

SECURITIES AND FUTURES COMMISSION

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From: e-workflow/IR/SFC@SFC
Date: 31/12/2009 01:35 PM

Subject: Consultation Paper Comment - Consultation Paper on Proposals to Enhance
Protection for the Investing Public (Ref: 20091231.1335.35374)

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Q18 : No. Introducing commission disclosure cannot effectively address the issue of conflict of interest.

Whether an investment product is suitable to a client or not depends on whether the features of the product, e.g. its risk level, level of liquidity, potential return etc. matches the requirements of the client. This should be determined by the client-s risk tolerance profile, his intended investment horizon, his age, his investment experience etc.

Introducing commission disclosure will only create confusion to the investing public. A member of investing public, in most cases without sufficient investment knowledge to determine whether a product really suits his financial situation, will simply consider a product with a lowest commission rate is the -best- product to him. In reality, this is generally not true.

The likely consequence is that those products with the lowest commission rates, regardless of its suitability to the investing public, will become most popular. In the extreme cases, these products will dominate the market. This would only limit the choices available to the investing public, and is unhealthy for the development of the Hong Kong financial market.

The correct direction to address the issue of potential conflict of interest:

1) The regulator could exercise a higher level of due diligence when authorizing a new investment product. E.g. the regulator could consider the term -mini-bond- misleading and disallowed its use.

2) The distributor (at the company level) could also perform sufficient due diligence before distributing a product. E.g. if the operation of certain unauthorized hedge funds are not transparent, the distributor should refuse to distribute them to the investing public.

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Q28 : No. Making it a mandatory requirement to audio record a client's risk profiling process and the advisory or selling process for investment products cannot help to protect the investors.

Since July 2009, retail banks have started audio recording customer risk profiling and investment selling process. Practically, the bank staff would first -pre-sell- and -explain- the features of an investment product without audio recording. Once a customer decides to subscribe a product, the customer will be requested to -listen- again the bank staff's standard script with audio recording. what is the point of doing so then?

This creates extra administration works for the distributors, and more importantly -wastes- the time of the investors. In fact, introducing mandatory audio recording seems to protect the distributors, rather than the investors, when a dispute comes up.

The current practice of requesting an investor for a written acknowledgment on his risk profile, his financial risk analysis, his understanding of the investment product etc. shall be sufficient for the purpose of investor protection.

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Attachment :