if their management of portfolios of OTC derivatives transactions is wholly incidental to their carrying on of any dealing activities which, but for the proposed carve-out described in paragraph 12(2) above, would constitute a Type 11 RA. In other words, the expanded Type 9 RA should incorporate a carve-out similar to the one in paragraph (c) of the definition of "securities or futures contracts management" in Schedule 5 to the SFO.

    (2) A similar proviso should apply to LCs licensed for Type 11 RA such that they should not have to be licensed for the expanded Type 9 RA if their management of portfolios of OTC derivatives transactions is wholly incidental to their carrying on of any dealing in OTC derivatives transactions. In other words, the expanded Type 9 RA should also incorporate a carve-out similar to the one in paragraph (b) of the definition of "securities or futures contracts management" in Schedule 5 to the SFO.

Q4. Do you have any comments or concerns about our proposals for expanding the scope of the existing Type 9 RA?

V. Transitional arrangements for Types 9, 11 and 12 RAs

32. We propose that there should be a limited transitional period (of say four to six weeks) before the two new RAs, and expanded Type 9 RA, are implemented.[11]

Type 11 and Type 12 RAs

33. Specifically, we propose that persons who –

    (1) submit applications for any of the new RAs during this transitional period, and

    (2) confirm in their application that they (and their proposed responsible officers in the case of corporations) have engaged in the relevant OTC derivatives activity (i.e. dealing in/advising on OTC derivatives in the case of Type 11 RA, and providing clearing agency for OTC derivatives in the case of Type 12 RA) in Hong Kong for a specified number of years (and our initial thinking here is to specify about two years) immediately before the coming into effect of the new OTC derivatives regime,

[11] Hence if the new RAs (or expanded Type 9 RA) are implemented from 1 July 2012, then the four to six week transitional period should expire immediately before 1 July 2012.

should be deemed to be licensed for the relevant new RA, and such deeming will stay in force until their application is determined. Thereafter, they may continue to engage in such activity if their application is approved, or must immediately cease to do so if their application is rejected.

34. We believe the above proposal strikes a practical balance between minimising disruption to market players, and ensuring that the deeming option is not abused by persons with no relevant experience in Hong Kong. The requirement to provide confirmation in this regard is significant as provision of false information in applications to the SFC can constitute an offence under section 383 of the SFO.

35. We also propose that transfers of accreditation should be possible during the transitional period but only if the person seeking the transfer, and the corporation to which he/she wishes to be accredited, are already licensed or deemed to be licensed.

36. For applicants who submit their licensing applications after the transitional period, we propose that no deemed status should be conferred, and hence they will not be able to conduct Type 11 or Type 12 RA until their licensing application is approved.

Expanded Type 9 RA

37. We propose similar transitional arrangements for the expanded Type 9 RA as well, save that applicants for the expanded Type 9 RA should –

    (1) already be licensed (or registered in the case of AIs) for Type 9 RA, and

    (2) confirm in their application that they, or their proposed responsible officers, have engaged in managing portfolios of OTC derivatives transactions in Hong Kong for a specified number of years (and our initial thinking here is to specify about two years) immediately before the coming into effect of the new OTC derivatives regime.

38. A point to note in respect of the expanded Type 9 RA is that the applicant would not be applying for a <u>new</u> licence or registration for Type 9 RA, but only for the conditions on his <u>existing</u> licence/registration for Type 9 RA to be modified so that they permit the management of OTC derivatives portfolios.

Q5. Do you have any comments or concerns about our proposed transitional arrangements for the new Type 11 and Type 12 RAs, and for the expanded Type 9 RA?

VI. Other amendments

39. Apart from amending Schedule 5 of the SFO to reflect the new RAs and expanded Type 9 RA, we propose to introduce consequential amendments to the following provisions of the SFO as well –

    (1) Section 109 – This section prohibits the issuing advertisements that hold out a person as carrying on Type 4, 5, 6 or 9 RA when the person is not licensed or registered for that RA. For consistency, we propose to extend this provision so that it applies in respect of the new Type 11 RA as well.

(2) Section 119 – This section empowers the SFC to register AIs to carry on RAs other than Type 3 or Type 8 RA. (Type 3 and Type 8 RAs are excluded because AIs are not required to be registered to carry on these RAs, and hence there is no need to empower the SFC to register AIs for such RAs.) As AIs will not have to be registered for the new Type 11 or Type 12 RA either, we propose to extend the exclusion in section 119 so that it covers Type 11 and Type 12 RAs as well.

(3) Section 181 –This section empowers the SFC to obtain information relating to securities, futures contracts, leveraged foreign exchange contracts and collective investment schemes. We propose to extend the section so that the SFC can also obtain information relating to OTC derivatives transactions. This will necessitate amendments to subsections 181(1)(b), (c) and (d), as well as subsections 181(2)(a), (b) and (c).

(4) Section 182 – This section essentially sets out the triggers for the SFC's investigation powers. As indicated in paragraph 33 of the Conclusions Paper, a new triggering event will be added to empower the SFC to investigate where it has reasonable cause to believe that any of the mandatory obligations may have been breached by a non-AI. Additionally, in view of our proposal to introduce two new RAs and expand Type 9 RA, we also propose to extend subsection 182(1)(b) so that the SFC can investigate where it has reasonable cause to believe that a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with any dealing in, clearing of, or advising on an OTC derivatives transaction, or the management of investments in any OTC derivatives transactions.

(5) Section 186 – This section empowers the SFC to assist overseas regulators in connection with breaches relating to securities, futures contracts, leveraged foreign exchange contracts, collective investment schemes or other similar transactions. We propose to extend this so that it covers assistance in relation to OTC derivatives transactions as well.

VII. Regulation of SIPs

40. The Conclusions Paper confirmed the need for the HKMA and SFC to have a degree of regulatory oversight of SIPs and their activities. In the following paragraphs, we set out our specific proposals in this regard.

Criteria for determining who is an SIP

41. In the Consultation Paper, we proposed to use both quantitative and qualitative criteria to determine whether a person should be regarded as an SIP or not. On reflection however, we believe we should only use quantitative criteria as that provides greater certainty and clarity for market participants. Reliance on qualitative criteria introduces an element of subjectivity which makes compliance difficult.

42. As to what the quantitative criteria should be, we are still considering this. Essentially, the idea is that Hong Kong persons whose OTC derivatives positions exceed a certain specified level (**SIP threshold**) will be regarded as SIPs. The SIP threshold may be set by reference to a person's aggregate holdings in all OTC derivatives transactions, or to holdings in a particular product class or transaction type, or a combination of the foregoing. However, it should in any event be many times higher than the reporting and clearing thresholds as the intention is to capture market participants in the OTC

derivatives market who are not regulated and whose positions are not just large but so large as to have the potential to threaten the financial market stability of Hong Kong. It follows therefore that the objective is to capture only those end-users whose possible failure (as a result of their activities in the OTC derivatives market) could have significant implications for Hong Kong as a whole. Consequently, we expect that the SIP threshold should be such that only a handful of market players, if any, may be caught.

Registration and deregistration of SIPs

43. The Consultation Paper also noted that we were not convinced SIPs should be regulated as licensed persons since they are not carrying on any intermediary function. We remain of this view, but also feel some form of registration with the SFC is necessary if the OTC derivatives positions and activities of SIPs are to be monitored effectively. However, any registration process should be relatively mechanical and without involving any application or approval process. Accordingly, we propose as follows –

    (1) Anyone who exceeds the SIP threshold should notify the SFC of such fact within a specified period, and failure to do so should constitute an offence. We are still considering what the specified period and penalties for such offence should be. One possibility is for the period and penalties to be on a par with those for other notification obligations under Part XV of the SFO.[12]

    (2) The SFC should then enter the names of such persons, and details of their OTC derivatives positions, in a register of SIPs. The register of SIPs should be kept and maintained by the SFC but information in it should be available to both the HKMA and the SFC as both regulators have a role in overseeing and regulating the OTC derivatives market.

    (3) We are still considering whether the names of SIPs entered in the register should be disclosed to the public.

44. We also propose that the HKMA and SFC should be able to enter the name of a person in the register of SIPs at their own initiative, subject however to having first given the person a short period to object or clarify why their name should not be so entered. This would be useful where the HKMA or SFC have reason to believe that a person has exceeded the SIP threshold but has not notified the SFC of such fact. Additionally, we propose that the name and details of a person may be removed from the register of SIPs if his positions have not exceeded the SIP threshold for a continuous period of one year. We also propose that such removal may be initiated by the person in question or by the HKMA or SFC.

Regulatory powers in respect of persons registered as SIPs

45. In order that the HKMA and SFC can effectively monitor the OTC derivatives market and take action to stem potential systemic risk, we propose that they should have certain regulatory powers in respect of persons whose names are entered in the register of SIPs. In particular, the HKMA and SFC should be able to –

[12] Notifications under Part XV must generally be made within three business days, and breaches are subject to fines at level 6 (HK$100,000) and imprisonment for 2 years (on indictment), and to fines at level 3 (HK$10,000) and imprisonment for 6 months (on summary conviction).

(1) require any such person to provide information regarding its activities and transactions in the OTC derivatives market as may be specified, and

(2) if the HKMA or SFC has reasonable cause to believe that OTC derivatives activities or transactions of any such person may pose systemic risk in the securities, futures or OTC derivatives markets in Hong Kong, require such person to take any of the following action –

(a) refrain from increasing its positions in any OTC derivatives transactions,

(b) reduce its positions in any OTC derivatives transactions,

(c) take such action in respect of any related collateral as specified (e.g. collect or post collateral, increase the amount of collateral collected or posted, restrict the use of collateral posted, etc), and

(d) take such other action as may be reasonably required.

46. We further propose that the above powers should be exercised by the SFC, but only with the HKMA's consent or at its recommendation. This would be in line with the proposal that the OTC derivatives market should be jointly overseen by the HKMA and SFC.

47. Additionally, we are also considering whether the powers described in paragraph 45(1) above should be extended so as to enable regulators to obtain information about the OTC derivatives positions and activities of persons related to the SIP, such as companies within the same group as the SIP. We would welcome feedback on this issue.

Disciplinary powers and rights of appeal

48. To ensure that a person complies with any requirement to produce information or take action as described in paragraph 45 above, we propose that the SFC should have power to take disciplinary action for breach of such requirement, and to apply to the court to compel compliance if necessary.

49. To that end, we propose to extend the disciplinary provisions under Part IX of the SFO so that the SFC may (with the consent of the HKMA, or at its recommendation) take disciplinary action against persons who fail to comply with such requirements. However, the range of sanctions would be limited to public/private reprimand and disciplinary fines of up to HK$10 million. Additionally, disciplinary action would only be taken against the person registered in the register of SIPs, and not against any director or member of its management.

50. Additionally, given the potentially significant role that SIPs may have on the market, we are also considering whether the proposed disciplinary powers discussed above should also be exercisable in respect of breaches of any of the mandatory obligations.[13]

51. We also propose to introduce a provision similar to section 185 of the SFO so that the SFC may (with the consent of the HKMA, or at its recommendation) apply to the court in respect of a person's failure to comply with such requirements. Here again, we propose

[13] Thus far, we have only proposed that regulators be able to take disciplinary action for breach of the mandatory obligations if the breach is by an AI, LC or AMB. For breaches by other persons (including therefore persons whose names are entered in the register of SIPs), we have thus far only proposed a civil penalty – see paragraph 189 of the Conclusions Paper.

that this should only allow the court to make an order against the person registered in the register of SIPs, and not any other person.

52. Lastly, we propose to introduce rights of appeal against –

(1) any decision to enter a person's name in the register of SIPs (as described in paragraph 44 above), and

(2) any requirement to provide information or take action as specified (as described in paragraph 45 above).

53. Such appeals would be heard before the Securities and Futures Appeals Tribunal.

Q6. Do you have any comments or concerns about our proposals for how SIPs should be identified and regulated?

VIII. Views sought

54. We invite views on any aspect of the proposals in this supplemental consultation. The feedback received will help finalise our views on how the new RAs should be cast, how the expanded Type 9 RA should be cast, and how SIPs should be regulated.