



證券商協會有限公司
THE INSTITUTE OF SECURITIES DEALERS LTD.

Securities and Futures Commission
8th Floor
Chater House
8 Connaught Road Central
Hong Kong

31st December, 2009

Attn : Mr. Stephen Po, Senior Director, SFC

Dear Stephen,

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

On behalf of the Institute of Securities Dealers Ltd, we are pleased to provide our comments to the SFC and consent to your publishing our submission on the SFC web site as necessary. However, to avoid doubt, all comments we make as follows are our opinions and, we shall not assume any liabilities for any claims due to your publishing our submission to the public.

We commend SFC's efforts to raise investor protection and confidence in its proposals and in actively seeking industry comments on the Consultation Paper on Proposals to Enhance Protection for the Investing Public (Consultation Paper), issued on 25 Sept 2009.

We are generally supportive of the proposed SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Products (SP) as it adds transparency and provides guidance on unlisted structured products which was lacking before.

Our views on the proposed disclosure requirements in Appendix C (Information to be Disclosed in Offering Documents for Unlisted Structured Products) and Appendix D (Advertising Guidelines Applicable to Unlisted Structured Products) to the SP Code are as follows. We think the sales disclosure document a good idea to add transparency for marketing of unlisted products. We support the proposal to limit the use of gifts by distributors in promoting specific investment products and the



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proposed advertising guidelines. We are also supportive that SFC explicitly require intermediaries to seek, as part of the “know your client” process, client information including knowledge of derivatives if and when intermediaries promote such unlisted derivative products.

We support the proposals 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, given SP is unlisted and thus 'higher' risk, we believe the proposals on disclosure enhancements and increased product transparency (including eligibility requirements for issuers, guarantors and SPVs and risk disclosure requirements) are for the good of the market.

On the revised Unit Trusts (UT) Code, we particularly welcome the Product key facts statement (KFS), because from the perspective of an investor, KFS makes it more user friendly.

We have no specific comments on the revised Code on Investment-Linked Assurance Scheme (ILAS) proposals.

On intermediaries conduct, we agree that some of the proposals in this part of the consultation paper should ONLY apply to unlisted investment products, because they are 'unregulated' and represent a different/higher level 'risk' and should be 'reigned in' to SFC's regulatory regime for better investor protection.

We 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... However, in practice, intermediaries should be able to rely and trust clients' representation and clients should not be using 'ignorance' as an excuse to escape their contractual obligations.

No matter how well and precisely the offer document is written and how clearly the intermediaries have explained to the investors on the details of the product, the investors must be made aware of and be able to access the risk level that they are



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willing to bear before their decisions to invest. There is nothing which could better protect the investors than by taking all necessary steps to protect themselves in their own accord. The SFC must continue to educate investors on the issue of investor responsibility that once they enter into an investment agreement they are bound by the agreement and they must understand the consequences of their decisions.

We support the proposal that a high net worth investor be considered to have specific knowledge and expertise if (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 (b) he has undergone training or studied courses which are related to the relevant product. We believe the minimum portfolio requirement of HK\$ 8 million for high net worth investors sufficient and need not be changed under the Professional Investor Rules. This has been working well and there is no reason to change.

On pre-sale disclosure of monetary and non-monetary benefits, in the business model 1 scenario where a distributor distributes a product and it or any of its associates explicitly receives monetary benefits from that product issuer (directly or indirectly), and business model 2 scenario where a distributor does not explicitly receive any monetary benefits for distributing an investment product issued by itself or any of its associates, we believe that specific disclosure of dollar amount or percentage appropriate. Although specific disclosure entail higher compliance costs, in the above instances, the benefits of transparency and provision of most relevant and easily understandable specific information to investors outweigh the costs. Whereas in the business model 3 case where a distributor makes a trading profit from a transaction, we support generic disclosure. We understand that specific disclosure may reveal sensitive commercial information on the distributor but as a minimum, clients have the right to know at least the trading profits, thus generic disclosure appears to be the practical solution.

Audio recording of the client risk profiling process and the advisory or selling process for investment products should NOT be made mandatory. We believe the current record keeping requirements are sufficient. We are of the view that problems with the Lehman saga resulted from misrepresentation/mis-selling by a few black sheep in the industry, other intermediaries and brokers should not be penalized and incur mega costs to setup audio recording because of them.



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We believe that a cooling-off period would generally be beneficial for investors, but we await further guidance on how this could be practically implemented. On the basis that a cooling-off period is incorporated in an investment product and a client has exercised his right under the mechanism, we believe that a distributor should promptly pass on to the client the full amount of monies invested excluding any profit less a reasonable administrative charge by the intermediaries.

Further to the Consultation Paper we would like to raise the issue that investors are confused as to which regulator is responsible for the over the counter market and where to make a complaint. Under the current regulatory framework, SFC sets the standards, through rules, codes and guidelines, for conducting regulated activities. SFC clearly serves as the lead regulator for market operators as well as market intermediaries while HKMA is the front line watchdog for banks, HKMA is expected to apply and administer the same standards as set by the SFC. The fact that over 20,000 complaints made by investors on the Lehman products were on allegations of mis-selling by banks signaled that the HKMA might not have been fulfilling its duties in regulating the banks to the same level as the SFC in regulating registered Dealers. We are of the considered opinion that banks conducting regulated activities should be licensed with the SFC and be regulated and supervised by the SFC.

If you have any questions, please feel free to contact our directors Dr. Cynthia Lam, Mr. Jojo Choy or our Company Secretary at isd_secretary@yahoo.com.hk.

Yours sincerely,
For and on behalf of
The Institute of Securities Dealers Ltd

Jojo Choy
Vice-Chairman