

MESSAGE

To: consult/SFC@SFC
cc:

CEO Ext :

From: "Rozina Cho" <rozina.cho@cash.com.hk>
Date: 15/01/2010 12:32 PM

Subject: RE: Comment on the consultation on proposals to enhance protection for the investing public

<<Summary Comments on the Consultation paper_18Dec09 (2).doc>>

Dear Sharon,

Sorry about this attachement.

Regards,
Rozina

From: Rozina Cho

Sent: Thursday, January 14, 2010 4:08 PM

To: 'consult@sfc.hk'

Subject: Comment on the consultation on proposals to enhance protection for the investing public

<< File: Summary Comments on the Consultation paper_18Dec09 (2).doc >>

To whom it may concern,

Would like to submit our comment regarding the topic.

Thanks.

Best Regards,

Rozina Cho

Head of Compliance

CASH Financial Services Group Limited

Direct : (852) 2287-8761

Fax : (852) 2820-0673

Our Growth, We Manage

P.S. This is a computer print out, no signature is required.

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***** Summary Comments on the Consultation paper_18Dec09 (2).doc *****

Consolidated Comments on the Consultation paper on Proposals to Enhance Protection for the Investing Public

Question No.	Questions	Comments
Question 18-28 Intermediaries Conduct		
Question 18	While it is proposed that these proposals will generally apply to all investment products (securities and futures products), the SFC would like to see your view as to whether you agree that some of these proposals may be more applicable to unlisted investment products because of the different operation modes, information disclosure framework etc of such products?	Agree. The Proposal may be more applicable to unlisted investment products
Investor Characterization		
Question 19	Do you agree that intermediaries should also obtain clients' information about their knowledge of derivatives?	Agree.
	Do you agree that this characterization will be able to assist intermediaries in ensuring that the investment advice and products offered in relation to unlisted derivative products are suitable for the client?	Disagree.
	Please suggest proposed items for assessing whether an investor had knowledge of derivatives.	<ul style="list-style-type: none"> • Self learning. • Age vs derivative products concentration % in the whole investment portfolio. • The existing KYC rules are sufficient to assess the investment experience of the clients. It's not necessary to strengthen the control of derivative products. Clients should be noted the risk and return of those derivative products. • It may not easy to prove a client had taken training or attending course.

Question No.	Questions	Comments
Professional Investors		
Question 20	Do you agree that a high net worth investors (HNWI) should be considered to have specific knowledge and expertise if he is currently working, or has previously worked in the relevant financial sector for at least one year in a professional position that involves the relevant product?	No Comment
	Do you agree that a HNWI should be considered to have specific knowledge and expertise if he has undergone training or studied courses which are related to the relevant product?	No Comment
	Do you agree that either one of the above criteria suffice to categorize an investor as one having the "Specific knowledge and expertise"?	Disagree. <ul style="list-style-type: none"> • Professional investors are unwilling to provide those documents and difficult to access what is "specific knowledge and expertise". • Apart from the work experience and training, HNWI can also consult the independent financial and legal advisory.
	Do you have any other suggestions?	<ul style="list-style-type: none"> • High net worth investor can earn expertise and knowledge through self study. Success businessman doesn't need an MBA. • A risk disclaimer or disclosure should be signed by HNWI for every derivative product.
Question 21	What amount should the minimum portfolio requirement be set at? Pls give your reason.	HK\$8mn (current) <ul style="list-style-type: none"> • Every concerned party seems to get used with this figure and the current situation is running smooth • To balance the growth in economy and that of the company's business, we suggested to maintain the minimum portfolio requirement of HK\$8mn.
Pre-Sale Disclosure of Monetary and Non-Monetary Benefits		
	Do you agree to introduce commission disclosure to address the issue of conflict of interest?	No.

Question No.	Questions	Comments
Question 22	<p>Where a distributor and/or any of its associates explicitly receives or will receive monetary benefits from a product issuers (directly or indirectly), which of the following three disclosure options would be more appropriate? Pls explain your views.</p> <p>Option 1.1 – Disclosure of dollar amount or percentage</p> <p>Option 1.2 – Disclosure of percentage bands or ceiling (i.e. “X% to Y%” or “up to Y%”)</p> <p>Option 1.3 – Generic disclosure</p>	<p>It should not be disclosed.</p> <p>Option 2:</p> <ul style="list-style-type: none"> • Minimize the administrative cost • It’s more appropriate to disclose the monetary benefits in related to commission rebate/ brokerage service, rather than buy/sell trading. <p>Option 3</p> <ul style="list-style-type: none"> • The plan may be too complicated for client to understanding. The amount disclosed is not necessary for the disclosure of the conflict of interest. Therefore, we suggest to use generic disclosure.
Question 23	Do you have any suggestions as to how the percentage bands referred to in the above question should be set (e.g. up to 1%, over 1% or 2%)	<3%
Question 24	<p>Where a distributor does not explicitly receive any benefits for distribution an investment product, which of the following disclosure options would be more appropriate? Pls explain your views.</p> <p>Option 2.1 – Specific disclosure of distribution reward</p> <p>Option 2.2 – Generic disclosure</p>	Option 2
Question 25	<p>Where a distributor makes a trading profit from a back-to-back transaction, which of the following disclosure options would be more appropriate? Pls explain your views.</p> <p>Option 3.1 – Disclosure of specific trading profit</p> <p>Option 3.2 – Generic disclosure</p>	Option 2

Question No.	Questions	Comments
Others	Comments on the disclosure of benefits received by intermediary	<p>Monetary benefit is one of the fundamental and sensitive commercial secrets between the issuer and distributor, the disclosure of too much details on this area shall induce the following problems.</p> <ul style="list-style-type: none"> ■ An issuer may give different pricing to different distributor on the same product. This may depends on i) their respective business relationship, ii) terms determined by a collective products / rebate schemes , iii) specific discount period and / or a combination of these and other reasons. ■ The disclosure may let those distributors realize that their terms gotten is not the best one on a specific product. This may give them hard feeling or shall continuously bargain with the issuer for better terms. Then the relationship the issuer between their distributors may deteriorate and the issuer may eventually reduce the profit margin involuntarily. This is not a good result for future product developments. ■ The commission scheme may be very complicated which including trailer fee, volume benefit... etc. which depends of many factors and conditions rather than a simple figure. Moreover, certain factors, such as volume benefit, cannot be determined at the time of sales or attributable to particular sales. Therefore, it is not easily for the distributor to explain nor the investor to understand the full picture, if not impossible. <p>- For similar reason, the monetary benefit received by a distributor is also one of the fundamental and sensitive commercial secrets between the distributor and its sales staff. Normally such information would not or should not be disclosed to its sales staff in real commercial world.</p> <ul style="list-style-type: none"> ■ It is because the sales staff earned his commission directly from his distributor employer company. When he realizes the amount received by his employer company, he may ask for higher pay out ratio which reduces the profit margin of the distributor employer. ■ Moreover, if the commission is so complicated for the sales staff to understand in full. It shall induce high chance for them to make unintentional misrepresentation.

Question No.	Questions	Comments
		<p>- An investor with less experience and / or the product is so specific indeed that he may not realize the market norm of the fee level that a distributor shall earn. Therefore, the disclosure of just a figure to him do not give any help in accessing his investment decision.</p> <p>Moreover, the cases shall become more complicated if the involvement of certain non-monetary benefits. The quantification of the non-monetary benefit requires subjective judgment and technical elaborations. These may give investor more confusion.</p> <p>As a whole, nearly no business in real commercial world has fully disclosed the cost of products to its client. Moreover, in case an issuer gives the same level monetary benefit on the same product to two different distributors. However, the distributors give significant different pay out rate to their respective front line sales staff, then the disclosure shall give no contribution to the issue at all.</p>
	Use of Gifts by Distributors in Promoting a Specific Investment Product	
Question 26	Do you agree to restrict distributors from offering investors supermarket gift coupons, audio visual equipment and other kinds of gifts having a monetary value (except discount of fees and charges) in promoting a specific investment product to investors?	Disagree.
Question 27	Do you agree that information on the principle/ agent capacity should be included in the Sales Disclosure Document?	Agree.
	Do you agree that information on any affiliation with product issuers should be included in the Sales Disclosure Document?	Agree.
	Do you agree that the information on monetary and non-monetary benefits should be included in the Sales Disclosure Document?	Agree.
	Do you agree that discount of fees and charges available to investors should be included in the Sales Disclosure Document?	Agree.
	Do you have other views as to what information should also be included in the Sales Disclosure Document?	Discount to client is monetary benefit to client, they should know Risk level

Question No.	Questions	Comments
Audio Recording		
Question 28	Do you think the current SFC record keeping requirements are sufficient?	Agree.
	Do you agree to make it a mandatory requirement to audio record a client's risk profiling process and the advisory or selling process for investment products?	Disagree
	If audio recording is made mandatory, how long do you think these audio records should be kept for? Please explain your views.	3-6 mths
		<ul style="list-style-type: none"> • Client's personal risk profile or characteristics is privacy. • Audio recording is a very good evidence for investor or distributor to solve their disputes. • Difficult to control the quality of the audio recording, increase the cost. • The existing KYC rules provide sufficient guidelines to assess the clients' suitability during the account opening. Besides, clients have enough channels to understand the products. The proposals on audio recording cannot help the client to evaluate their suitability of the investment products. It is recommended to enhance the KYC by warning the client for the investments and giving sufficient risk disclosure statement. <p>It is very inconvenient to record ALL selling process for the investment products. Using phone verification with recording after purchasing of the products will be much more efficient.</p>
Questions 29-32 Post-sale Arrangements - Cooling-off Period		
Question 29	Do you believe that a cooling-off period would generally be beneficial for investors, or investors?	No comment.
	Do you think that costs associated with its implementation would outweigh the benefits for investors?	Agree.

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	Please let us have your further views.	<ul style="list-style-type: none"> • Involve many parties and high administrative cost. Harm the relationship of investor and distributor if the investor “輸打贏要”. • The cooling-off period may lead the cost and liability to be incurred by the agents rather than the products issuer. For instance, the issues of Lenman minibonds, the investors have claimed the repurchasing of the products from the banks (distributors), rather than Lenman Brothers (the product issuer). As a result, the distributors would seek to increase the pricing and reimburse the cost from clients. • Basically, the cooling-off period would create the systematic risk for distributors. In case of the clients sell the products back to distributors; the distributors will be exposed to the liabilities, in which other affiliations and businesses will be affected. • It leads to the uncertainty for the revenue, FRR and accounting treatments of the distributors. • Right and obligations among product issuer and distributors are not clearly refined. 																														
Question 30	<p>Do you agree that investors should be given a period of time (cooling-off period) after placement of their orders to cancel before execution?</p> <p>If so, please state which type of products you consider appropriate and could be subject to the cooling-off period.</p> <p>If no, please explain your views.</p>	<p>No comment.</p> <table border="1" data-bbox="884 174 1155 1106"> <thead> <tr> <th data-bbox="884 757 916 1106">Types of products</th> <th data-bbox="884 607 916 757">1 month</th> <th data-bbox="884 456 916 607">2 weeks</th> <th data-bbox="884 306 916 456">24 hours</th> <th data-bbox="884 174 916 306">Others</th> </tr> </thead> <tbody> <tr> <td data-bbox="916 757 948 1106">Fixed pricing product</td> <td></td> <td></td> <td>✓</td> <td></td> </tr> <tr> <td data-bbox="948 757 1011 1106">> 5 yrs monthly installment products</td> <td></td> <td></td> <td></td> <td>✓</td> </tr> <tr> <td data-bbox="1011 757 1043 1106">> 10 yrs period products</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td data-bbox="1043 757 1123 1106">Entry and exit price differences > 10%</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td data-bbox="1123 757 1155 1106">Fund, Fond, ELI</td> <td></td> <td>✓</td> <td></td> <td></td> </tr> </tbody> </table>	Types of products	1 month	2 weeks	24 hours	Others	Fixed pricing product			✓		> 5 yrs monthly installment products				✓	> 10 yrs period products					Entry and exit price differences > 10%					Fund, Fond, ELI		✓		
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Question No.	Questions	Comments										
Question 31	<p>Do you agree that a window should exist to allow investors to request an issuer to buy back the product after executing a trade?</p> <p>If you agree, please state under what circumstances do you think the window should be provided to the investors?</p> <p>If not, please explain your views.</p>	Disagree.										
Question 32	<p>On the basis that a cooling-off period is incorporated in an investment product and a client had exercised his right under the mechanism, do you agree that a distributor should deduct a reasonable administrative charge when they pass on to the client the full amount of refund (including the sales commission) received from the product issuer?</p> <p>If you agree, what is the time frame within which do you consider such payment is considered made "promptly"?</p>	<p>Any amendments or withdrawals of the purchase should be done within the given cooling-off period, which should be before execution of the trade.</p> <p>Agree.</p>										
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Additional input	<p>Do you think there are other specific areas of reform in the pre-sale, sale or post-sale process that could be introduced in the future to better protect investors?</p>	<p>Client should note and understand how many risks they can afford before they make investment or placing order.</p>										