

MESSAGE

Sent by: "Yip, Betty" <betty.yip@deacons.com.hk>
To: consult/SFC@SFC CEOO Ext :
cc: "Financial Services Group" Ext :
<FinancialServicesGroup@deacons.com.hk> Ext :
"Mok, Joyce" <joyce.mok@deacons.com.hk>

From: "Gallaher, Rory " <rory.gallaher@deacons.com.hk>
Date: 31/12/2009 03:19 PM
Subject: Consultation on Proposals to Enhance Protection for the Investing Public
[28415(FID174561)]

Dear Sirs

Please see the attached letter and our comments on the Consultation Paper.

Yours faithfully
Deacons

Atths

Confidential Communication - This e-mail (including any attachments) is confidential and may be subject to legal professional privilege. If this e-mail has been sent to you by mistake please inform us by reply e-mail and then delete the e-mail, destroy any printed copy and do not disclose or use the information in it. There is no warranty that this e-mail is error or virus free. This e-mail is copyright. Deacons is not liable if an e-mail or attachment is altered without its written consent.



Letter to SFC_CP_Proposals to Enhance Protection for Investing Public.pdf



Deacons' Response_SFC_CP_Proposals to Enhance Protection for Investing Public.pdf



Deacons
的 近 律 師 行

By e-mail (consult@sfc.hk)

Our Ref 28415

Partner Rory Gallaher Tel +852 2825 9697
Secretary Betty Yip Tel +852 2825 9683
Direct Fax +852 2826 5375
E-mail rory.gallaher@deacons.com.hk

31 December 2009

Securities and Futures Commission
8/F Chater House
8 Connaught Road Central
Hong Kong

Attention: Consultation on Proposals to Enhance Protection
for the Investing Public

Dear Sirs,

**Consultation on Proposals to Enhance Protection
for the Investing Public**

We are pleased to attach our comments on the Consultation Paper on
Proposals to Enhance Protection for the Investing Public.

Yours faithfully,

Deacons

Encls.

Lawyers

5th Floor
Alexandra House
18 Chater Road
Central
Hong Kong
DX-009010 Central 1
Tel +852 2825 9211
Fax +852 2810 0431
www.deacons.com.hk

**Representative
Offices in China**

Beijing
Guangzhou
Shanghai

**Independent
Affiliated Firms**

Australia
Indonesia
Malaysia
Singapore
Taiwan
Thailand

Partners

Lina Cheung^{*}
David Lawrence^{*}
Lam Wing-Win^{*}
Suen Denise
Christina Hung^{*}
Kath Cole
Franki Cheung^{*}
Alec Lai
Lindsay Ester
Daisy Tong^{*}
Glenn Haley
Geoffrey Sizer
Michael Tambur
Christopher Gibbon
Susan Gordon
Gavin Nestill
Rory Gallaher
Jeremy Lam
Tobin Guan Kuo
Cheung Kwok Ka
Rosary Chow
Engina Chan
Cynthia Chung
Linda Lee
Robert Clark
Annie Tsui
Edwardo Wilton
Joseph Moran
Alfred Tse
Esther Lai
Charmaine Kam
Prudence Mak
Taylor Hui
Katherine Chan
Rodney Goh
Philip Gilligan
Gary Lui
Alexander Que
Rhode Yung
Patsy Lau
Karen Nam
Myra So
Richard Huxton
Paul Kwan
Karen Chan
Wallace Wang
Alyssa Li
Greg Hanton

Consultants

Wai-Pai Wong^{*}
James Barkam^{*}
John Rose^{*}
John Richardson^{*}
William Mackery
Winnie Lai
Wen Poon
Catherine Zhang
Jane McBride
Zhang Wei Min

^{*} Notary Public
^{*} China-Appointed Attesting Officer

Please note that the Financial Services practice
group's new fax number is +852 2826 5375

**DEACONS' RESPONSE TO SFC'S CONSULTATION PAPER (CP) ON
PROPOSALS TO ENHANCE PROTECTION FOR THE INVESTING PUBLIC**

PART II OF THE CP - PRODUCTS

What are your views on the requirement for Issuers to provide ongoing disclosure of the types of information set out in 7.6 of the SP Code throughout the term of a structured product? Please explain the reasons for your views. Are there any other matters which you think an Issuer should be obliged to disclose to investors on an ongoing basis?

QUESTIONS 1 TO 17: THE OFFER OF INVESTMENT PRODUCTS TO THE PUBLIC IN HONG KONG	
CONSULTATION QUESTION IN RELATION TO OVERARCHING PRINCIPLES SECTION	
Q1	Do you have any comments on the Overarching Principles Section of the Handbook generally or any particular provisions in the Section? Please explain your views.
A	<p>Paragraph 5.3 of the Overarching Principles Section imposes an obligation on Product Providers to exercise due care in the selection of distributors "having regard to whether such distributor is suitably qualified and competent to discharge its obligations properly". We do not think it is appropriate to impose an obligation which goes beyond checking that a distributor has the necessary licence and is provided with adequate information regarding the relevant product. A distributor has to demonstrate that it is fit and proper in order to obtain a licence. This process includes an examination of the experience, qualifications and competence of the licensee. The SFC has the power to conduct inspections to satisfy itself that licensed persons remain fit and proper.</p> <p>It may be appropriate to impose a specific training obligation for certain types of schemes, as in the case of hedge funds.</p>
CONSULTATION QUESTIONS IN RELATION TO THE SP CODE	
Q2	What are your views on the proposed disclosure requirements in Appendix C (<i>Information to be Disclosed in Offering Documents for Unlisted Structured Products</i>) and Appendix D (<i>Advertising Guidelines Applicable to Unlisted Structured Products</i>) to the SP Code?
A	
Q3	What are your views on the requirement for Issuers to provide ongoing disclosure of the types of information set out in 7.6 of the SP Code throughout the term of a structured product? Please explain the reasons for your views. Are there any other matters which you think an Issuer should be obliged to disclose to investors on an ongoing basis?

A	
Q4	What are your views on the eligibility requirements for Issuers and Guarantors of unlisted structured products proposed by the Commission?
A	
Q5	<p>(a) What are your views on the proposed requirements applicable to SPV Issuers?</p> <p>(b) What are your views on the current proposal to mandate the appointment of a Hong Kong-licensed Product Arranger for structured products issued by an SPV and make such Product Arranger responsible for ensuring an SPV Issuer's compliance with the SP Code throughout the term of the structured product?</p> <p>(c) Do you think a Product Arranger should also be appointed for structured products issued by Issuers (whether SPVs or not) or guaranteed by Guarantors where these entities are not local Regulated Entities (i.e. where the Issuers/Guarantors are not licensed banks regulated by the HKMA or corporations licensed by the Commission pursuant to section 116 of the SFO)?</p> <p>(d) Other than what has been proposed, what other obligations or requirements (if any, both before and after an offering), do you think a Product Arranger should be made subject to? Please give a list of any such additional obligations with reasons.</p> <p>Please explain your views.</p>
A	To bring Product Arrangers in line with the requirements for managers of structured funds, is it proposed that Product Arrangers should have to show sufficient human resources such as 2 key personnel with at least 5 years relevant experience in retail structured products?
Q6	<p>(a) What are your views on the proposed eligibility criteria for collateral in respect of structured products?</p> <p>(b) Do you think that collateral should be subject to any additional eligibility criteria? If so, what criteria?</p> <p>(c) What are your views on the requirement that investors' claims to collateral proceeds should be accorded priority and should not be subordinated to claims by counterparties to transactions with the Issuer that are related to the structured product?</p>

A	
Q7	Do you believe that the Commission should take into account any additional eligibility criteria for reference assets, or any other factors, when considering whether or not to accept a proposed reference asset or asset class for a structured product? If so, please list such additional criteria / factors and give an explanation for each.
A	
Q8	<p>(a) Should indicative valuations of structured products be required to be provided daily? Do you think there are additional or other measures which could help investors to assess the performance of their investments? If so, please provide details.</p> <p>(b) With regard to the proposal to provide liquidity by way of making firm price quotations, do you think an exemption is justifiable for structured products with a short scheduled tenor, e.g. of one month or less? How often do you think issuers or their market agents should provide liquidity by way of making firm price quotations? Do you think that there are other circumstances or periods during the term of certain structured products in which liquidity provision should not be required or could not reasonably be provided? If so, why?</p>
A	
Q9	Please give your views on the use of annualised returns in offering documents and advertisements for structured products.
A	
Q10	Please provide your views on the length of the transition period for compliance with SP Code requirements for unlisted structured products where the issue of documents has been authorized prior to the date of the SP Code's effectiveness.

A	
CONSULTATION QUESTIONS IN RELATION TO THE REVISED UT CODE	
Q11	In relation to proposals regarding investment activities set out in Proposal 1 (structured funds), Proposal 2 (funds that invest in FDI) and Proposal 3 (investments in other schemes), other than the proposed general requirements, what other requirements do you think should be included? Please explain your views.
A	We have prepared a schedule of our comments on the revised UT Code, which is set out as an Appendix. Our views on Proposals 1, 2 and 3 are set out in the Appendix.
Q12	In relation to the disclosure and reporting requirements set out in Proposal 4 (bilingual annual reports) and Proposal 5 (Product KFS), do you agree with the proposals? Please explain your views.
A	We note that under Proposal 4, the publication of a Chinese language annual report is voluntary for SFC-authorized schemes which are recognized jurisdiction schemes. However, this exception is not expressly provided for under the revised Chapter 11.6. The literal reading of Chapter 11.6 seems to suggest all SFC-authorized schemes are required to publish English and Chinese annual reports. We propose that a Note be inserted under Chapter 11.6 to clarify this position. Further, a Note should also be inserted to clarify that a Chinese language interim report is not required.
Q13	Do you have any comments on the revisions to the UT Code generally? Please explain your views.
A	Please see the Appendix.
Q14	What are your views about the idea of UCITS schemes which have issued KIDs under their own E.U. regulator's regime using those KIDs in place of the Product KFS? The issue here is how we should balance the importance of developing broadly standardized Product KFS across all products sold to the Hong Kong public so that it is easy for Hong Kong investors to understand and compare different products, and the commercial needs of individual fund houses to reduce costs and lessen administrative burdens. Also, if a large number of SFC-authorized funds adopt KIDs instead of Product KFS, it may defeat the purpose of comparability under the Product KFS proposal. The SFC would like to hear your views.

A	We believe that it is very important that UCITS funds can use their UCITS Key Information Document as their Hong Kong KFS. Any Hong Kong specific disclosures can still be addressed in the Hong Kong Offering Document or Information for Hong Kong Investors. It will be very confusing for investors if they are provided with both a Key Information Document and a KFS.
Q15	Do you agree that the proposed approach to implementation of the revised UT Code is acceptable and practicable, taking into account the needs and circumstances of various stakeholders? Do you have any particular views as to exactly how long the transition period should be for Existing Schemes to fully comply with the Product KFS and Other Disclosure Requirements (paragraph 191)?
A	
CONSULTATION QUESTIONS IN RELATION TO THE REVISED ILAS CODE	
Q16	Do you have any comments on (1) the Product KFS requirements, (2) the enhanced disclosure requirements on "with-profit" features and internal funds, (3) the deletion of Chapters 5, 8 and 9 of the current ILAS Code, and (4) the codification of the existing practices regarding the computation of surrender values and the notification requirements on scheme changes?
A	
Q17	Do you agree that the proposed approach to implementation of the revised ILAS Code as acceptable and practicable, taking into account the needs and circumstances of various stakeholders? Do you have any particular views as to exactly how long the transition period should be for Existing Schemes to fully comply with the Product KFS and Other Disclosure Requirements (paragraph 214(c))?
A	

PART III OF THE CP: INTERMEDIARIES CONDUCT

QUESTIONS 18 - 28: INTERMEDIARIES CONDUCT IN THE SALE OF INVESTMENT PRODUCTS IN HONG KONG, WHETHER TO THE PUBLIC OR NOT.	
Q18	Do you agree that some of the proposals in this part of the consultation paper should only apply to unlisted investment products? Please explain your views.
A	
Q19	Do you think that intermediaries should, as part of their "know your client" procedures, seek clients' information about their knowledge of derivatives and characterize those clients (other than professional investors) with such knowledge as "clients with derivative knowledge" to assist intermediaries in ensuring that the investment advice and products offered in relation to unlisted derivative products are suitable? Please give your views on the contents of the proposed measures for intermediaries to assess whether investors have knowledge of derivatives.
A	There is merit in imposing a requirement on intermediaries to conduct due diligence to ensure that their clients have an understanding of the use and risks of derivative products before recommending such products. It would be logical to extend this obligation to cases where the product in question is a fund, deposit, note or other structure which effectively acts as a "wrapper" for a derivative contract or transaction. However, we do not believe that it would be appropriate to restrict promotion of funds which make use of derivatives for hedging or investment purposes as part of their investment strategy. In such circumstances, appropriate disclosure of the strategy and risks should be made in the offering document, and it is the obligation of the manager to make use of derivatives within the scope of his mandate, but it is not necessary for an investor in the fund to have experience of trading in derivatives. We believe that the criteria which investors will need to meet to qualify as "clients with derivative knowledge" are too narrow. Very few investors will be willing to attend training courses on derivatives, and attendance will not necessarily enhance their understanding any better than reading the products offering materials. Even fewer investors will have derivative work experience, and the pool of investors with trading experience is likely to shrink if derivative products can no longer be promoted to investors who do not qualify as "clients with derivative knowledge".

Q20	<p>Should a high net worth investor be considered to have specific knowledge and expertise if:</p> <p>(a) 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; or</p> <p>(b) he has undergone training or studied courses which are related to the relevant product?</p> <p>Do you have any other suggestions?</p>
A	<p>We are concerned that the requirement to have worked with a relevant product seems too specific and suggest that working for one year in the financial sector may be sufficient.</p> <p>The application of the suitability obligation and the extent of its scope is unclear, particularly in the context of promotion by fund managers.</p> <p>In many cases, managers will appoint third party distributors or enter into commission agreements with entities such as banks, insurance companies and other financial intermediaries ("intermediaries"). In such circumstances it is clear that the investor is the client of the intermediary, and the intermediary will have the obligation to ensure suitability if the investor is not a professional investor (who meets the criteria set out in Ch. 15 of the Code of Conduct and has consented to be treated as such).</p> <p>It is important to note that the intermediary acts as the agent of the investor and not of the manager or the fund in these circumstances.</p> <p>However, where the manager promotes the fund which he manages directly to investors the position is less clear. The manager is not the agent of the investor and does not assume an obligation to advise the investor. There will not be a client agreement in the conventional sense. Under paragraph 6.4.2(b) of the Fund Manager Code of Conduct, where the manager is acting as distributor of an authorised fund the offering document and application form are regarded as the client agreement, but the position is left open where the manager is selling an unauthorised fund.</p> <p>The Fund Manager Code of Conduct does not explicitly impose a suitability obligation on the manager in relation to the sale of interests in funds which it manages. Paragraph 1.4 of the Code of Conduct creates confusion as to whether the obligation of suitability in paragraph 5.2 of the Code of Conduct is intended to apply to fund managers. Paragraph 1.4 provides</p> <p>"To the extent that a licensed or registered person acts in the capacity of a management company in relation to the discretionary management of collective investment schemes (whether authorised or unauthorised), the Code does not apply to such activity. In relation to such activities, such licensed or registered persons are subject to the Fund Manager Code of Conduct issued by the Commission."</p> <p>Revisions to definition of "Professional Investor": many hedge fund managers have accepted a condition on their license that they will only deal with professional investors as defined in the SFO and subsidiary legislation. If this</p>

	condition is intended to restrict managers from selling their funds to investors who are not professional investors as so defined, any change to the definition which would impose qualifying criteria such as those set out in 15.4 of the Code of Conduct may have a significant impact on the industry.
Q21	What amount should the minimum portfolio requirement be set at? Please give your reasons.
A	
Q22	Where a distributor and / or any of its associates explicitly receives or will receive monetary benefits from a product issuer (directly or indirectly), which of the following three disclosure options would be more appropriate? Please explain your views. Option 1.1 - Disclosure of dollar amount or percentage Option 1.2 - Disclosure of percentage bands or ceiling (i.e. "x% to y%" or "up to y") Option 1.3 - Generic disclosure
A	
Q23	Do you have any suggestions as to how the percentage bands referred to in Question 22 should be set (e.g. up to 1%, over 1% to 2%, etc)?
A	
Q24	Where a distributor does not explicitly receive any monetary benefits for distributing an investment product, which of the following disclosure options would be more appropriate? Please explain your views. Option 2.1 - Specific disclosure of distribution reward Option 2.2 - Generic disclosure

A	
Q25	<p>Where a distributor makes a trading profit from a back-to-back transaction, which of the following disclosure options would be more appropriate? Please explain your views.</p> <p>Option 3.1 - Disclosure of specific trading profit</p> <p>Option 3.2 - Generic disclosure</p>
A	
Q26	<p>Do you consider it appropriate to restrict distributors from offering investors supermarket gift coupons, audio visual equipment and other kinds of gifts having monetary value (except discount of fees and charges) in promoting a specific investment product to investors? Do you consider it appropriate to restrict distributors from offering investors supermarket gift coupons, audio visual equipment and other kinds of gifts having monetary value (except discount of fees and charges) in promoting a specific investment product to investors?</p>
A	
Q27	<p>Do you have any comments on the proposed information content of the Sales Disclosure Document which includes (a) capacity (principal or agent); (b) affiliation with product issuer; (c) monetary and non-monetary benefits; and (d) discount of fees and charges available to investors?</p>
A	
Q28	<p>Do you think audio recording of the client risk profiling process and the advisory or selling process for investment products should be made mandatory or the current record keeping requirements are sufficient? If audio recording is made mandatory, how long do you think these audio records should be kept for? Please explain your views.</p>

A	
---	--

PART IV OF THE CP: POST-SALE ARRANGEMENTS - COOLING-OFF PERIOD

QUESTIONS 29 TO 32: THE FEASIBILITY OF A COOLING-OFF PERIOD FOR SALES OF INVESTMENT PRODUCTS TO THE PUBLIC IN HONG KONG	
Q29	Do you believe that a cooling-off period would generally be beneficial for investors, or do you believe that costs associated with its implementation would outweigh the benefits for investors?
A	We do not believe a cooling off period is merited in relation to products which offer regular redemptions without penalty. If cancellation rights are introduced, investors who cancel must bear any market risk during the cooling off period.
Q30	Please provide your views on whether investors should be given a period of time after placement of their orders during which execution of the trade is delayed and the investor is given an opportunity to cancel the order before the trade is executed. If your view is that this would generally be beneficial to investors, please provide your views on the types of investment products for which it should be considered and the appropriate cooling-off timeframe.
A	See Q29.
Q31	Please provide your views on whether, and in what circumstances, you think a window could or should be provided to investors after the date the trade in the relevant product is executed during which an issuer should be required to buy back the product at an investor's request.
A	See Q29.
Q32	On the basis that a cooling-off period is incorporated in an investment product and a client has exercised his right under the mechanism, do you consider that a distributor should promptly pass on to the client the full amount of refund (including the sales commission) received from the product issuer less a reasonable administrative charge? Please explain your views.
A	See Q29.

APPENDIX

Comments on the Revised UT Code as Set Out in Appendix A Section II of the Consultation Paper on Proposals to Enhance Protection for the Investing Public

Chapter	Page	Deacons Comments
Explanatory Notes (a)		<p>Please could the Commission confirm that changes to the Code will only be made after consultation with the industry?</p> <p>Please could the Commission confirm that communications of changes to the UT Code will cover any change made to:</p> <p>(1) the Appendices A1, A2 and B which are not set out within the body of UT Code but are to appear on the SFC website;</p> <p>(2) Appendix F which is a stand-alone document.</p> <p>Concern here is that provisions on the website may change without industry notification (e.g. an SFC alert email) as we have experienced with FAQs. We support the Commission's move towards more web-based information but can there be a commitment to strengthening external communications?</p>
I.2 (Scheme established in recognized jurisdictions)	1	<p>Could the RJS list be expanded to include all UCITS schemes authorised for sale to the public within any state in the EU so that, for Financial Resources Rules purposes, an investment in a UCITS scheme may be recognized as an asset of a licensed entity.</p> <p>To provide certainty for recognised jurisdiction scheme managers, it should be clear which requirements of the Code must be complied with and which are deemed to be complied with notwithstanding differences between the Code and UCITS requirements,. If there is a change in the SFC's requirements it should be implemented after notice to allow managers to decide whether to deauthorise or to comply with the revised requirement.</p> <p>The issue of regulatory change affecting recognised jurisdiction schemes was highlighted by the introduction of UCITS III, which caused problems for the industry generally, but in particular for funds of funds investing in recognised jurisdiction schemes which were not authorised; upon transition to UCITS III the position was initially taken that such underlying schemes ceased to be recognised jurisdiction schemes and became subject to an aggregate 10% limit which could have required major restructuring of fund of fund portfolios.</p>

1.3 (Documents to be supplied)	2	Would it be possible for the Commission to set out details of any other certification/confirmations and undertakings required and which party can give these? The FAQs on Authorisation have recently been amended to address this but further guidance would be welcome. Further, the wording of such confirmations may vary from one case officer to another. For the purpose of efficiency and consistency, we suggest that the confirmations required by the SFC could be standardized and be published on the SFC's website.
2.1 (Products Advisory Committee)	4	Where are details of the "Terms of Reference" set out? Will the Commission continue to give reasons for decisions on request?
3.11A	7	The definition of "Product Code" under Chapter 3.11A does not include the SP Code. Is there any particular reason why the SP Code is not included in the definition?
4.5 (General obligations of trustee/custodian)	9	Where only a custodian is appointed, the board of directors plays the supervisory role of a trustee and the custodian would not normally perform this role. Could the UT Code reflect this?
4.5(a)	9	It is common for custody agreement to limit the liability of the custodian for sub-custodians outside the custodian's group where selected by the manager, or non group sub-custodians in certain markets (generally emerging markets). Can the Code be amended to make it clear that such limitations are effective in the absence of an express waiver? Can the Code make it clear that custodians are not responsible for losses arising as a result of the insolvency of sub-custodians outside the custodian's group?
4.5 (c)	9	In practice, the custodian may not agree to have such term in the custodian agreement as the calculation of the NAV is undertaken by the administrator. Could the UT Code reflect market practice in recognising the differing functions of the Board, the administrator and custodian?
4.5 (f)	9	Most Recognised Jurisdiction Schemes' accounts do not contain a custodian report.
4.5 (g)	10	It is relatively uncommon to issue certificates and this provision creates confusion: units/shares can be created and issued prior to receipt of subscription monies. A standard trust deed provides that if cleared funds are not received within a specified number of days prior to or following the Dealing Day as at which the relevant units were issued, the manager may cancel such units.

4.6 (Retirement of trustee/custodian)	10	In practice, a custodian is likely to require termination of the fund if a replacement custodian approved by the Commission cannot be found within a relatively short period.
5.1	11	Please clarify whether <u>both</u> the manager <u>and</u> any delegate with investment discretion must meet the qualifying criteria. Is the position different for hedge funds? In particular, is it necessary for both entities to be regulated in an AIR?
5.5 (Criteria for Acceptability of Management Company)	12	<p>With regards to 5.5 (b), for a fund manager licensed in an AIR, would it be possible for the Commission to rely on the home regulator to have verified the track record of the two key personnel? This would help to promote a level playing field with current proposals for the treatment of structured products.</p> <p>The Note under Chapter 5.5 sets out the requirement for the due diligence process adopted by the management company in selecting and monitoring the sub-managers on an on-going basis. Could the Commission please clarify the extent of such disclosure? Further, can the Commission clarify whether the disclosure on the due diligence process is only required for sub-managers who do not have experience relating to the public funds? In other words, such disclosure is not required if the sub-managers meet the requirement under Chapter 5.5(b)?</p> <p>In the Consultation Paper in June 2008, the SFC allowed certain flexibility in relation to the appointment of sub-managers under multi-manager schemes. Would the Commission consider codifying such flexibility in the revised UT Code for the purpose of clarity and certainty? Further, there is an emerging concept of transition managers for UCITS schemes. Would the Commission consider providing for this in the revised UT Code?</p>
5.10	13	The obligation of the manager should be to manage the scheme in the "best interests" of the holders, rather than the "exclusive interest" of the holder as the manager should have regard also to the interests of others (such as creditors of the fund).
6.2 (English and Chinese Offering Document)	15	For translation certificates, would the Commission move to a system of recognising certificates of approved translators?
6.8 (Changes to scheme documentation)	16	Please clarify how this applies to UCITS schemes (in particular those which do not provide for meetings)?

6.15 (Dealing)	17	Under the revised Chapter 6.15, payment of redemption proceeds may be delayed where the market(s) in which a substantial portion of investments is made is subject to legal or regulatory requirements thus rendering the payment of redemption moneys within the one month timeframe not practicable. Would the Commission consider providing for such flexibility where there is a substantial change in the market condition that disposal of assets to meet redemption proceeds would subject the fund to substantial loss?
6.18 (Fees)	19	<p>Please consider whether a general requirement for fairness and full disclosure could be introduced for performance fees?</p> <p>Please confirm that the intention of the new note is to provide an exception from the high on high principle, so that if the benchmark is exceeded, a fee can be paid although the NAV per share is below the previous high?</p> <p>We suggest it should also be made clear that a fee can be charged on redemption notwithstanding it covers a period of less than a year and notwithstanding the fund is below its previous high provided the redemption value is higher than the redeeming holder's purchase price (or benchmark).</p>
6.19 (a) (Fees)	19	Please clarify that a distribution fee can be paid as is common for UCITS schemes, e.g. to a shareholder servicing agent provided it is paid out of the management fee or disclosed as an addition to the management fee.
7 Investment: core requirements	20	Please confirm that the restrictions under Chapter 7 do not apply to Chapter 8.8 UCITS schemes.
7.3 (Spread)	20	Would the Commission change the wording to "neither listed, quoted <u>nor dealt in</u> on a market" to cover the OTC markets?
7.10 (Futures and commodities)	21	Is it possible to elaborate on the calculation of futures exposure?
7.11 (Investments in other schemes) and Note to 7.17	22	Please clarify the application of the Chapter 7 investment restrictions on underlying schemes? We suggest that listed REITS and other forms of listed closed ended investment companies (such as UK investment trusts) should be treated as listed securities, and not be subject to the limits on investment in collective investment schemes, save as to provisions to minimise double charging of fees payable to the manager or its associates.

7.14, 7.15 and the Note and thereunder	22	<p>7.14/15 which limit fees payable when investing in associated funds do not apply to investments in unauthorised/non-recognised jurisdiction schemes; neither does 7.16(d) (which applies to feeder funds). Is this intentional?</p> <p>The Note under the new Chapter 7.15 states that the prohibition on the management company from obtaining a rebate on any fees or charges levied by and underlying scheme or its management company does not apply to underlying schemes which are non-recognized jurisdiction schemes and not authorized by the SFC. Could the Commission clarify why such exemption is applicable to non-recognized jurisdiction schemes that are not authorized by the SFC? Further, this seems to be inconsistent with the requirement under Chapter 10.12 which prohibits the management company from retaining cash rebates or other rebates from a broker or dealer.</p>
7.25 (Applicability of restrictions to umbrella funds)	24	As the Commission requires confirmation of no cross-liabilities between sub-funds of an umbrella fund, is this provision necessary? Should sub-funds not be treated the same as other funds managed by the same manager?
8 Specialized schemes	25	For UCITS schemes, could the Commission confirm that it will accept the home regulator's classification of the fund for the purposes of determining under which provision of Chapter 8 the scheme would be authorised in Hong Kong?
8.1 (b) (UPMF-Investment and borrowing limits)	25	If REITS, investment trusts and ETFs are to be treated as CIS for the purpose of Chapter 7 please confirm whether REITs, investment trusts and ETFs are CISs for the purposes of UPMFs.
8.1 (c)	25	Can this provision be disapplied for UCITS schemes?
8.1 (g)	25	Can this provision be disapplied for UCITS schemes?
8.2 (Money market/cash management funds)	26	<p>Would the Commission consider conforming these provisions to UCITS restrictions?</p> <p>Can it be made clear that bonds with regular interest reset dates are treated as having a remaining maturity equal to the period to the next reset date?</p>
8.2 (f) (Investment limitations)	26	Could the Commission confirm that this provision can be disapplied for UCIT schemes as in practice the average portfolio maturity and remaining maturity of an instrument for UCITS funds differ from this requirement.
8.7 Hedge Funds	38	The US\$50,000 minimum subscription amount for single strategy schemes does not encourage

		<p>promoters to seek authorisation in light of the private placement exemptions.</p> <p>The restriction on charging assets to the prime broker (8.7(b)(ii)) to the amount of indebtedness to the prime broker does not provide the prime broker with sufficient margin for security.</p> <p>There is increasing use of managed accounts for funds of hedge funds, and this should be permitted.</p>
8.8 (Structured funds)	48	<p>The new Chapter 8.8 defines a structured fund as a collective investment scheme which seeks to achieve its investment objective primarily through investing substantially in financial derivative instruments. Could the Commission please clarify what "substantially" means in term of percentage of the fund's assets (e.g. 75% of the fund's assets)?</p> <p>Is it possible to clarify which provisions of other chapters apply to UCITS schemes? For example, can a UCITS scheme just comply with the accounts requirements of the lead regulator and not Appendix E? Are the additional audit requirements for Luxembourg funds still justified?</p>
8.8 (a)	49	<p>The new Chapter 8.8(a) requires the management company of a structured fund and the issuer of the financial derivative instruments to be independent of each other. However, in practice it is common for the management company and the issuer of the financial derivative instruments to be within the same group of companies. Would the SFC consider allowing management company and the issuer of the financial derivative instruments to be within the same group of companies subject to the issuer meeting certain additional requirements such as capital requirement, credit ratings etc.</p>
8.8 (e) (ix)	50	<p>The new Chapter 8.8(e)(ix) states that collateral cannot be applied for any purpose except for the purpose of being used as collateral. Could the Commission please clarify that this does not prohibit a fund from investing cash that it receives as collateral in other money market instruments.</p>
8.8 (h) (ii)	51	<p>We note that the new Chapter 8.8(h)(ii) requires additional disclosure on potential conflict of interests and the related risks arising from the same entity or entities within the same group acting in different capacities in relation to the scheme. This seems to imply that the management company and the issuer of the financial derivative instruments may be within the same group of companies provided that there is sufficient disclosure. Could the Commission clarify that this is the position?</p>

8.9 (k)	53	<p>The new Chapter 8.9(k) requires the collateral disclosure requirements in 8.8(g) to be complied with by a scheme falling under Chapter 8.9. Chapter 8.8(g) provides that where the aggregate value of all collateral held by a scheme represents 30% or more of its net assets value, it shall publish on the scheme's website the nature of such collateral as at each quarter end within one month after the relevant quarter. Such publication would only be useful if the details of the relevant website are disclosed in the offering document of the scheme. As Chapter 8.9(k) applies to UCITS schemes as well, the implication is that the website of the relevant UCITS schemes may need to be disclosed in the offering document. If so, this would trigger requirement for compliance of the relevant website with Appendix F. This may result in additional costs being incurred. Would the Commission consider exempting UCITS schemes from complying with Chapter 8.9(k) and requiring the disclosure under Chapter 8.8(g) to be made in the interim and annual report of the schemes instead?</p>
9.9 (Jurisdiction)	55	<p>Please clarify that this is limited to unit trust deed, articles of association of a corporate fund or any other agreement under which Hong Kong investors may have rights (which would not include agreements such as management, custodian, and administration agreements).</p>
10.9 - 10.13 (Transactions with connected persons)	57	<p>Are these provisions to apply to UCITS schemes, which have their own requirements on connected party transactions?</p>
11.1 (b) (Ongoing disclosures)	59	<p>For multi-manager products, could the Commission consider the Luxembourg and Irish approach of allowing changes to managers within the same group without offering document updates or notices so long as information available and certain conditions met?</p>
11.8 (Maintenance of a website)	61	<p>Chapter 11.8 requires a scheme to maintain a website as a matter of best practice. For a scheme that currently does not have a website accessible to Hong Kong investors, could the Commission clarify whether there is any time period for the scheme to set-up such website? Would the requirement for a website be discharged if the offering document, circulars etc. are available through the website of the distributors of the scheme in Hong Kong?</p> <p>Would the Commission require the website to be maintained in both English and Chinese? How will this apply to UCITS schemes?</p>

Appendix D: Contents of the constitutive documents	71	Could the Commission confirm that Appendix D does not apply to UCITS schemes?
Appendix E: Contents of financial reports	75	Could the Commission consider if UCITS schemes can comply only with the requirements of the home regulator and if there is any need to continue with the special audit procedures for Luxembourg schemes?