

26 May 2015

Securities and Futures Commission  
35/F Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Dear Sir,

**Consultation Paper on the Principles of Responsible Ownership (the "Consultation Paper")**

We refer to the Consultation Paper issued by the Securities and Futures Commission (the "Commission") in March 2015 inviting interested parties to submit written comments on the proposals set out in the Consultation Paper.

The Hong Kong Trustees' Association (the "HKTA") is a professional association representing trustees and members of the trust and fiduciary services industry in Hong Kong. We are interested in the present consultation to the extent that the Principles would affect the trustee industry in Hong Kong.

We set out below our responses to some questions set out in the Consultation Paper for your consideration. In relation to any questions which we have not provided any responses, please be informed that the HKTA does not have any particular view on the particular arrangement or issue specified in that question.

- 1. Do you agree with the approach (paragraphs 49 to 50) to aim the Principles at all investors and not just institutional investors? If the scope of the Principles is too broad which investors should be excluded or, alternatively, which investors should be included?*

We agree that the Principles should be aimed at individual and institutional investors with the exception of trustees and custodians. By way of reference, the Japan FSA and UK FRC stewardship codes cover only institutional investors which are defined to mean asset managers or asset owners.

In the context of unit trusts and mutual funds, trustees are only legal owners of the investment assets and they do not make any investment decisions or involve in the voting process. Further, as custodians are appointed by trustee for trust funds, custodians similarly do not participate in investment decisions or voting in general meetings and should also be excluded from the scope of the Principles. The Principles on responsible ownership are directly relevant to the investment function conducted by fund managers and therefore it is the fund managers should be included and not the trustee or custodians.

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**Hong Kong Trustees' Association Ltd**  
Registered Office 註冊地址：  
6/F Alexandra House, 18 Chater Road,  
Central, Hong Kong  
香港中環遮打道十八號歷山大廈六樓

Tel 電話: 2551 8696  
PO Box 8493 GPO Hong Kong  
E-mail 電郵: queries@hktrustees.com  
Website 網址: www.hktrustees.com



In the context of private or family trusts, the trustees, if included, should be regarded in the same light as 'individuals' and family owners. As fiduciaries, the trustees of private trusts are accountable to the beneficiaries who are generally not members of the investing public but members of a family. Therefore for private trustees, disclosure, reporting and accounting to stakeholders should not be based on what is prescribed in the Principles; these are private matters for individuals to agree with the trustee and practices of what is appropriate or responsible ownership are as diverse as the family dynamics in each family. There is also a whole body of law and statutes which have developed since *Bartlett v Barclays Bank Trust Co Ltd* that specifically relief or even prevent trustees from exercising its investment powers or powers to intervene in the management and control of trust underlying companies.<sup>1</sup>

2. *Whilst we do not wish to encourage a close-ended list of the type of institutions which will qualify as "institutional investors" and their agents, we would encourage views from the market as to their understanding of the types of institutions which may well fall within or outside of such a broad characterization.*

The types of institutions which might fall within such characterization should be those who are involved in making investment decisions or related to investment functions such as fund managers. In our view, we believe trustees and custodians should be excluded from the scope and outside of such a broad characterization where they are only taking the investment assets into custody and do not make any investment decisions or get involved in the voting process; as in the case of unit and mutual funds trustees and trustees of private trusts with restricted investment powers.

3. *Should institutional investors be encouraged or obliged to apply the Principles on a "comply-or-explain" basis and, if so, which institutional investors and what should they be asked to disclose and to whom?*

Similar to the responses above, we believe trustees and custodians should be excluded from the scope of the Principles.

4. *Should certain types of organizations be required to disclose whether or not they comply with the Principles and, if not, why they do not do so (i.e. on a "comply-or-explain" basis)? For example, should the following be required to comply with the Principles on a "comply-or-explain" basis: (i) institutions authorized and regulated by the HKMA, (ii) approved trustees of MPF schemes, trustees of ORSO schemes and trustees of pooled investment schemes approved for MPF purposes, (iii) insurers, insurance intermediaries and MPF intermediaries authorized and/or regulated by the OCI and (iv) entities licensed and regulated by the SFC?*

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<sup>1</sup> E.g. Hong Kong (like Singapore, English, Cayman, Jersey and other jurisdictions) have trustee legislation that permit (but do not compel) trustee powers including investment powers to be 'reserved' to the settlor/ other persons; i.e. they limit trustee's investment powers to oversee the investee company/ appoint directors/ vote and by statute can rest such power to someone other than the trustee. The British Virgin Islands have Virgin Islands Special Trust Alternative Regime (VISTA) that prohibits a trustee from intervening with underlying companies of a trust.



Whilst we understand that trustees will have fiduciary duties to act in the investors' best interests, trustees should not be required to comply or explain non-compliance with the Principles for the following reasons:

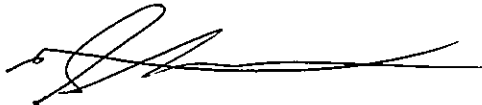
- The Principles on responsible ownership are directly relevant to the investment function conducted by fund managers, those involve in making investment decisions and/or have voting responsibilities/rights; trustees and custodians who do not perform these functions and should not be required to comply with the Principles.
- Trustees and custodians of international financial institutions that have U.S. operations could be perceived to be in non-compliance with the Volcker Rule if they retain residual investment power by taking on ownership responsibilities in relation to the unit trust / mutual fund's investments.
- Family or private trust arrangements would not benefit from such requirement to 'comply-or-explain'.

5. *Should compliance with the Principles be monitored? If so, which regulator should be responsible for doing so? For example, should it be the SFC or should it be the primary regulatory in each respective industry?*

We understand the importance of responsible ownership for the company, its investors and the economy as a whole, and we believe the SFC would be in the best position and should be sole regulator to monitor compliance of the Principles in applicable situations.

Thank you for the opportunity to comment on this important matter and we appreciate the SFC's consideration of our responses to the specific questions in the letter.

Yours faithfully,



Hong Kong Trustee's Association Ltd