

ASSOCIATION OF GLOBAL CUSTODIANS

**Communication of the Association of Global Custodian's Asia Focus Committee<sup>1</sup>**

12 October 2020

The Honourable Mr. Tran Van Dung,  
Chairman of State Securities Commission of Vietnam

Mr. Bui Hoang Hai  
Director of Securities Offerings Supervision Department,

Ms. Ta Thanh Binh  
Director of Securities Market Development Department,

Mr. Vu Chi Dzung  
Director of International Cooperation Department,  
State Securities Commission of Vietnam

**(Sent by email to: [dzungtran@ssc.gov.vn](mailto:dzungtran@ssc.gov.vn), [haibh@ssc.gov.vn](mailto:haibh@ssc.gov.vn),  
[binhtt@ssc.gov.vn](mailto:binhtt@ssc.gov.vn), [dzungvuchi@ssc.gov.vn](mailto:dzungvuchi@ssc.gov.vn))**

Dear Chairman Dung and directors of the State Securities Commission,

Key custodian banks' concerns regarding the proposed Vietnam CCP model

We refer to the invite from the State Securities Commission (SSC) for public comments on the "Draft Circular about Registration, Depository, Clearing and Settlement of Securities".

The Association of Global Custodians<sup>2</sup> (AGC) very much appreciates this opportunity to contribute to the plans of the SSC, to further develop the

<sup>1</sup>Mr. CHEW CH Bernie, Chairman, The Association of Global Custodians, Asia Focus Committee, c/o Northern Trust, One George Street, #12-06, Singapore 049145

<sup>2</sup> The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

Vietnam market in line with international best practices and standards. The AGC welcomes and fully supports the establishment of a Central Counterparty to cover settlement in the market.

However, member banks, especially the four member banks providing custodial services to foreign investors through their offices in Vietnam, have some concerns regarding the proposed model.

Certain AGC member banks have contributed to the comprehensive letter sent to you by ASIFMA dated 18 September on the subject matter. The AGC supports that letter, especially the feedback on the proposed model ASIFMA provided on the asset safety considerations highlighted in their letter.

In emphasis AGC member banks strongly advocate that the proposal for custodian banks to act as a Direct Clearing Member (DCM) does not conform with the accepted international practice and structure for a CCP. In a standard model for a CCP, only broker/dealers and trading entities which are trading members of a stock exchange are DCMs. Investors and their custodian banks are not part of the central clearing process. The responsibility of custodian banks is to carry-out their clients' instructions to settle trades with brokers/trading counterparties following their execution on the exchange.

In the SSC's proposed model a custodian bank would act as a clearing member (a counter party to the CCP, taking on payment obligations to the CCP) to clear trades for the custodial clients of the bank. Where a custodian bank, itself, is not a clearing member, it would need to appoint a General Clearing Member (GCM) to act on its clients' behalf. Investors would then need to open margin accounts with the GCM appointed by that custodian bank. The AGC anticipates that the vast majority of investors would find it a challenge to accept the risk attached to a GCM (usually expected to be brokers) holding their cash and securities, should a custodian bank appoint a GCM. Indeed many foreign regulated funds would be precluded under their risk management and governance rules, from agreeing for accounts to be opened with a GCM. Furthermore, in order to meet asset safety obligations, they would require asset safekeeping and settlement (i.e., under a DVP model) to be performed by a regulated custodian bank.

It is only in certain markets such as Hong Kong and Singapore, subject to the licensing conditions of the CCP and authorized by their local banking regulators, that banks act as a GCM, providing third-party clearing services to brokers who are not DCMs. This service is unrelated to custodial services and is a separate business for those banks' clients. In

both markets mentioned, banks operating as a GCM can only clear their own trades if they have equity trading rights.

The AGC appreciates that the drive behind the establishment of the CCP is to mitigate the requirement for the pre-funding of trades. However, the new CCP framework envisaged does not seem to address the pre-funding issue of concern to global institutional investors. In fact the model as currently proposed, would add further complexity as well as increase risks for global investors. As per the proposal the pre-funding requirement will be replaced by a margin requirement, i.e., investors need to have sufficient margin (as required by the local broker as the clearing member (CM)) before placing the exchange order. The Vietnam Securities Depository (VSD) will calculate the maintenance margin after tabulating new trading activities each day and will inform the CM to send additional funds if their margin balance should fall below the required margin. The CM in turn will calculate additional margin as needed from investors and will require investors to top-up within the day if necessary. Margin requirements in accordance with international practice are generally assessed and required only of the CM. Margin requirements prior to executing securities transactions, indicates that the market still requires pre-funding by investors. It is also impractical for foreign investors in different time zones to meet the timeline for intraday margin calls if requested by the CM. The margin requirement will add more complexity to account structures and operational processes and create more associated risks for foreign investors to trade in the Vietnam market. This will increase the cost of investing in Vietnam.

There is also an additional regulatory issue that will currently preclude our member banks providing custodial services in Vietnam from being either a DCM or GCM.

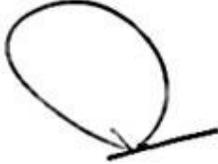
Banks in Vietnam are regulated by the State Bank of Vietnam ("SBV") and the Law on Credit Institutions. The current Credit Institution Law does not mention Clearing Services as an allowed activity for commercial banks or foreign bank branches. Additionally the regulations do not allow commercial banks to trade shares (buying/selling) directly. In order to do so they must set-up/acquire child companies/joint companies. Commercial banks, therefore, cannot be a DCM: a DCM must have a proprietary account under the proposed CCP model. Therefore, if a bank is to legally act as a DCM, changes are required to banking regulations.

In conclusion AGC member banks are currently averse to becoming DCM or GCM participants in any CCP established in Vietnam. However, our member banks stand ready at any time to engage with the SSC in further discussions to work towards a solution that all participants can accept.

Thank you for accepting this submission.

Please feel free to contact either the undersigned or our Chairman, Mr. Bernie Chew, should the State Securities Commission have any questions regarding our submission.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, loopy 'R' followed by a horizontal line.

Robert Edwards, (as attorney in fact)  
For and on behalf of Bernie Chew,  
Chairman, Asia Focus Committee,  
The Association of Global Custodians

([rob@asiafacilitators.com](mailto:rob@asiafacilitators.com))

([cbc2@ntrs.com](mailto:cbc2@ntrs.com))