

SECURITIES AND FUTURES COMMISSION

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Subject: Consultation Paper Comment - Consultation Paper on Proposals to Enhance
Protection for the Investing Public (Ref: 20091231.1408.58908)

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Q18 : Yes, we agree that it should only apply to unlisted investment products because unlisted investment products are not subject to any regulatory framework, investors' interests are then less protected, whereas listed investment products are well covered by regulatory framework.

Q19 : Whenever the investment advice and products in relation to unlisted derivative products are offered to clients, we think that it should offer to those clients with derivative knowledge. If clients wish to purchase the unlisted derivative products, intermediaries should seek clients' information about clients' knowledge of derivatives in their know your client procedures. To ascertain whether investors have knowledge of derivatives, we believe using investors' prior trading experience in derivative products or current/previous work experience related to derivative products is a better measure than using investors' attendance to derivative product training courses.

Q20 : Apart from the criteria set out in paragraph 15.3 of the Code of Conduct in relation to assessing the knowledge and expertise of professional investors, we think related working experience in the relevant financial sector for at least one year in a professional position that involves the relevant product can be used as one of the criteria to assess the knowledge and expertise of professional investors or high net worth investors. Further, we agree that intermediaries should re-assess the knowledge, expertise and investment experience of those professional investors/ high net worth investors if such kind of investors has ceased trading for two years or more in the relevant market or product.

Q21 : We think that the current minimum portfolio requirement of HK\$ 8 million for professional investors is sufficient because the size of an investor's portfolio has no direct relationship with whether this investor is professional or novice, or whether this investor has sufficient investment experience, knowledge and expertise in the relevant product/market. Moreover, revising the threshold upwards may have adverse effects on private placement and direct placement of IPO shares to professional investors.

Q22 : We think option 1.3 - generic disclosure would be more appropriate as the market practice for the exchange traded products is to disclose the charges/fees to the clients in the price schedule on product range basis at the time when the client enters an agreement with the intermediary to deal in those types of products instead of conveying to the client each time a trade is undertaken. In addition, options 1.1 and 1.2 will reveal some sensitive commercial information of the intermediary to the investors.

Q23 : No, we do not opt for this disclosure proposal.

Q24 : We think generic disclosure would be more appropriate because a distributor may not receive any monetary benefits, and if a distributor receives non-monetary benefits, it may be difficult for the distributor to

quantify such non-monetary benefits for specific disclosure.

Q25 : Generic disclosure would be more appropriate because generic disclosure may address the concern over revealing the sensitive commercial information.

Q26 : We do not have any strong opinion on restricting distributors from offering investors gifts with monetary value in promoting a specific investment product because we believe investors rely more on the product suitability than the attractiveness of gift when making investment decision. Further, we support that distributors should be allowed to offer discount of fees and charges to investors for substantial purchases/transactions.

Q27 : We think it would be appropriate to include (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 in the content of the proposed Sales Disclosure Document for unlisted investment products. But for the monetary and non-monetary benefits, we think generic disclosure would be sufficient. The proposed Sales Disclosure Document for unlisted investment products should contain Chinese or English version.

Q28 : We do not think audio recording of the client risk profiling process and the advisory or selling process for investment products should be made mandatory, however, it can serve as a recommended best practice for selling unlisted investment products.

Q29 : To certain extent, a cooling-off period would generally be beneficial to investors. However, we advocate that a cooling-off period should be implemented for unlisted investment products only because it may not be practical and commercially viable to incorporate a cooling-off period for exchange-traded products.

Q30 : We believe it is absolutely impractical and not beneficial to investors. Time is of the essence in the markets and investors may prefer immediate execution of their orders instead of any delay in execution.

Q31 : If a cooling-off period or a window provided to investors would be implemented for unlisted investment products, it should come without any conditions. If the investors request to realize their investment in unlisted products during cooling-off period, the issuers should be required to buy back the products at the prevailing market prices.

Q32 : If a client exercises his right during a cooling-off period, a distributor should pass on the client the realized amount, which includes the sales commission, received from the product issuer but less a reasonable administrative charge. However, the total amount payable to the client should be capped at the total principal amount invested to discourage any speculation.



18. 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.

O. Yes, we agree that it should only apply to unlisted investment products because unlisted investment products are not subject to any regulatory framework, investors' interests are then less protected, whereas listed investment products are well covered by regulatory framework.

19. 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 those 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.

O. Whenever the investment advice and products in relation to unlisted derivative products are offered to clients, we think that it should offer to those "clients with derivative knowledge". If clients wish to purchase the unlisted derivative products, intermediaries should seek clients' information about clients' knowledge of derivatives in their "know your client" procedures. To ascertain whether investors have knowledge of derivatives, we believe using investors' prior trading experience in derivative products or current/previous work experience related to derivative products is a better measure than using investors' attendance to derivative product training courses.

20. Should a high net worth investor be considered to have specific knowledge and expertise if:

- i. 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
- ii. he has undergone training or studied courses which are related to the relevant product?

Do you have any other suggestions?

O. Apart from the criteria set out in paragraph 15.3 of the Code of Conduct in relation to assessing the knowledge and expertise of "professional investors", we think related working experience in the relevant financial sector for at least one year in a professional position that involves the relevant product can be used as one of the criteria to assess the knowledge and expertise of "professional investors" or high net worth investors. Further, we agree that intermediaries should re-assess the knowledge, expertise and investment experience of those "professional investors"/ high net worth investors if such kind of investors has ceased trading for two years or more in the relevant market or

product.

21. What amount should the minimum portfolio requirement be set at? Please give your reasons.

O. We think that the current minimum portfolio requirement of HK\$ 8 million for “professional investors” is sufficient because the size of an investor’s portfolio has no direct relationship with whether this investor is professional or novice, or whether this investor has sufficient investment experience, knowledge and expertise in the relevant product/market. Moreover, revising the threshold upwards may have adverse effects on private placement and direct placement of IPO shares to “professional investors”.

22. 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.

- i. Option 1.1 – Disclosure of dollar amount or percentage (Under this option, a distributor would disclose the monetary benefits that are receivable by it and/or any of its associates in dollar amount or a precise percentage of the investment amount.)
- ii. Option 1.2 – Disclosure of percentage bands or ceiling (i.e. “x% to y%” or “up to y%”) (a distributor would disclose the monetary benefits that are receivable by it and/or any of its associates in percentage band or ceiling of the investment amount.)
- iii. Option 1.3 – Generic disclosure (a distributor would simply make a generic disclosure of the existence and nature of each of the monetary benefits and where possible, the method of calculating each benefit.)

O. We think option 1.3 - generic disclosure would be more appropriate as the market practice for the exchange traded products is to disclose the charges/fees to the clients in the price schedule on product range basis at the time when the client enters an agreement with the intermediary to deal in those types of products instead of conveying to the client each time a trade is undertaken. In addition, options 1.1 and 1.2 will reveal some sensitive commercial information of the intermediary to the investors.

23. 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)?

O. No, we do not opt for this disclosure proposal.

24. 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 (A distributor of an in-house product would ascertain how much an external distributing firm in Hong Kong is paid for

distributing the same or similar product)

- Option 2.2 – Generic disclosure (the distributor would make a generic disclosure stating that while it does not explicitly receive any benefits in distributing the investment product, the associate will benefit from the origination and distribution of the product. This disclosure obligation would also apply when the product issuer and distributor are the same company.)

O. We think generic disclosure would be more appropriate because a distributor may not receive any monetary benefits, and if a distributor receives non-monetary benefits, it may be difficult for the distributor to quantify such non-monetary benefits for specific disclosure.

25. 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.

- i. Option 3.1 – Disclosure of specific trading profit (a distributor would have to disclose the profit from the transaction in a dollar amount, percentage, percentage band or percentage ceiling together with a description of the methodology used.)
- ii. Option 3.2 – Generic disclosure (a distributor would disclose to a client that it is making a trading profit without disclosing further details.)

O. Generic disclosure would be more appropriate because generic disclosure may address the concern over revealing the sensitive commercial information.

26. 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?

O. We do not have any strong opinion on restricting distributors from offering investors gifts with monetary value in promoting a specific investment product because we believe investors rely more on the product suitability than the attractiveness of gift when making investment decision. Further, we support that distributors should be allowed to offer discount of fees and charges to investors for substantial purchases/transactions.

27. 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?

O. We think it would be appropriate to include (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 in the content of the proposed Sales

Disclosure Document for unlisted investment products. But for the monetary and non-monetary benefits, we think generic disclosure would be sufficient. The proposed Sales Disclosure Document for unlisted investment products should contain Chinese or English version.

28. 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.

O. **We do not think audio recording of the client risk profiling process and the advisory or selling process for investment products should be made mandatory, however, it can serve as a recommended best practice for selling unlisted investment products.**

29. 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?

O. **To certain extent, a cooling-off period would generally be beneficial to investors. However, we advocate that a cooling-off period should be implemented for unlisted investment products only because it may not be practical and commercially viable to incorporate a cooling-off period for exchange-traded products.**

30. 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.

O. **We believe it is absolutely impractical and not beneficial to investors. Time is of the essence in the markets and investors may prefer immediate execution of their orders instead of any delay in execution.**

31. 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.

O. **If a cooling-off period or a window provided to investors would be implemented for unlisted investment products, it should come without any conditions. If the investors request to realize their investment in unlisted products during cooling-off period, the**

issuers should be required to buy back the products at the prevailing market prices.

- 32. 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.
- O. If a client exercises his right during a cooling-off period, a distributor should pass on the client the realized amount, which includes the sales commission, received from the product issuer but less a reasonable administrative charge. However, the total amount payable to the client should be capped at the total principal amount invested to discourage any speculation.**