



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

Consultation paper on proposals to amend the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission in relation to the establishment of the Financial Dispute Resolution Centre Ltd and the enhancement of the regulatory framework

November 2011



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Foreword

We would like to invite market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals, in each case by no later than 9 January 2012. If you wish to provide comments on the proposals in the capacity of a representative of an organisation, you should provide details of the organisation whose views you represent.

Please note that the names of commentators and the contents of their submissions may be published on our website and in other documents to be published by us. 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 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.

Written comments may be sent as follows:

By mail to: Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Attention: Consultation on proposals in relation to the establishment of the Financial Dispute Resolution Centre Ltd and the enhancement of the regulatory framework

By fax to: (852) 2293 4962

By on-line submission: <http://www.sfc.hk>

By e-mail to: enfconsultation@sfc.hk

A copy of this consultation paper can be found on the SFC's website at <http://www.sfc.hk>.

Securities and Futures Commission
Hong Kong

8 November 2011



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 Data¹ will be used following collection, what you are agreeing to with respect to the 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 SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
 - (a) to administer the relevant provisions and codes and guidelines published pursuant to the powers vested in the SFC;
 - (b) in performing the SFC's statutory functions under the relevant provisions;
 - (c) for research and statistical purposes; or
 - (d) for other purposes permitted by law.

Transfer of personal data

3. Personal Data may be disclosed by the 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 SFC's website and in documents to be published by the SFC during the consultation period or at its conclusion.

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 SFC has the right to charge a reasonable fee for processing any data access request.

Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

1

Personal Data means personal data 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.



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:

The Data Privacy Officer
The Securities and Futures Commission
8/F Chater House
8 Connaught Road Central
Hong Kong

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



Consultation paper on proposals to amend the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission in relation to the establishment of the Financial Dispute Resolution Centre Ltd and the enhancement of the regulatory framework

Part I Introduction

Executive Summary

Proposed establishment of the Financial Dispute Resolution Centre Ltd

1. On 9 February 2010, the Government published a Consultation Paper on the Proposed Establishment of an Investor Education Council (IEC) and a Financial Dispute Resolution Centre Ltd (FDRC). The proposals covered the establishment of an IEC to holistically oversee the delivery of investor education and the establishment of an FDRC to help customers resolve monetary disputes with financial institutions (FIs) in a speedy, affordable, independent and impartial way.
2. On 13 December 2010, the Government published the Consultation Conclusions. In general, the proposals were supported.
3. The Government's objective is to require FIs to resolve client complaints internally in the first instance. The FDRC will administer an independent external dispute resolution scheme when the complaints cannot be resolved internally.
4. The FDRC will handle monetary disputes which arise in respect of the services provided by FIs regulated by the Securities and Futures Commission (SFC) or the Hong Kong Monetary Authority (HKMA) to individual customers and sole proprietorships. The FDRC will seek to resolve disputes in the first instance by way of mediation, and by way of arbitration proceedings in cases where disputes cannot be resolved through mediation.
5. The SFC proposes to amend the Code of Conduct for Persons Licensed by or Registered with the SFC (the Code) to set out the SFC's expectations of licensed and registered persons in connection with the FDRC.
6. Section 169(1) of the Securities and Futures Ordinance (SFO) empowers the SFC to publish "codes of conduct for the purpose of giving guidance relating to the practices and standards with which intermediaries and their representatives are ordinarily expected to comply in carrying on the regulated activities for which the intermediaries are licensed or registered."
7. Enhancing the requisite standards regarding the dispute resolution scheme is desirable and is within the ambit of section 169(1) of the SFO. It is also a natural extension of the existing obligations concerning complaints handling which are already provided for in paragraph 12.3 of the Code.



8. As explained in the Code, the SFC is guided by the Code in considering whether a licensed or registered person satisfies the requirement that it is fit and proper to remain licensed or registered. For the purposes of the Code, a registered person includes a “relevant individual” as defined in section 20(10) of the Banking Ordinance (Cap.155), and “registered” shall be construed accordingly.
9. It has been decided by the Government that the Code will be used as the means for obliging licensed and registered persons regulated by the SFC and the HKMA to engage in the FDRC process.
10. In the circumstances, suitable Code amendments need to be formulated to provide a means of achieving the objective and ensuring the effective operation of the FDRC.

Proposed miscellaneous amendments to the Code

11. Separately, the SFC proposes to make a number of miscellaneous amendments to the Code. These proposals are aimed at enhancing the existing regulatory framework governing the conduct of licensed or registered persons with a view to strengthening investor protection. The proposals are also part of the SFC’s efforts to improve supervisory oversight over the financial market and strengthen effective enforcement against market misconduct.
12. The SFC considers that the proposed revisions would be consistent with the SFC’s regulatory objectives to “provide protection for members of the public investing in or holding financial products” and “minimize crime and misconduct in the securities and futures industry”, pursuant to sections 4(c) and (d) of the SFO.

How to read this consultation paper

13. A number of the proposals in this consultation paper flow directly from the proposed establishment of the FDRC. We have also taken the opportunity to enhance the existing regulatory framework by proposing additional amendments which can be conveniently considered at the same time.
14. We have included the necessary details to assist the industry in considering the implications for their business. We suggest that readers first consider an overview of all the proposals being put forward to provide context for any detailed consideration of individual proposals.
15. For the convenience of readers, we have also grouped our proposals in this consultation in separate sections as noted below. This will allow those with an interest only in the matters which directly impact them to readily identify and consider those issues.
 - Part I – Introduction
 - Part II – Proposed establishment of the FDRC
 - Part III – Proposed miscellaneous amendments to the Code
16. Each section of our consultation paper is marked to indicate which of the above headings it falls under.



17. The proposals set out in Part II and Part III of this consultation paper will apply to licensed or registered persons in Hong Kong. Those in Part II will mainly apply to firms which provide services to individual clients and sole proprietorships, other than firms which carry on Type 10 regulated activity under the SFO i.e. provision of credit rating services.

Summary of matters for consultation

Proposed establishment of the FDRC

18. As indicated above, it has been decided by the Government that the Code will be used as the means for obliging licensed and registered persons regulated by the SFC and the HKMA to engage in the FDRC process.
19. The SFC is consulting on the following amendments to the Code in connection with the establishment of the FDRC (see Part II of this consultation paper):
- (a) inclusion of a provision obliging licensees to participate in the FDRC process. This will require licensed or registered persons to comply with the FDRC Scheme (“FDRS”) in full and be bound by the dispute resolution processes provided for under the FDRS;
 - (b) enhancement of the complaints handling procedures in paragraph 12.3 of the Code. This will require licensed or registered persons to:
 - seek to resolve complaints internally and, failing resolution, to inform clients of the right to make a complaint to the FDRC;
 - consider the subject matter of the complaints. If the subject matter relates to other clients, or raises issues which may be of broader concern, licensed or registered persons should take steps to investigate and remedy the matter;
 - (c) enhancement of the reporting obligations in paragraph 12.5 of the Code. This will require licensed or registered persons to:
 - notify the SFC upon receipt of a complaint to the FDRC;
 - provide the SFC with all documentation and information in connection with the FDRC process (if so requested by the SFC);
 - provide the SFC with details of the outcome of a complaint including detailed terms of settlement;
 - (d) inclusion of a “good faith” provision in dealing with the FDRC. This will require licensed or registered persons to make full and frank disclosure before mediators and/or arbitrators, and to render all reasonable assistance to the FDRC process.

Proposed miscellaneous amendments to the Code

20. To enhance the existing regulatory framework and to strengthen effective enforcement against market misconduct, the SFC is also consulting on the following amendments (see Part III of this consultation paper):



- (a) changes to the order recording requirements in paragraph 3.9 of the Code. It is proposed that:
- the retention period for telephone recordings of client orders be extended from three months to six months;
 - the use of mobile telephones for receiving client orders be banned;
 - the Internet Protocol address records of clients for all online transactions be retained for at least six months;
- (b) changes to the form of third party authorization in paragraph 7.1 of the Code. This will expressly require licensed or registered persons not to effect transactions for any third party in a client's account unless that third party has been authorized in writing by the client;
- (c) extension of the reporting obligations in paragraph 12.5 of the Code. This will require licensed or registered persons to report to the SFC any actual or suspected material breach, infringement or non-compliance with any applicable law, rules and regulations by their clients; and
- (d) inclusion of a new provision regarding expert witness services. This will require licensed or registered persons not to prohibit their staff from performing expert witness services for the SFC and the HKMA.

Invitation for comments

21. In this consultation paper, we have posed 10 questions to interested parties to consider and provide comments on. These questions are categorized as follows for ease of reference:

Question	Subject	Where to find the details?
1 to 4	Proposed establishment of the FDRC	Part II
5 to 10	Proposed miscellaneous amendments to the Code	Part III

22. We would like to seek comments on the proposals set out in this consultation paper. In determining our regulatory approach in the areas we consult on, it is important that we take into account the views of those who will be affected by the implementation of these proposals, including market participants and investors, provided that the intended objectives are not compromised. We have set up various ways for interested parties to provide comments. Please see the "Foreword" section at the beginning of this consultation paper. We look forward to hearing from you by 9 January 2012. After the end of the consultation period, we will consider the comments carefully and aim to adopt a balanced and pragmatic approach for the purposes of enhancing the existing regulatory framework in Hong Kong.



Part II Proposed establishment of the FDRC

Introduction

1. In this Part II of the consultation paper, the SFC seeks public views on the proposed amendments to the Code following the Government's consultation conclusions to establish the FDRC and its decision to use the Code as the means for obliging licensed and registered persons regulated by the SFC and the HKMA to engage in the FDRC process.
2. The proposals set out in this Part II will entail a revision of certain provisions in the Code. The proposed amendments are marked up against the current version of the relevant requirements in Appendix A to this consultation paper.
3. Reference is also made to similar regulations, if any, in the UK, Australia and Singapore. Although the SFC recognises the importance of international comparison, we are equally mindful that we should only endorse regulatory provisions that are compatible with the Hong Kong financial markets. A summary of the practices adopted by the regulatory authorities in the UK, Australia and Singapore is set out in Appendix B to this consultation paper.

Summary of matters for consultation

4. The SFC is consulting on the following amendments to the Code in connection with the establishment of the FDRC:
 - (a) inclusion of a provision obliging licensees to participate in the FDRC process;
 - (b) enhancement of the complaints handling procedures in paragraph 12.3;
 - (c) enhancement of the reporting obligations in paragraph 12.5; and
 - (d) inclusion of a "good faith" provision in dealing with the FDRC.

Transitional period

5. The SFC will provide an appropriate transitional period for any of the proposals that are implemented under Part II of this consultation paper.

Proposed amendments to the Code

Inclusion of a provision obliging licensees to participate in the FDRC process

6. As indicated, it has been decided by the Government that the Code will be used as the means for obliging licensed and registered persons to engage in the FDRC process.
7. It is proposed that the Code will provide that licensed and registered persons should comply with the FDRS in full and be bound by the dispute resolution processes provided for under the FDRS.
8. Similar requirements are found in the UK, Australia and Singapore in applicable legislation, rules and/or guidance. In the UK, if complaints are not resolved satisfactorily, eligible clients are entitled to refer their complaints to the Financial



Ombudsman Service (the UK Ombudsman). Once a client accepts a determination by the UK Ombudsman, it is final and binding on both parties. In Australia, the requirement that firms have a dispute resolution system, which consists of an internal dispute resolution procedure and membership of one or more external dispute resolution (EDR) schemes, available for their retail clients, is a licensing condition. If a client accepts an EDR outcome, it will be binding on both parties. In Singapore, an FI is required to be a member of an approved dispute resolution scheme, i.e., the Financial Industry Disputes Resolution Centre Ltd (FIDReC), and to comply with terms of membership of the scheme. Where the complainant accepts the FIDReC's determination and/or award, it is binding on the FI and the complainant.

9. Please see the draft amendments to the Code and the international practices comparison for Part II in Appendices A and B to this consultation paper respectively.

Enhancement of the complaints handling procedures in paragraph 12.3

10. Currently, paragraph 12.3 of the Code provides the requirements upon a licensed or registered person with regard to the handling of complaints.
11. Paragraph 12.3 of the Code provides:
“A licensed or registered person should ensure that:
 - (a) complaints from clients relating to its business are handled in a timely and appropriate manner;
 - (b) steps are taken to investigate and respond promptly to the complaints; and
 - (c) where a complaint is not remedied promptly, the client is advised of any further steps which may be available to the client under the regulatory system.”

Firms should seek to resolve complaints internally, etc.

12. Following the establishment of the FDRC, the primary regulatory objective will remain that licensed and registered persons should seek to resolve complaints internally. If the complaints cannot be resolved satisfactorily through internal resolution processes, eligible clients may choose to refer their complaints to the FDRC.
13. It is therefore proposed that the Code be amended to require a licensed or registered person to seek to resolve complaints internally and, failing resolution, to inform clients of the right to make a complaint to the FDRC.
14. Similar requirements are found in the UK, Australia and Singapore. In the UK, firms must investigate the complaint competently, diligently and impartially. Firms are also required to publish summary details of their internal process for complaints handling. The summary details cover how firms seek to resolve relevant complaints and if the complaint is not resolved, the complainant may be entitled to refer it to the UK Ombudsman. In Australia, firms are required to handle complaints internally in an efficient, timely and effective manner. They must advise clients of their rights to take their complaints to an EDR scheme when they provide a final response. In Singapore, a complainant can only lodge his/her case with the FIDReC upon showing that an attempt has been made to resolve the matter by the FI's internal dispute resolution unit, but the matter has not been resolved. The FI's final reply to the complainant will expressly inform the complainant of his/her right to contact the FIDReC for assistance.



15. Please see the draft amendments to the Code and the international practices comparison for Part II in Appendices A and B to this consultation paper respectively.

Question 1:

Do you agree that firms should be obliged to inform clients of their right to make complaints to the FDRC if the complaints cannot be resolved internally?

Firms should consider the subject matter of complaints

16. It is desirable that licensed or registered persons should carefully consider the subject matter of complaints from clients. If the subject matter of the complaints relates to other clients, or raises issues which may be of broader concern than merely those which affect the complainant, licensed or registered persons should take steps to investigate and remedy these issues, notwithstanding that the other clients may not have filed complaints with the licensed or registered persons and/or the FDRC.
17. Similar requirements are found in the UK, Australia and Singapore. In the UK, firms are required to identify root causes of complaints and consider whether such root causes may also affect other processes or products (including those not directly complained of). Where problems, root causes or compliance failures are identified, firms should consider whether they have to act with regard to the position of customers who have not complained. In Australia, an EDR scheme is required to identify systemic issues and cases of serious misconduct that arise from the consideration of complaints. In Singapore, the FIDReC is required to notify the Monetary Authority of Singapore (MAS) of information relating to systemic issues and market misconduct.
18. Please see the draft amendments to the Code and the international practices comparison for Part II in Appendices A and B to this consultation paper respectively.

Question 2:

Do you think that firms should consider the subject matter of a complaint received from a client and if the subject matter of the complaint relates to other clients, or raises issues of broader concern, firms should take steps to investigate and remedy these issues notwithstanding that the other clients may not have filed complaints with the licensed or registered persons and/or the FDRC?

Enhancement of the reporting obligations in paragraph 12.5

19. The current reporting obligations are found in paragraph 12.5 of the Code.
20. The link between the FDRC and regulators is a key element in the FDRS. The FDRC will pass certain information to the regulators to assist them to perform their regulatory functions. Some of the information that will be passed from the FDRC to the regulators will be on an anonymous basis. The inclusion of express reporting obligations on firms in the Code will provide a means for the SFC to be properly apprised of matters which are before the FDRC and will serve as a check on information the SFC may receive from the FDRC. Receiving information directly from firms should help the FDRC and the SFC perform their different functions.



21. It is proposed that the Code be amended to impose new obligations in connection with the FDRC, requiring licensed or registered persons:
- (a) to notify the SFC upon receipt of a complaint to the FDRC;
 - (b) to provide the SFC with all documentation and information in connection with the FDRC process (if so requested by the SFC); and
 - (c) to provide the SFC with details of the outcome of a complaint including detailed terms of settlement, if any.
22. Similar requirements are found in the UK, Australia and Singapore. In the UK, a firm must provide the FSA with a complete report concerning complaints received from eligible complainants twice a year. In Australia, an EDR scheme is required to provide the ASIC with updated complaints information on a quarterly basis. In Singapore, the FIDReC is required to submit to the MAS a report of all disputes received on a quarterly basis. There are requirements about the information to be reported in these jurisdictions.
23. Please see the draft amendments to the Code and the international practices comparison for Part II in Appendices A and B to this consultation paper respectively.

Question 3:

Do you agree that:

- (a) firms should notify the SFC upon receipt of a complaint to the FDRC; and
- (b) firms should provide the documentation and information referred to in paragraph 21(b) and (c) above?

Inclusion of “good faith” provisions in dealings with the FDRC

24. To help achieve fairness and consistency in the dispute handling process, licensed or registered persons should make full and frank disclosure before mediators and/or arbitrators (as the case may be). They should also render all reasonable assistance to the FDRC process. This is to ensure that mediators and/or arbitrators are provided with all necessary information when considering a determination or an award.
25. Similar requirements are found in the UK, Australia and Singapore. In the UK, firms and licensees must cooperate with the UK Ombudsman. The UK Ombudsman may require a party to a complaint to provide specified information or to produce specified documents. In Australia, the Financial Ombudsman Service (FOS), one of the EDR schemes approved by the ASIC, may require a party to a dispute to provide information to the FOS and to do anything else that may assist the FOS’s consideration of the dispute. In Singapore, the FI is required to provide full co-operation and assistance to the FIDReC. The FIDReC may require the FI to provide information and to attend interviews.
26. Please see the draft amendments to the Code and the international practices comparison for Part II in Appendices A and B to this consultation paper respectively.



Question 4:

Do you agree that licensed or registered persons should make full and frank disclosure before mediators and/or arbitrators, and render all reasonable assistance to the FDRC process?



Part III Proposed miscellaneous amendments to the Code

Introduction

1. In this Part III of the consultation paper, the SFC seeks public views on a number of miscellaneous amendments to the Code. These proposals are part of the SFC's efforts to improve supervisory oversight over the financial market and strengthen effective enforcement against market misconduct with a view to enhancing investor protection.
2. The proposed amendments are marked up against the current version of the relevant requirements in Appendix A to this consultation paper.
3. Reference is also made to similar regulations, if any, in the UK, Australia and Singapore. Although the SFC recognises the importance of international comparison, we are equally mindful that we should only endorse regulatory provisions that are compatible with the Hong Kong financial markets. A summary of the practices adopted by the regulatory authorities in the UK, Australia and Singapore is set out in Appendix C to this consultation paper.

Summary of matters for consultation

4. The SFC is consulting on the following miscellaneous amendments to the Code:
 - (a) changes to the order recording requirements in paragraph 3.9;
 - (b) changes to the form of third party authorization in paragraph 7.1;
 - (c) extension of the reporting obligations in paragraph 12.5; and
 - (d) inclusion of a new provision regarding expert witness services.

Transitional period

5. The SFC will provide an appropriate transitional period for any of the proposals that are implemented under Part III of this consultation paper.

Review of the order recording requirements

Background

6. Over the years, the SFC has made continuous efforts to ensure licensed or registered persons comply with the telephone recording requirements. The importance of the requirements was highlighted in two circulars issued to intermediaries on 13 November 2002 and 25 November 2004 respectively¹.

¹ For details, please see Circulars on Order Recording Requirements and Telephone Recording Requirements of 13 November 2002 and 25 November 2004 respectively on the SFC's website.



7. In summary, the telephone recording requirements perform the following functions:
 - (a) telephone recordings of client orders are important audit trails that facilitate the resolution of any trade disputes. They are reliable evidence to fall back on when assessing disputes between an intermediary and its clients concerning the particulars of orders; and
 - (b) they are effective compliance monitoring tools for intermediaries to prevent and/or detect irregular or fraudulent trading activities.
8. The existing order recording requirements provide that, where order instructions are received from clients through the telephone, a licensed or registered person should use a telephone recording system to record the instructions and keep such recordings for at least three months. At the moment, accepting client orders through mobile phones is discouraged but, where such a method is used, specific recording procedures must be complied with. These requirements are currently set out in paragraph 3.9 of the Code.
9. The SFC considers that the three-month minimum record retention period is inadequate and the exemption to the telephone recording requirements could potentially undermine the rationale behind the recording regime. We therefore intend to enhance the current regime in order to bolster its effectiveness.
10. The SFC is also aware that there is a growing trend for licensed or registered persons to provide order placing services through the Internet to their clients. The rapid development of Internet trading presents challenges in identifying the person who originated the instruction for an online transaction. Measures should be put in place to assist our work in this area.

Proposal to extend the telephone recording retention period

11. We seek the public's view on possible changes to paragraph 3.9 of the Code to extend the minimum retention period of telephone recordings to six months.

Explanation and rationale

12. We wish to highlight at the outset that the six-month minimum retention period was initially proposed alongside the introduction of the telephone recording requirements as early as September 2000².
13. After considering the feedback from the market, the SFC published the consultation conclusions in February 2001³. At the time, some market participants felt that the six-month telephone record retention period was excessive as this would substantially increase the compliance costs of firms. In response, the SFC decided to reduce the proposed retention period from six months to three months.
14. After a decade following its implementation, the SFC has considered the need to review the minimum retention period to ensure that the requirement keeps pace with current market developments.

² For detail, please see the Consultation Paper on the Proposed Revised Code of Conduct for Persons Registered with the Securities and Futures Commission (September 2000) on the SFC's website.

³ For detail, please see the Consultation Conclusion Report on the Proposed Revised Code of Conduct for Persons Registered with the Securities and Futures Commission (February 2001) on the SFC's website.



15. Our concern is to ensure that the length of the record retention period does not weaken the rationale behind the telephone recording regime. A short retention period may render the recording obligation meaningless if the tape record is no longer available before access to the record of the communication is required.
16. From a regulatory perspective, intermediaries are encouraged to maintain records of client orders for as long as possible. The three-month retention period fails to meet the realistic timeline of many complaints. For example, where there is a time lapse between the date of the telephone conversation and the complaint or inquiry, or the particular disputes do not come to light until a later stage, the short three-month minimum retention period creates unnecessary hurdles for dispute resolution and enforcement inquiries.
17. For these reasons and having regard to the rationale behind the recording obligations, we take the view that the minimum retention period should be reasonably extended. A longer retention period would minimize the loss of important evidence for both dispute resolution and regulatory enforcement purposes.
18. The SFC is mindful of the potential compliance burden on intermediaries when considering new measures. It is therefore important that an appropriate duration of retention period is identified to strike an appropriate balance between the potential benefits derived from a longer retention period and the potential costs of this proposal.
19. Having said that, consideration should also be given to the fact that the costs in operating telephone recording systems have reduced considerably over the last decade. In particular, the SFC is aware that some firms have, for several years, implemented digital recording systems to ensure audio records are retained for longer than six months for internal purposes. The impact on these firms should therefore be minimal. The new proposal will likely affect those firms that are still using analog telephone recording devices.
20. We therefore do not expect the additional compliance costs to be incurred by the industry would be as high as the cost at the time when the six-month minimum retention period was first proposed in 2000.
21. It is our current view that an extension of the minimum retention period from three months to six months will not excessively increase the operational costs of most firms and, in any event, that the costs are outweighed by the regulatory benefits of the proposal.

Question 5:

Do you agree that telephone recordings of order instructions received from clients should be retained for at least six months?

Other related amendments

22. To ensure consistency, we also propose to amend paragraph 1A of Schedule 4 and paragraph 37 of Schedule 6 to the Code to reflect the six-month minimum retention period policy. The former relates to the telephone recording of confirmations of executed trades in futures contracts and/or options contracts traded on Hong Kong



Futures Exchange Ltd, whereas the latter applies to the telephone recording applicable to leveraged foreign exchange trading.

23. Please see the draft amendments to the Code and the international practices comparison for Part III in Appendices A and C to this consultation paper respectively.

Proposal to prohibit the use of mobile telephones for receiving client orders

24. We would also like to seek views on a proposal to amend paragraph 3.9 of the Code to prohibit the use of mobile telephones for receiving client orders.

Policy consideration

25. Under paragraph 3.9 of the Code, the use of mobile telephones for receiving client orders is exempted from the telephone recording requirements, provided that the order details and time of receipt are properly recorded afterwards, for example, by writing or making a call to the office system (the mobile telephone exemption).
26. The existence of the mobile telephone exemption was intended to provide convenience for account executives in cases where client orders are received via mobile phones of the account executives when they are out of the office. However, the exemption has also created a convenient avenue for individuals, whether intentionally or inadvertently, to bypass the recording requirements by diverting conversations of client orders from firms' recorded telephone lines to their own mobile phones. This has led us to reconsider the merit of the exemption.
27. Recognizing that the existence of the mobile telephone exemption could facilitate the risk of circumvention and undermine the telephone recording obligation, the SFC intends to impose a ban on the acceptance of client orders through mobile phones.

Implications for licensed or registered persons

28. Following the implementation of the proposal, should any conversation regarding order instructions be received on mobile phones, the call should be diverted to the firm's telephone recording system immediately. If the market is already closed, clients should leave their order instructions on the firm's recorded voice mailbox for execution on the next trading day.
29. The SFC recognizes that the proposed prohibition on the use of mobile telephones in receiving client orders will represent a significant change to some firms' current practice, especially that of smaller sized firms. Nevertheless, we consider that, a complete ban, which applies to all intermediaries at the same time, will not give any unfair advantage to any specific intermediary.
30. The SFC believes that the proposed amendments will close an important avenue for individuals to sidestep the telephone recording requirements. The integrity of telephone recording requirements is vital to dispute resolution between the intermediaries and their clients and also to the SFC's enforcement work in deterring and tackling market misconduct.
31. The proposed ban would close the loophole inherent in the existing order recording requirements.



Question 6:

Do you agree with the proposed prohibition on using mobile phones for receiving order instructions from clients? If not, do you have any alternative proposals that would achieve the same objective (e.g. permit the use of corporate mobile phones that record all incoming and outgoing calls)?

Other related amendments

32. To ensure consistency, we also propose to amend Schedule 4 to the Code to reflect the proposal regarding dealings in futures contracts and/or options contracts traded on Hong Kong Futures Exchange Ltd.
33. Please see the draft amendments to the Code and the international practices comparison for Part III in Appendices A and C to this consultation paper respectively.

Proposal to retain Internet Protocol address (IP address) records

Background

34. With the advancement of Internet technology, online trading has become a service commonly offered by intermediaries, and is well received by the market.
35. An IP address is a numeric code assigned to a computer when it is connected to the Internet. Where a person logs on to a website, an IP address is left as a record of the visit.
36. At present, where the order instruction is received via the Internet, licensed and registered persons are required to retain trading statements, etc. as evidence of online transactions.
37. Whilst the existing record keeping requirements would provide the SFC with information on the particulars of the transaction and also the background of the clients, it lacks the substantive evidential material to establish the true identity of the person who originates the instruction for a transaction over the Internet.
38. To this end, we would like to seek comments on a proposal to require licensed and registered persons to retain IP address records of clients for all online transactions for a minimum period of six months.

Rationale

39. In developing this proposal, our aim is to enhance the tools available to investigate market misconduct where the Internet is used as a medium for client order delivery.
40. With the availability of the IP address records and the assistance of the Internet Service Providers, the Internet account information and physical location of the computer that was used for the online order placing may be located.
41. The availability of the IP address records will assist our enforcement work in investigating Internet trading activities. Although the IP address alone may not be



conclusive evidence of the identity of the person who placed a particular trade, it may be circumstantial evidence showing that a particular individual is responsible for the trades in question.

42. Furthermore, the retention of IP address records should be regarded as an aspect of a firm's audit trail. The IP address records would help to protect a client's account from being hacked or from unauthorized use by another person. For example, where a dispute arises over the validity of the client orders, the IP address records may help to determine whether there was any unauthorized access to the client's account by another person. The requirement therefore also protects the interests of the clients and the firms.
43. To be in line with the proposed telephone recording requirement, it is proposed that the IP address records be retained by licensed and registered persons for a minimum period of six months.

Implication for firms

44. We understand that the technology to capture and record clients' IP address records is readily available in any Internet trading system. Each time when a person logs in or logs out to his trading account, his IP address record is automatically stored in a log file of the system. In this regard, we do not expect firms to encounter significant difficulties in recording this data.
45. Please see the draft amendments to the Code and the international practices comparison for Part III in Appendices A and C to this consultation paper respectively.

Question 7:

Do you agree with the proposed IP address record keeping requirement?

Proposal to require third party authorization in writing

46. The SFC proposes to amend paragraph 7.1 of the Code to require licensed and registered persons not to accept orders placed by a third party for a client's account unless that third party is authorized by the client in writing. We also propose to make a minor amendment to paragraph 7.1(b) to improve its clarity.

Rationale

47. At present, paragraph 7.1(a) of the Code stipulates the circumstances under which licensed or registered persons may enter a transaction for client. They are:
 - (a) the client, or a person designated by the client, has specifically authorized the transaction; and
 - (b) the client has authorized in writing the licensed or registered person or its employees to effect transactions without the client's specific authorization.



48. The current provision is silent on the form of the designation required for third party authorization. However, the SFC is aware that most, if not all, of the firms already require third party authorization to be in writing. As such, the proposed amendment is only a codification of the existing practice among most, if not all, firms.
49. Another proposed amendment to paragraph 7.1 is to add clarity to the drafting of subsection (b) of the paragraph. We propose to delete the sentence “*if an authority is granted to a person who is not an employee or agent of the licensed or registered person, the authority should state that the person is not an employee or agent of the licensed or registered person.*” to remove any possible ambiguity.
50. Please see the draft amendments to the Code and the international practices comparison for Part III in Appendices A and C to this consultation paper respectively.

Question 8:

Do you agree with the proposed amendments to paragraph 7.1 of the Code?

Extension of notification requirement under paragraph 12.5

51. The existing paragraph 12.5 of the Code requires licensed and registered persons to report to the SFC any actual or suspected material breach, infringement or non-compliance with applicable law, rules, regulations and codes by themselves or their employees. We propose to extend the application of this reporting duty to any actual or suspected material breach, infringement or non-compliance (where applicable) committed by clients of licensed and registered persons.

Rationale

52. The SFC is of the view that the maintenance of the integrity of our market requires the cooperation of licensed and registered persons. There are many situations where intermediaries and their front-line staff are in the best position to detect irregularities of their clients, given that they have day-to-day contact with the clients.
53. In practice, some firms are already reporting suspected misconduct committed by their clients to the SFC. We take the view that it is a good practice for firms to actively and voluntarily report breaches/non-compliance by their clients. The continuous business relationship with a client, despite the firm’s knowledge or suspicion of the client’s activities, might implicate the firm and expose it to unnecessary reputational and operational risks.
54. The SFC envisages that the proposed requirement would protect firms from their clients’ potentially improper activities, if any. It will also assist the SFC in responding to suspicious market activities, thereby strengthening our objectives to effectively supervise, monitor and regulate the conduct of market participants.

Implication for firms

55. In formulating this proposal, we have taken into account the existing obligations on firms to report suspicious transactions to the Joint Financial Intelligence Unit (JFIU) in compliance with the obligations under the Drug Trafficking (Recovery of Proceeds)



Ordinance (Cap. 405) (DTROP)⁴ and Organized and Serious Crimes Ordinance (Cap. 455) (OSCO)⁵. We see no good reason why, in appropriate cases, firms should not make reports to the JFIU and the SFC simultaneously.

56. In addition, pursuant to paragraph 12.5 of the Code, firms are required to report to the SFC any suspected or actual material breach or non-compliance by themselves or their employees. The proposal is therefore an extension of the existing reporting obligations.
57. Against this background, firms should already have a set of internal policies and procedures in place to identify possible suspicious activities and ensure they are reported to the relevant authorities. We therefore take the view that firms should not encounter significant difficulties in complying with the proposed additional reporting requirement.
58. Please see the draft amendments to the Code and the international practices comparison for Part III in Appendices A and C to this consultation paper respectively.

Question 9:

Do you agree with the proposed extension of the reporting requirement?

Proposal to require firms not to prohibit staff from performing expert witness services

59. We propose to insert a new provision in the Code requiring licensed and registered persons not to prohibit their staff from performing expert witness services for the SFC or the HKMA.

Rationale

60. Adjudication of sophisticated market misconduct can involve technical issues, such as financial concepts and industry practice, etc. Hence, expert evidence often plays an important part in enforcement litigation. The expert witness applies his/her market expertise in interpreting the implications of a transaction or market conduct and assists a court or tribunal by providing it with his/her knowledge of the subject matter.
61. The SFC has in-house experts but they are unable to handle all the enforcement cases that require market expertise. As such, external experts are regularly consulted by the SFC for their market views on market conduct related matters.
62. We have experienced cases where requests for assistance are met with resistance from licensed and registered persons who do not wish their employees to act as experts. This poses difficulties for the SFC in pursuing enforcement action and hinders our objectives in suppressing improper conduct.

⁴ Under section 25A(1) of the DTROP, where a person knows or suspects that any property represents any person's proceeds of, was used in connection with, or is intended to be used in connection with drug trafficking, he shall disclose that knowledge or suspicion to an authorized officer as soon as it is reasonable for him to do so.

⁵ Under section 25A(1) of the OSCO, where a person knows or suspects that any property represents any person's proceeds of, was used in connection with, or is intended to be used in connection with, an indictable offence, he shall disclose that knowledge or suspicion to an authorized officer as soon as it is reasonable for him to do so.



63. We therefore propose an introduction of an obligation that aims at preventing employers from discouraging their employees from performing expert witness services for the SFC or the HKMA.
64. Under this proposal, it is not suggested that licensed and registered persons, as employers, be placed under a positive obligation to assist the SFC by making their employees available as expert witnesses. However, any prohibition on employees performing such a role, absent a reasonable excuse, would reflect adversely on the fitness and properness of the licensed or registered person.
65. The SFC takes the view that such a requirement will not increase the compliance costs of licensed and registered persons.
66. Please see the draft amendments to the Code and the international practices comparison for Part III in Appendices A and C to this consultation paper respectively.

Question 10:

Do you agree with this proposal requiring firms not to prohibit their employees from performing expert witness services?



Appendix A

Proposed amendments to Code of Conduct



Draft changes to the Code of Conduct

3.9 Order recording

- (a) Except as otherwise provided in Schedule 3 and Schedule 6 to the Code, a licensed or registered person should record and immediately time stamp records of the particulars of the instructions for agency orders and internally generated orders (such as proprietary accounts and staff accounts).
- (b) Where order instructions are received from clients through the telephone, a licensed or registered person should use a telephone recording system to record the instructions and maintain telephone recordings as part of its records for at least ~~three~~six months.
- (c) Where order instructions are received from clients through the Internet, a licensed or registered person should collect the Internet Protocol address records of the online transactions and maintain the records for at least six months.
- (d) A licensed or registered person should prohibit its staff from receiving client order instructions through mobile phones and should have a written policy in place to explain and enforce this prohibition.

Notes

~~The Commission notes that mobile telephones are widely used in Hong Kong. In this regard, the Commission expects licensed or registered persons to arrange for the use of a telephone recording system in their offices. Although use of mobile phones for receiving client order instructions is discouraged, where orders are accepted by mobile phones, the time of receipt and the order details should be recorded immediately (e.g. by a call to the office system or in writing by hand).~~

7.1 Authorization and operation of a discretionary account

- (a) A licensed or registered person should not effect a transaction for a client unless before the transaction is effected (i) the client, or a person designated in writing by the client, has specifically authorized the transaction; or (ii) the client has authorized in writing the licensed or registered person or any person employed by the licensed or registered person (who ~~should~~must in turn be a licensed or registered person) to effect transactions for the client without the client's specific authorization.
- (b) Where a client wishes to grant an authority described under paragraph 7.1(a) (ii), the licensed or registered person or a person employed by it should explain the terms of the authority to the client. If an authority is granted to an employee or agent of the licensed or registered person, the authority should state that the person is an employee or agent of the licensed or registered person. ~~If an authority is granted to a person who is not an employee or agent of the licensed or registered person, the authority should state that the person is not an employee or agent of the licensed or registered person.~~ The licensed or registered person should also confirm with the client at least on an annual basis whether that client wishes to revoke such authority. For the avoidance of doubt, it will be acceptable



for the licensed or registered person to send a notification to the client before the expiry date of its discretionary authority and inform the client that such authority is automatically renewed unless the client specifically revokes it in writing before the expiry date.

- (c) If a licensed or registered person has obtained an authority described under paragraph 7.1(a)(ii), the Client Agreement and the licensed or registered person's records should designate such accounts as "discretionary accounts".
- (d) Senior management should approve the opening of discretionary accounts.
- (e) A licensed or registered person should implement internal control procedures to ensure proper supervision of the operation of discretionary accounts.

12A Obligations under the FDRS

A licensed or registered person should comply with the Financial Dispute Resolution Scheme ("FDRS") for managing and resolving disputes administered by the Financial Dispute Resolution Centre Ltd ("FDRC") in full and be bound by the dispute resolution processes provided for under the FDRS. The FDRS will apply to licensed or registered persons other than firms which carry on Type 10 regulated activity under the SFO i.e. provision of credit rating services.

12.3 Complaints

A licensed or registered person should ensure that:

- (a) complaints from clients relating to its business are handled in a timely and appropriate manner;
- (b) steps are taken to investigate and respond promptly to the complaints; **and**
- (c) where a complaint is not remedied promptly, the client is advised of any further steps which may be available to the client under the regulatory system including the right to make a complaint to the FDRC; and
- (d) where a complaint has been received, the subject matter of the complaint is properly reviewed. If the subject matter of the complaint relates to other clients, or raises issues of broader concern, a licensed or registered person should take steps to investigate and remedy such issues, notwithstanding that the other clients may not have filed complaints with the licensed or registered person and/or the FDRC.



12.5 Notifications to the Commission

A licensed or registered person, as a firm, should report to the Commission immediately upon the happening of any one or more of the following:

(a) any material breach, infringement of or non-compliance with any law, rules, regulations, and codes administered or issued by the Commission, the rules of any exchange or clearing house of which it is a member or participant, and the requirements of any regulatory authority which apply to the licensed or registered person, or where it suspects any such breach, infringement or non-compliance whether by:

(i) itself; ~~or~~

(ii) persons it employs or appoints to conduct business with clients or other licensed or registered persons; ~~or~~

(iii) its clients (where applicable),

giving particulars of the breach, infringement or non-compliance, or suspected breach, infringement or non-compliance, and relevant information and documents;

(b) the passing of any resolutions, the initiation of any proceedings, or the making of any order which may result in the appointment of a receiver, provisional liquidator, liquidator or administrator or the winding-up, re-organisation, reconstruction, amalgamation, dissolution or bankruptcy of the licensed or registered person or any of its substantial shareholders or the making of any receiving order or arrangement or composition with creditors;

(c) the bankruptcy of any of its directors;

(d) the exercise of any disciplinary measure against it by any regulatory or other professional or trade body or the refusal, suspension or revocation of any regulatory licence, consent or approval required in connection with its business; ~~and~~

(e) any material failure, error or defect in the operation or functioning of its trading, accounting, clearing or settlement systems or equipment; ~~and~~

(f) the receipt of a client complaint to the FDRS;

(g) the initiation of the FDRS in response to a complaint (including any documentation, if so requested by the Commission); and

(h) the determination or settlement of a complaint in connection with the FDRS (including the details of the determination or settlement, if so requested by the Commission).



12.6 Co-operation under the FDRS

A licensed or registered person should:

- (a) make full and frank disclosure before mediators and/or arbitrators in connection with the FDRS; and
- (b) render all reasonable assistance to the FDRS.

12.7 Expert witness

A licensed or registered person, as a firm, should not prohibit persons it employs from performing expert witness services for the Commission and the Hong Kong Monetary Authority.



Schedule 4 Additional requirements for licensed or registered persons dealing in futures contracts and/or options contracts traded on Hong Kong Futures Exchange Limited

The provisions in this Schedule apply to all licensed or registered persons in the course of their dealing in Futures Contracts and/or Options Contracts traded on Hong Kong Futures Exchange Limited (“HKFE”) except as otherwise specified in certain paragraphs which do not apply to licensed or registered persons which are not exchange participants of HKFE.

For the purposes of this Schedule, the defined terms and expressions set out below have the meanings assigned to them under the rules of HKFE. Where such defined terms and expressions are applied to exchange participants of HKFE, they are deemed to apply with the same meaning to licensed or registered persons which are not exchange participants wherever the context so permits.

Books and accounts

...

- 1A. Where confirmations of executed trades are made to clients through the telephone, a licensed or registered person should use a telephone recording system to record such confirmations and maintain telephone recordings as part of its records for at least ~~three~~six months.
- 1B. A licensed or registered person should prohibit its staff from confirming executed trades through mobile phones and should have a written policy in place to explain and enforce this prohibition.

Notes

~~The Commission notes that mobile telephones are widely used in Hong Kong. In this regard, the Commission expects licensed or registered persons to arrange for the use of a telephone recording system in their offices. Although use of mobile phones for confirming executed trades is discouraged, where executed trades are confirmed by mobile phones, the time of confirmation and the relevant details should be recorded immediately (e.g. in writing by hand).~~



Schedule 6 Additional requirements for licensed persons engaging in leveraged foreign exchange trading

The provisions in this Schedule apply to the carrying on of Type 3 regulated activity, namely leveraged foreign exchange trading, by persons licensed to conduct such activity.

Part I

General conduct of business requirements

...

Taping

35. Without prejudice to paragraph 3.9 of the Code, a licensed person should install at its place of business a centralized tape recording system to record all telephone conversations conducted by it or its representatives with prospective clients, clients and recognized counterparties.
36. All telephone lines used by employees or representatives of the licensed person responsible for making calls, confirming orders, executing contracts, transferring funds, or carrying out instructions incidental thereto, should be routed through the centralized tape recording system.
37. Tapes from the centralized tape recording system should be kept for at least ~~3~~six months.

...

International practices comparison for Part II

International Practices Comparison for Part II

This comparison is based on our interpretation of the relevant rules and regulations in the respective jurisdictions as of August 2011.

Obliging licensees to participate in the FDRC

	United Kingdom	Australia	Singapore
Licensees should comply with the FDRS	<p>The FSA Handbook on Dispute Resolution: Complaints (“DISP Handbook”) contains rules and guidance on how firms and licensees should deal with complaints promptly and fairly, including complaints that could be referred to the Financial Ombudsman Service (“the UK Ombudsman”).</p> <p>For details, see Introduction (Chapter INTRO) and, paragraphs 1.1.1, 1.1.3 and 1.1.14 (Chapter 1 Treating complainants fairly) of the DSIP Handbook.</p>	<p>Financial services providers (“FSPs”) are required to have a dispute resolution system available for their retail clients. A dispute resolution system must consist of an internal dispute resolution (“IDR”) procedure and membership of one or more external dispute resolution (“EDR”) schemes. A licensee must show that it is a member of an ASIC-approved EDR scheme(s). Proof of membership must be shown in a licence application.</p> <p>For details, please see sections 912A and 1017G of the Corporations Act 2001, and RG 165.1-2, 165.54, 165.148 and 165.157 of Regulatory Guide 165 on Licensing: Internal and external dispute resolution issued by ASIC in April 2011 (“Regulatory Guide 165”).</p>	<p>The MAS requires a financial institution (“FI”) to be a member of an approved dispute resolution scheme and to comply with terms of membership of the scheme. The Financial Industry Disputes Resolution Centre Ltd (“FIDReC”) is the approved dispute resolution scheme.</p> <p>For details, please see sections 28A(2) and (6) of the Monetary Authority of Singapore Act, and section 4 of and the First Schedule to the Monetary Authority of Singapore (Dispute Resolution Schemes) Regulations 2007 (“Regulations”).</p>

	United Kingdom	Australia	Singapore
Licensees should be bound by the dispute resolution processes provided for under the FDRC regime	<p>Section 226(1) of the Financial Services and Markets Act 2000 (“FSMA”) sets out that a complaint which relates to an act or omission of a respondent is to be dealt with under the ombudsman scheme (if applicable).</p> <p>If a complainant accepts a determination by the UK Ombudsman, it is final and binding on the complainant and respondent. For details, please see paragraph 3.6.6(3) (Chapter 3 Complaint handling procedures of the UK Ombudsman) of the DISP Handbook.</p>	<p>The EDR scheme outcome should not bind the client if he or she does not choose to accept it. However, if the client accepts the EDR outcome, the scheme member may require him or her to accept the outcome as full and final satisfaction of the claim and it will be binding on both parties.</p> <p>For details, please see RG 139.191 of Regulatory Guide 139 on Approval and oversight of external dispute resolution schemes issued by ASIC in April 2011 (“Regulatory Guide 139”).</p>	<p>The FI shall comply, and ensure all its officers, representatives or agents comply, with all instructions and determinations made by the FIDReC. Where the complainant accepts the FIDReC’s determination and/or award, it would be binding on the FI and the complainant.</p> <p>For details, please see paragraphs 13(2), 18(3) and 26(4) of the Terms of reference published by the FIDReC on 2 May 2008 (“FIDReC’s Terms of Reference”).</p>

Enhancement of the complaints handling procedures in paragraph 12.3

	United Kingdom	Australia	Singapore
<p>Licensees should seek to resolve complaints internally and, failing resolution, to inform clients of the right to make a complaint to the FDRC</p>	<p>Once a complaint has been received by a respondent, it must investigate the complaint competently, diligently and impartially. It should aim to resolve complaints at the earliest possible opportunity.</p> <p>To aid consumer awareness of the protections offered by the DISP Handbook, respondents must publish appropriate information regarding their internal procedures for the reasonable and prompt handling of complaints.</p> <p>The information should cover:</p> <ol style="list-style-type: none"> (1) how the respondent fulfils its obligation to handle and seek to resolve relevant complaints; and (2) if the complaint is not resolved, the complainant may be entitled to refer it to the UK Ombudsman. <p>For details, please see paragraphs 1.2.1, 1.2.3, 1.4.1 and 1.4.3 (Chapter 1) of the DISP Handbook.</p>	<p>FSPs are required to handle complaints internally in an efficient, timely and effective manner. Further, they should seek to resolve complaints directly with clients through IDR procedures. For details, please see RG 165.46 and 165.83 of the Regulatory Guide 165.</p> <p>Scheme members must advise clients of their rights to take their complaints to an EDR scheme when scheme members provide a final response at IDR within 45 days. Scheme members must also comply with some regulatory requirements to promote the availability of EDR schemes. For example, licensees who provide a Financial Services Guide to retail clients must include details of their scheme membership in that document. For details, please see RG 139.61 and 139.63 of the Regulatory Guide 139 and section 942B (2) (h) of the Corporations Act.</p>	<p>A complainant can only lodge his/her case with the FIDReC upon showing that an attempt has been made to resolve the matter by the FI's internal dispute resolution unit, but the matter has not been resolved. The FI's final reply to the complainant will expressly inform the complainant of his/her right to contact the FIDReC for assistance.</p> <p>For details, please see paragraphs 13(1) and (2) of the FIDReC's Terms of Reference.</p>

	United Kingdom	Australia	Singapore
<p>Licensees should consider whether the subject matter of a complaint may be relevant to other clients notwithstanding they may not have filed any complaint with the licensee and/or the FDRC</p>	<p>Respondents are required to take into account all relevant factors in assessing a complaint. These factors include similarities with other complaints received by a respondent.</p> <p>Respondents are also required to identify root causes of complaints and consider whether such root causes may also affect other processes or products (including those not directly complained of). Where problems, root causes or compliance failures are identified, respondents should consider whether they have to act with regard to the position of customers who have not complained.</p> <p>For details, please see paragraphs 1.3.3, 1.3.5, 1.4.1 and 1.4.2 (Chapter 1) of the DISP Handbook.</p>	<p>An EDR scheme is required to identify systemic issues and cases of serious misconduct that arise from the consideration of complaints, and to report any systemic, persistent or deliberate conduct to the ASIC.</p> <p>The type of conduct or issues that might be reported are classified into two broad categories:</p> <p>(a) systemic issues, which relate to issues that have implications beyond the immediate actions and rights of the parties to the complaint; and</p> <p>(b) serious misconduct, which include fraudulent conduct, grossly negligent or inefficient conduct, and wilful or flagrant breaches of relevant laws.</p> <p>For details, please see RG 139.119, 121, 126 and 129 of the Regulatory Guide 139.</p>	<p>The FIDReC is required to notify the MAS of information relating to systemic issues and market misconduct.</p> <p>FIs should regard complaints as potential indicators of problems. Where the FI receives a significant number of complaints about a specific issue or investment product, it should conduct investigations to identify the cause of the problems and rectify problems immediately.</p> <p>For details, please see paragraph 11(1) of the FIDReC's Terms of Reference, and paragraphs 2 and 5.2.4 of the Guidelines on Fair Dealing – Board and Senior Management Responsibilities for Delivering Fair Dealing Outcomes to Customers (FAA-G11).</p>

Enhancement of the reporting obligations in paragraph 12.5

	United Kingdom	Australia	Singapore
Licensees should notify the SFC upon receipt of a complaint to the FDRC	<p>Twice a year a firm must provide the FSA with a complete report concerning complaints received from eligible complainants. The report must include information about:</p> <ul style="list-style-type: none"> (a) the total number of complaints received by the firm; (b) the total number of complaints closed by the firm; (c) the total number of complaints upheld by the firm in the reporting period and outstanding at the beginning of the reporting period; and (d) the total amount of redress paid in respect of complaints during the reporting period. <p>For details, please see paragraphs 1.10.1 and 1.10.2 (Chapter 1) of the DISP Handbook.</p>	<p>An EDR scheme is required to collect and record information about the number of complaints and inquiries received, the number of complaints closed with an indication of the outcome, etc.</p> <p>A scheme is also required to provide the ASIC with updated complaints information (including that described above) on a quarterly basis. A comprehensive summary and analysis of the information must also be contained in each annual report published by a scheme.</p> <p>For details, please see RG 139.149 and 152-153 of the Regulatory Guide 139.</p>	<p>The FIDReC is required to submit, on a quarterly basis, to the MAS a categorised summary report of all disputes received. For details, please see section 11(a) of the Regulations, and paragraph 11(2) of and Annex 2 to the FIDReC's Terms of Reference.</p>

	United Kingdom	Australia	Singapore
Licensees should provide the SFC with all documentation and information in connection with the FDR process (if so requested by the SFC)	Please see the above explanation about the requirements in 1.10.1 and 1.10.2 (Chapter 1) of the DISP Handbook.	Please see the above explanation about requirements of RG 139.149 and 152-153 of the Regulatory Guide 139.	The FIDReC has the full power and absolute discretion, where necessary, to disclose information relating to a complaint, dispute or award to the MAS and the Court. For details, please see paragraph 11A of the FIDReC's Terms of Reference.
Licensees should provide the SFC with details of the outcome of a complaint including detailed terms of settlement, if any	Please see the above explanation about the requirements in paragraphs 1.10.1 and 1.10.2 (Chapter 1) of the DISP Handbook.	An EDR scheme is required to publish information about complaints received and closed, with an indication of the outcome, against each scheme member in an annual report. For details, please see RG 139.154 of the Regulatory Guide 139.	Please see the above explanation about the requirements in paragraph 11A of the FIDReC's Terms of Reference.

Inclusion of “good faith” provisions in dealing with the FDRC

	United Kingdom	Australia	Singapore
Licensees should make full and frank disclosure before mediators/arbitrators	<p>The UK Ombudsman may, by notice in writing given to a party to a complaint, require that party to provide specified information or to produce specified documents. If the person fails to comply with the requirement, the UK Ombudsman may certify that fact in writing to the court for enquiry into the case.</p> <p>For details, please see sections 231(1) and 232(1) of the FSMA.</p>	<p>The Financial Ombudsman Service (“FOS”) is one of the EDR schemes approved by the ASIC.</p> <p>Under the FOS Constitution, the FOS’s Terms of Reference (“TOR”) form a binding contract between each FSP and the FOS. Each FSP is therefore bound to comply with its obligations under the TOR.</p> <p>Where an FSP fails to meet its obligations under the TOR, the FOS may take any action it considers appropriate including expelling the FSP from membership of the FOS in accordance with the FOS Constitution.</p> <p>The FOS may require a party to a dispute to provide to, or procure for, the FOS any information that the FOS considers necessary, except where the party satisfies the FOS that to provide information would breach a duty of confidentiality to a third party and, despite best endeavours, the third party’s consent to the disclosure of the information has not been able to be obtained, etc.</p> <p>For details, please see paragraph 13.7 of the TOR issued by the FOS on 1 January 2010 (as amended 1 July 2010), and paragraphs 7.2 and</p>	<p>The FIDReC may require the FI and any representative of it to provide information relating to the dispute in its control that is in the public domain or agreed to by parties in writing to be disclosed or which parties are compelled to disclose.</p> <p>For details, please see paragraph 18(1) of the FIDReC’s Terms of Reference.</p>

	United Kingdom	Australia	Singapore
		13.4 to 13.7 of the Operational Guidelines to the Terms of Reference issued by the FOS on 1 January 2010 (“Operational Guidelines”).	
Licensees should render all reasonable assistance to the FDR process	Where a complaint against a respondent is referred to the UK Ombudsman, the respondent must cooperate fully with it and comply promptly with any settlements or awards made by it. For details, please see paragraph 1.4.4 (Chapter 1) of the DISP handbook.	The FOS may require a party to a dispute to do anything else that the FOS considers may assist the FOS’s consideration of the dispute. This may include requiring a party to a dispute to attend an interview. For details, please see paragraph 7.3 of the Operational Guidelines.	The FI and any representative of it shall provide full co-operation and assistance to the FIDReC. The FIDReC may require the FI and any representative of it to attend interviews. For details, please see paragraph 18(1) of the FIDReC’s Terms of Reference.

International practices comparison for Part III

International Practices Comparison for Part III

This comparison is based on our interpretation of the relevant rules and regulations in the respective jurisdictions as of August 2011.

Order recording framework

	United Kingdom	Australia	Singapore
Retention period for telephone recordings	<p>The FSA requires firms to take reasonable steps to record relevant telephone conversations of client orders and retain the records for a period of at least six months.</p> <p>For details, please see paragraphs 11.8.1, 11.8.5 and 11.8.10 (Chapter 11 Dealing and Managing) of the Conduct of Business Sourcebook (COBS).</p>	<p>There is no specific rule or regulation which requires the recording of telephone calls of client orders for equity trades. However, market participants of the ASX market are required to record all telephone conversations with clients in relation to their dealings in futures market transactions. The records must be kept for at least three months.</p> <p>For details, please see paragraph 4.1.10 of the ASIC Market Integrity Rules (ASX Market) 2010.</p>	<p>An FI is required to tape record all telephone conversations on transaction related instructions, where practicable. It is also required to establish the minimum retention period for taped telephone conversations, taking into account the relevant laws, rules and regulations. As far as treasury activities are concerned, tapes should be kept for at least two months or for longer periods if longer term instruments are involved.</p> <p>For details, please see paragraphs 3.1.6, 3.4.2 and 3.10.2 of the Guidelines on Risk Management Practices – Internal Controls issued by the MAS, and paragraph 8.1 of The Singapore Guide to Conduct & Market Practices for Treasury Activities published by The Singapore Foreign Exchange Market Committee.</p>

			<p>The MAS has also issued the Notice on the Sale of Investment Products (Notice No. SFA 04-N12). Paragraph 29 of the notice requires licensed persons to maintain records of all communications with customers in respect of trading in securities, futures contracts and leveraged foreign exchange, including a record in the form of a file note or tape recording of the telephone conversation. The notice will take effect on 1 January 2012.</p>
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	United Kingdom	Australia	Singapore
Use of mobile telephones in receiving client orders	<p>With effect from 14 November 2011, firms will be required to ensure that conversations with clients do not take place on private communication equipment (including private mobiles) that firms cannot record.</p> <p>For details, please see paragraphs 1.7, 1.9 and 2.43 of Policy Statement 10/17: Taping of mobile phones (November 2010) issued by the FSA, and paragraph 11.8.8 (Chapter 11 Dealing and Managing) of the COBS.</p>	<p>There is no specific rule or regulation prohibiting the use of mobile phones in receiving client orders.</p> <p>However, in a public submission, ASIC acknowledged that any compulsory recording of telephone conversations would help to deter rumour mongering and other market abuses and that this would need to be accompanied by reform banning the use on trading floors of mobile phones and any other devices that cannot be recorded or taped.</p> <p>For details, please see paragraph 62 of ASIC's submission on CAMAC's issues paper Aspects of Market Integrity of 13 March 2009.</p>	<p>The use of mobile phones outside the trading room for trading is prohibited except in exceptional circumstances and only where mitigating controls are in place. An FI should state in its policies and procedures whether off-premises and after hours trading are permissible. If such transactions are allowed, records of these transactions must enter the FI's recording system as soon as they are made. When carrying out treasury activities, FIs should adopt appropriate policy to restrict usage of mobile phones in their dealing rooms.</p> <p>For details, please see paragraphs 3.1.6 and 3.7.1 of the Guidelines on Risk Management Practices - Internal Controls issued by the MAS, and paragraph 8.2 of The Singapore Guide to Conduct & Market Practice for Treasury Activities published by The Singapore Foreign Exchange Market Committee.</p>
Retention of IP address records	<p>There is no specific rule or regulation requiring the retention of IP address records of clients.</p>	<p>There is no specific rule or regulation requiring the retention of IP address records of clients.</p>	<p>There is no specific rule or regulation requiring the retention of IP address records of clients.</p>

Third party authorization in writing

	United Kingdom	Australia	Singapore
Third party authorization must be in writing	There is no specific rule or regulation requiring third party authorization to be in writing.	<p>Market participants must not enter into a transaction for a third party in a client's account unless that third party is authorized in writing by the client to give such instructions.</p> <p>For details, please see paragraph 3.3.1 (Chapter 3 Client Relationships) of the ASIC Market Integrity Rules (ASX Market) 2010.</p>	<p>A trading representative must not use a client's account for third party trading without the client's prior written consent. For details, please see paragraph 13.6.1 of the SGX-ST Rules, Rulebook.</p> <p>In addition, paragraph 4.12 of the Notice to Capital Markets Intermediaries on the Prevention of Money Laundering and Countering the Financing of Terrorism - Capital Markets Intermediaries (Notice No. SFA 04-N02) requires a capital markets intermediary to verify the due authority of persons appointed to act on behalf of the client, by obtaining the appropriate documentary evidence that the client has appointed the persons to act on its behalf and the specimen signatures of the persons appointed.</p>

Reporting requirements

	United Kingdom	Australia	Singapore
Reporting actual or suspected breaches by clients	<p>Where a firm has reasonable grounds to suspect a transaction might constitute market abuse, it must notify the FSA without delay.</p> <p>For details, please see paragraph 15.10.2 (Chapter 15 Notifications to the FSA) of the Supervision Handbook.</p>	<p>The ASIC has consulted on the requirement on market participants to notify the ASIC if they have reasonable grounds to suspect a person is trading with inside information or engaging in manipulative trading. The ASIC has decided to proceed with the implementation of such reporting requirement beyond 31 October 2011.</p> <p>For details, please see paragraphs 101-103 of Report 237: Response to submissions on CP 145 Australian equity market structure: Proposals (April 2011), and RG 223.8 and RG 223.11 of Regulatory Guide 223: Guidance on ASIC market integrity rules for competition in exchange markets (April 2011).</p>	<p>Section 39 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act requires a person who knows or has reasonable grounds to suspect that any property was used in connection with any criminal conduct, and the information came to his attention in the course of his trade, etc., he shall disclose it to the Suspicious Transaction Reporting Officer. Firms are obliged to submit such reports to the MAS for information.</p> <p>For details, please see paragraph 9.2 of the Notice to Capital Markets Intermediaries on the Prevention of Money Laundering and Countering the Financing of Terrorism - Capital Markets Intermediaries (Notice No. SFA 04-N02) and paragraph 10.2 of the Notice to Finance Companies on the Prevention of Money Laundering and Countering the Financing of Terrorism - Finance Companies (MAS 824).</p>

Expert witness services

	United Kingdom	Australia	Singapore
Firms not to prohibit staff from performing expert witness services	<p>S166 of the FSMA provides that the FSA may require a firm, etc. to provide with the FSA with a report by a skilled person for diagnostic, monitoring, preventative and remedial purposes. Further, a firm must provide all reasonable assistance to any skilled person appointed.</p> <p>For details, please see paragraphs 5.2.1, 5.3.1 and 5.5.9 (Chapter 5 Reports by skilled persons) of the Supervision Handbook.</p> <p>There is no specific rule or regulation requiring employers not to prohibit their staff from performing expert witness service.</p>	<p>There is no specific rule or regulation requiring employers not to prohibit their staff from performing expert witness service.</p>	<p>There is no specific rule or regulation requiring employers not to prohibit their staff from performing expert witness service.</p>