

31 December 2009

To : Securities and Futures Commission  
8/F., Charter House,  
1 Charter Road,  
Hong Kong  
Attn : Consultation Proposals

Dear Sir,

Re: Consultation Paper on Proposals to Enhance Protection for the Investing Public

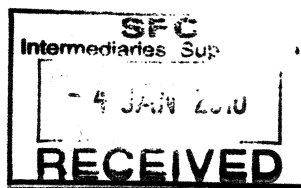
We hereby submit our response to the Consultation.

Yours faithfully,  
For and on behalf of  
Quam Securities Company Limited



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Kevin Sew Hoy  
Director



## SFC Consultation on Code of Conduct and Selling Practices

### Consultation Response from Quam Securities Co. Limited

|   | Questions   | Response   |
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|   | <b>Question in relation to Overarching Principles</b>   |            |
| 1 | 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.  | No comment |
|   | <b>Questions in relation to the SP Code</b>   |            |
| 2 | 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?   | No comment |
| 3 | 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?  | No comment |
| 4 | What are your views on the eligibility requirements for Issuers and Guarantors of unlisted structured products proposed by the Commission?  | No comment |
| 5 | (a) What are your views on the proposed requirements applicable to SPV Issuers?<br><br>(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?<br><br>(c) Do you think a Product Arranger should also be appointed for structured | No comment |

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|   | <p>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> |            |
| 6 | <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>   | No comment |
| 7 | <p>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.</p>   | No comment |
| 8 | <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</p>   | No comment |

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|    | <p>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> |            |
| 9  | <p>Please give your views on the use of annualized returns in offering documents and advertisements for structured products.</p>   | No comment |
| 10 | <p>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.</p>   | No comment |
|    | <p><b>Questions in relation to the UT Code</b></p>   |            |
| 11 | <p>In relation to proposals regarding investment activities set out in Proposal 1 (structured funds), Proposal 2 (funds that invest in FDIs) 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.</p>  | No comment |
| 12 | <p>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.</p>   | No comment |
| 13 | <p>Do you have any comments on the revisions to the UT Code generally? Please explain your views.</p>  | No comment |
| 14 | <p>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</p>  | No comment |

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|    | <p>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.</p> |  |
| 15 | <p>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)?</p>  | No comment   |
|    | <p><b>Questions in relation to the revised ILAS Code</b></p>  |  |
| 16 | <p>Do you have any comments on<br/> (1) the Product KFS requirements,<br/> (2) the enhanced disclosure requirements on "with-profit" features and internal funds,<br/> (3) the deletion of Chapters 5, 8 and 9 of the current ILAS Code, and<br/> (4) the codification of the existing practices regarding the computation of surrender values and the notification requirements on scheme changes?</p>   | No comment   |
| 17 | <p>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))?</p>   | No comment   |
|    | <p><b>Questions in relation to Selling Practices</b></p>  |  |
| 18 | <p>Do you agree that some of the proposals in this part of the consultation paper should only</p>   | Yes – we believe that it should only apply to unlisted investment products or “non-exchange traded |

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|    | <p>apply to unlisted investment products? Please explain your views.</p>  | <p>products”. However, we further seek the SFC definition of what “unlisted investment products” consist? Furthermore, a further possible proposal would be to restrict to only allow “unlisted structured products” only.</p> <p>We suggest the Commission set out a list of approved securities and futures and commodities exchanges that should be recognized and these not only to be within the HK jurisdiction but from other countries and the respective products that are listed on these exchanges that will exempt the need for further compliance to these selling practices.</p> <p>We believe there may be a wider interpreted definition of “exchanges” and this can lead to mis-interpretation. Exchanges such as approved ATS, black boxes, bulletin boards can also be assumed as exchanges and such products that are allowed to be traded deemed and “listed”.</p>  |
| 19 | <p>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 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?</p> <p>Please give your views on the contents of the proposed measures for intermediaries to assess whether investors have knowledge of derivatives.</p> | <p>We believe that firstly, subject to our reply to Question 18 , that any product traded on a approved exchange, whether it be a simple equity securities, warrant options, knock out warrants, covered warrants, futures contract, commodity contract, ETF, REIT, bond, CBBC, equity options, debentures, listed funds etc, should all be exempt for the need to gain client understanding of such products, as we believe the prudent vetting of any such product that is allowed to be listed on an approved exchange have undergone certain risk assessment criteria which limits the client to a certain amount of loss, provided that prudent margin call and contract close out of client positions are enforced, then the client should only lose the amount of the capital or margin he/she has invested.</p> <p>For other non-exchange traded products which are traded on an OTC (over the counter) fashion, then it is possibly important to gain the full understanding and assessment of the clients knowledge to deal in any products which are dealt on an OTC basis including derivatives, including complex structure derivative products which may impose elements of unlimited downside risk to the client.</p> <p>We also believe the categorization and use of the definition of Professional Investor is widely mis-</p> |

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|    |  | <p>interpreted and can cause much confusion in all realms of the investment process.</p> <p>Any further introduction for defining another investor category may lead to wide interpretation and determination thereof.</p>  |
| 20 | <p>Should a high net worth investor be considered to have specific knowledge and expertise if:</p> <ul style="list-style-type: none"> <li>(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</li> <li>(b) he has undergone training or studied courses which are related to the relevant product?</li> </ul> <p>Do you have any other suggestions?</p> | <p>We do not consider this a prudent assessment. Any inference by mere fact that a HNW investor is or has worked in an employment related to the financial sector is too general an assumption. Furthermore, this may place restrictive burdens on due diligence and validation on financial intermediaries to assess this criteria.</p> <p>Furthermore, this can also stifle the development of markets if there were restrictions to only allow HNW investors to certain products. The validation and onus should not be placed on the financial intermediary to make assessment, but rather for the investor to make representation that he/she has understood the risks and the products that he or she intends to deal.</p> <p>Where you advocate that investors should undergo training or certification before they may deal in certain products, we consider that this is good. However, financial intermediaries should not be in the position to make this assessment. Financial intermediaries shall only rely on this as a means of determining investor categorization, and shall not be held responsible for such validation. We believe that it may stifle market development.</p> <p>Investor Characterization is very subjective and can not be fully relied upon for the sale of higher risk products. Mere HNW does not imply a greater risk taker.</p> <p>There is no parameter set out of what is HNW investor other than the definition of Professional Investor.</p> <p>Some intermediaries internally have investor segmentation for the purpose of marketing which are based on demographic profiles. These may not necessarily correlate to what an investor may want to invest if his/her risk tolerance is not matched. As we discuss below under Professional Investors, it is not</p> |

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|    |   | <p>appropriate for each intermediary to be assessor and determiner of the clients categorization, the outcome of which can be widely vary among intermediaries.</p>  |
| 21 | <p>What amount should the minimum portfolio requirement be set at? Please give your reasons.</p>  | <p>We believe that the current definition of “Professional Investor” is sufficient and any further modification would lead to further confusion and administrative burden.</p> <p>Furthermore, financial intermediaries face due diligence and validation difficulties from potential investors who are required to satisfy the Professional Investor definition, as some investment products and their offering memorandums have indicated that such offerings are only to be made to persons who are Professional Investors. These offerings include primary placements of GEM securities, which in many offering documents stipulates that such places shall only be Professional Investors. We believe this runs contrary to the ambit that dealing in GEM securities in the open market is not restrictive to Professional Investors, but only requires the risk disclosure of GEM to be conveyed to the investors in the client assessment process. In this example, there is clearly contradicting use of the Professional Investor definition which applies to the same type of securities. Unless there is a process to eliminate the unequivocal application, continual confusion and misuse will arise.</p> |
| 22 | <p>Where a distributor or any of its associates explicitly receives or will receive monetary benefits from a product issuer (directly or indirectly) for distributing an investment product, which of the following three disclosure options would be more appropriate? Please explain your views.</p> <p>Option 1.1 – Disclosure of dollar amount or percentage<br/> Option 1.2 – Disclosure of percentage bands or ceiling (i.e. “x% to y%” or “up to y%”)<br/> Option 1.3 – Generic disclosure</p> | <p>Option 1.3 – generic disclosure is preferred.</p> <p>However for the usual broking of exchange traded products o securities and futures, the market practice now discloses the charge to the clients in the price schedule on product range basis at the time when client enters an agreement to deal in those types of products, and it in not conveyed to the client each time a trade is undertaken.</p> <p>However, we believe that for products that are dealt with respect to ”price spreads” such as bonds, it would be commercially sensitive to have to disclose the exact dollar or percentage bands of commission/spreads that an intermediary may receive</p>   |

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|    |   | <p>from an issuer or as a markup. As there are many intermediaries vying for distribution rights from issuers and if there were an open transparent disclosure of the amount of commission between distributors, then the competitive bargaining element among intermediary distributors and issuers may have certain detrimental impact.</p>  |
| 23 | <p>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)?</p>   | <p>No – we do not advocate for this disclosure proposal.</p>   |
| 24 | <p>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</p> <p>Option 2.1 – Specific disclosure of distribution reward</p> <p>Option 2.2 – Generic disclosure</p> | <p>Option 2.2 – Generic disclosure</p> <p>Answer same as for Question 22. One distributor may not receive any monetary benefits, but this should not exclude other intermediary distributors from receiving any.</p>   |
| 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? Please explain your views.</p>  | <p>Generic Disclosure</p> <p>As discussed in Question 22.</p> <p>It is always commercially sensitive in certain investment products, especially the OTC trading of bonds and debentures where there may not be any reference to market value. These products are usually traded ad hoc and liquidity is not as transparent. In many situations it is a trade between willing buyer and willing seller. If an intermediary acts as a market maker, whereby, may act as a Principal in the deal, then possible disclosure to the client on both buy and sell side should be disclosed. However, no further disclosure of the implied trading profit the Principal needs to be made as it is in the interest of the intermediary to exercise commercial judgment and in the deal.</p> |
| 26 | <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</p>   | <p>Yes in spirit we agree.</p> <p>However, many equities securities brokers who have online trading platforms that offer free stock price quotes based on the clients volume of business. As</p>   |

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|    | charges) in promoting a specific investment product to investors?   | stock quote information is currently not free, we see it as a necessary component in facilitating clients to trade securities online. It can be implied that this is a “gift” which may need to be carved out in the offering.  |
| 27 | Do you have any comments on the proposed information content of the Sales Disclosure Document which includes<br>(a) capacity (principal or agent);<br>(b) affiliation with product issuer;<br>(c) monetary and non-monetary benefits; and<br>(d) discount of fees and charges available to investors?   | In reply on each point:-<br><br>a) Yes agree<br>b) To what extent does the explanation is required.<br>c) As per our comments in Question 22 and 25<br>d) As per c above  |
| 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 | <p>We do not believe that the mandatory audio recording of client risk assessment will serve any purpose in the betterment of investor protection. In some ways there may arise opportunities of even greater mis-selling. We would emphasize that the current record keeping of phone order recording of 3 months is sufficient. Otherwise audio recording for KYC and client assessment of investment risk is not administratively feasible. The business models of banks in dealing with investors is different to that of broker/dealers, in which the clients of <i>non-bank</i> intermediaries are usually more sophisticated.</p> <p>Unless there is a uniform process for all intermediaries to apply a systematic and methodical approach to the assessment or there is an independent regulatory or a sanctioned third party body making investment product risk assessment, then the interpretation of any assessment shall be wide and differing among intermediaries.</p> <p>However, we feel that once a client has undergone such investment risk categorization, then we feel that there may be certain reliance thereafter from such assessment to sell all investment products that match and / or are within that client’s investment profiling category.</p> <p>We believe the proposal for audio recording is only to facilitate the possible dispute resolution of future claims that may arise for any mis-selling. We believe that any imposition of this rule is not a conclusive solution to any future dispute resolution. In all respects it will stifle market development and add to further compliance and administration costs.</p> |

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|    | <b>Questions in relation to Post Selling practices</b>   |   |
| 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?   | <p>For exchange traded products, we believe this is totally impractical and not commercial.</p> <p>For any other product sold, there must be an automatic recourse in the Issuers selling documentation giving relief to the intermediary who sold this product, with a solution for refund settlement procedure documented with clear refund guidelines.</p> <p>Furthermore, OTC products sold in the secondary market may need to be considered as well as it is then not the Issuer who is the seller, but a third party. Unless specific rules are made and enforced by the clearing agent to hold both buyer and sellers money during the cooling period, it will be an unviable proposal.</p> <p>Problems may arise where intermediaries who also distribute products that are not registered or authorized by HK regulatory authorities. The issues of any such "Cool Off Policy" should be clearly stipulated to the Clients in a "Key Fact Statement" as there may not be any recourse available from Issuers who are not based in HK.</p> |
| 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. | <p>This would not be practical for exchange traded products. Time is of the essence in these markets. Clients prefer swift execution. By providing any exist route, this will lead to further uncertainty and malpractice from both clients and broker dealers.</p> <p>For non exchange traded products, this would only be practical if there were a back to back arrangement from the Issuer or arrangement for secondary market OTC products as discussed on Question 29.</p>  |
| 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.  | For non exchange traded products, and any products that do not have direct correlation to immediate exchange market prices, we believe a period of 5 business days would be sufficient.   |

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| 32 | <p>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.</p> | <p>We believe that the proposed rules for the disclosure of intermediaries remuneration and incentives in selling such product, will improve transparency to the Client at time of the investment decision. Then any Cooling Off refund <u>should not</u> include the selling commission and this remains to the intermediary. We also envisage that an administration fee can also be levied for any refund applications under a Cooling Off period.</p> |
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