

MESSAGE

To: • consult/SFC@SFC
cc:

CEOO Ext :

From: "Tommy Chan" <tommy.chan@piba.org.hk>
Date: 31/12/2009 03:57 PM

Subject: Re: Response to the Consultation Paper on the Proposal to Enhance Protection
for the Investing Public

Dear Sirs,

Our response to the Consultation Paper on the Proposal to Enhance Protection for the Investing Public is enclosed for your reference.

Regards,



The Secretariat of PIBA Response from PIBA.pdf



香港專業保險經紀協會
PROFESSIONAL INSURANCE BROKERS ASSOCIATION

Response to the Consultation Paper on the Proposal to Enhance
Protection for the Investing Public

31 December 2009

On Products

The Handbook:

(1) We at PIBA hold great concern that there is no clarification to the existing regulatory environment in Hong Kong relating to the provision of advice on underlying investments for ILAS products. We believe that intermediaries are subject to a self-regulatory system, and intermediaries are also subject to the oversight of the Insurance Authority, however; we respectfully request that the SFC clarifies whether the SFC regulates intermediaries conduct relating to advising on the underlying investments of an ILAS product. We request the SFC to clarify and confirm their stance that they do not regulate the business conduct of insurance intermediaries with respect to giving advice or offering discretionary service on underlying investments in an ILAS product. We further request the SFC to confirm insurance intermediaries can receive remuneration when offering advisory or discretionary service on underlying investments in an ILAS product. Our concern stems from the fact that the underlying investments are indeed "securities" as defined with the SFO and therefore any intermediary providing advice relating thereto would be required to be licensed under the SFO.

(2) After we came across clause 5.3 of the Code on Investment-Linked Assurance Schemes, which refer to illustration document for Investment-Linked Assurance Scheme, we have a proposed amendment which could reflect more on the clients' need, and it is stated below:

~~"An illustration document must be prepared by the Authorized Insurer in conjunction with each proposed investment by each prospective scheme participant. Alternatively the Commission may allow the provision of a standard illustration for each scheme, provided that the surrender values illustrated are for a contract with a term based on a maximum commission scale and a minimum premium requirement."~~

That is, we are proposing customized illustrations. PIBA acknowledges the amendment would eliminate the need for the standard illustration. However we believe the customized illustration, which will be provided to each prospective scheme participant, could provide more details to reflect the clients' needs. We at PIBA are fully aware that this enhanced disclosure requirement would affect the day-to-day operation of both the Insurance Authority and insurance intermediaries, therefore we request 9 months to be a sufficient transition period for implementation.

(Incorporated with Limited Liability) 註冊有限公司

Units 07&08, 25/F, China Insurance Group Building, 141 Des Voeux Road Central, Hong Kong.

香港中環德輔道中141號中保集團大廈25樓07-08室

Tel電話: (852) 2869 8515 Fax 圖文傳真: (852) 2770 2372 Website 網址: www.piba.org.hk E-mail 電郵: info@piba.org.hk



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(3) Clause 5.4 of the Code on Investment-Linked Assurance Schemes sets out the minimum requirement for the information to be included in the illustration document. The emphasis has continued to remain on the surrender value. PIBA believes that the financial implications of applying a premium holiday should be included in the illustration document, as we have learned from previous experience. The warning should also include the decision to apply premium holiday for an extended period of time, which it should be amended to the following:

"Warning: You should only invest in this product if you intend to pay the premium for the whole of your chosen premium term. Should you terminate this product early or should you cease paying the premium early, you may suffer a significant loss"

We also believe the Declaration section should be amended to reflect the client having been given, read and understood the product Key Facts Statement.

(4) Clause 5.4 recommended an assumed rate of return should be used in the illustration document. PIBA believes that, given the lessons we learned from the previous financial crisis, we should include the downside risk, i.e. the impact of potential investment losses, in the illustration. PIBA are fully aware of the possible effect of discouraging sales, however we believe it is necessary for the prospective scheme participant to understand the risk through the explanation of the brokers.

(5) In the "Information to be disclosed in the principal" brochure which is the Appendix A to the Code on Investment-Linked Assurance Schemes, we request for an inclusion of the following in the summary of fees and charges:

- Fees and charges
- Frequency and the duration of each fee and charge

On the Intermediaries Conduct

Average Investor, Professional Investor and unlisted derivative products:

(6) Point 15 and 20 of Part III refers to 'average investor' yet fails to provide a definition. If a suitable definition is to be included, it may be defined as 'an investor who has the experience of investing in any financial investment authorized by SFC'.

(7) Points 21 to 25 refer to unlisted derivative products and there are proposals for intermediaries when recommending these types of products to clients with or without knowledge of derivatives. However PIBA would respectfully ask the SFC, why is it relevant to

(Incorporated with Limited Liability) 註冊有限公司

Units 07308, 25/F, China Insurance Group Building, 141 Des Voeux Road Central, Hong Kong.

香港中環德輔道中141號中保集團大廈25樓07-08室

Tel 電話: (852) 2889 8515 Fax 傳文傳真: (852) 2770 2372 Website 網址: www.piba.org.hk E-mail 電郵: info@piba.org.hk



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the client's knowledge in derivatives whether the product is listed or unlisted? PIBA finds this to be somewhat illogical since the subject of concern is the knowledge of the product and not the listing of the product.

(8) Point 26 aims to define what constitutes a client with knowledge of derivatives. PIBA agrees with the 'know your client' requirement and believes that before providing service to clients, intermediaries must conduct 'know your client' procedures. However we believe specifically requiring the implementation of a process to assess clients with derivative knowledge' would not be necessary, since we believe a competent intermediary would assess the level of knowledge and comfort the client has with any particular product or service available. The clarification or codification should be that clients without knowledge of the particular product or service should be suitably educated or informed before provision/sale of the service of product in question. Therefore, PIBA believes that the SFC's current Code of Practice will suffice if intermediaries are held to it and disciplined accordingly when in breach.

(9) Point 32 provides a definition for professional investors. PIBA is satisfied with the existing definition and do not see any need for change. The current amount of HK\$8 million as a threshold is fine. The current rule that requires intermediaries to assess and be reasonably satisfied that the person is knowledgeable and has sufficient expertise in relevant products and markets is an approach that can be applied to most situations of concern.

Pre-sale disclosure of monetary and non-monetary benefits:

(10) Point 67 and 68 refer to a business model with back-to-back transactions. It is suggested that any trading profit is similar to the commission that may otherwise generated, hence it should be disclosed. However PIBA believes that the nature of trading profit is fundamentally different from that of commission earning, therefore the disclosure of trading profit is in stark contrast to other industries where the buyer does not know the seller's trading profit, as a result, the disclosure of such profit will make little if any sense.

Use of gifts

(11) Points 75 to 79 explore the pros and cons of restricting intermediaries from offering investors gift. While PIBA believe there should be no restriction on the gift offering, an intermediary should not act in a way that would materially distract the client's attention from the features of the products. The question of whether a material distraction has taken place should be a question of fact.

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Sales disclosure document:

(12) For investment-linked assurance schemes, we propose the following items should be incorporated into the client agreement/policy documents:

- Capacity to act
- Affiliation to produce issuers
- Benefit disclosure and generic terms of receiving discount of fees and charges

By including the aforementioned items into existing documentation, PIBA believes that there would be a higher likelihood the client would read such documentation.

Audio recording:

(13) It is virtually impossible for the business models of most Insurance Brokers to apply audio recording of client meetings since clients are most often served outside of the office.

-THE END-

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