



CONSULTATION ON PROPOSALS TO REDUCE AND MITIGATE HACKING RISKS ASSOCIATED WITH INTERNET TRADING

THE LAW SOCIETY'S SUBMISSIONS

The Law Society has considered the consultation paper issued by the Securities and Futures Commission ('SFC') in May 2017, on the Proposals to reduce and mitigate Hacking Risks associated with Internet Trading ('Consultation Paper'). We have the following responses.

Consultation Questions

***Question 1:** The SFC is of the view that the proposed controls [set out in the Consultation Paper] should be baseline requirements, which will also serve as an entry requirement for potential internet brokers. Do you agree with this approach?*

Law Society's response:

The Law Society welcomes the proposals set out in the Consultation Paper to enhance the cyber security arrangements of licensed corporations ("LCs") and to support the growth of Fintech in the Hong Kong market. We agree with this approach.

Cyber-security is an evolving area and we appreciate and endorse the aim to keep guidance to LCs continually under review and updated to reflect current technology best practice, whilst reflecting commercial realities.

***Question 2:** The application of Paragraph 18 of and Schedule 7 to the Code of Conduct [for Persons Licensed by or Registered with the Securities and Futures Commission] is expanded to cover the internet trading of securities that are not listed or traded on an exchange. Do you agree that the proposed expansion of the scope of the regulation of internet trading is appropriate?*

If yes, is the proposed wording [as set out in paragraph 17 of the Consultation Paper] sufficiently clear?

Law Society's response:

The Law Society agrees with the expansion of the application of Paragraph 18 to cover internet trading of securities that are not listed on an exchange and considers the proposed wording to be acceptable. In particular, the extension of the definition to cover trading of funds, and indeed all electronic access provided by LCs to the accounts of clients, as the Law Society agrees that these are subject to the same hacking risks.

Question 3: By not prescribing particular 2FA [two-factor authentication] solutions, the proposed requirements [in the Consultation Paper] should provide brokers with a measure of flexibility when providing additional safeguards against hacking risks. Do you agree that this approach is appropriate?

Law Society's response:

As stated above in our response to Question One, the Law Society believes it is important that the industry adopts a best practice approach in relation to cyber-security issues. We agree with the proposed requirement for 2FA for client login. Whilst we understand that the proposed flexibility is to avoid any adverse impact on the timeliness of order execution, if 2FA represents best practice, clear guidance will be needed on where this may be replaced with alternative arrangements.

Question 4: Do you agree that for practical considerations, it will not be appropriate to mandate the monitoring of suspicious trading patterns?

Law Society's response:

The Law Society agrees but welcomes the proposed circular which will recommend the monitoring of suspicious trading patterns as best practice.

Question 5: Due to cost considerations, the proposals do not require internet brokers to assess and enhance their backup facilities (ie, disaster recovery sites) for providing internet trading services or alternative arrangements for receiving clients' orders in an emergency so as to avoid disrupting services in an unacceptable manner. Do you agree with this approach?

Law Society's response:

The Law Society appreciates the SFC's commercial approach to cost considerations but suggests that the proposed circular detailed above also cover this area under best practice suggestions.

Question 6: In your opinion, does the current level of service offered by your service providers enable you to comply with the proposed baseline requirements? Do you envisage any difficulty in negotiating higher service levels with your service

providers?

Law Society's response:

This question is for industry participants. The Law Society is not placed to respond but welcomes the proposals to codify baseline requirements for agreements with third party service providers for the outsourcing of internet trading activities.

Comments on Proposed Guidelines for Reducing and Mitigating Hacking Risks associated with Internet Trading (Appendix B of the Consultation Paper)

Law Society's response:

Please see our comments above.

Comments on the Proposed Amendments to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Appendix C of the Consultation Paper)

Law Society's response:

Please see our comments above.

Concluding remarks

The Law Society appreciates that electronic data may be subject to specific hacking risks but would make the point that the same levels of investor protection and intermediary conduct need to apply (based on one set of principles consistently applied) across all channels.

Also, noting the related SFC consultation at the moment on the proposed guidelines on online distribution and advisory platforms, we would expect that the same underlying philosophy would be reflected throughout and that the impact of all of related conduct proposals will be reviewed in aggregate to ensure a consistent approach.

**The Law Society of Hong Kong
4 July 2017**