



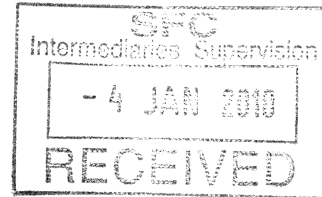
CONVOY 康宏理财
your finance navigator

Ref: CFG-LCD-L-0912002

Date: 30 December 2009

BY HAND ONLY

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



Dear Sirs,

Re: **SFC's Consultation Paper on Proposals to Enhance Protection for the Investing Public**

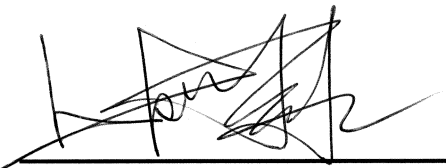
We refer to the above and are pleased to enclose herewith our response to the same.

Should further discussion or clarification be needed, please do not hesitate to contact Mr. Ben Wang, our Legal Counsel, at 3601 3627.

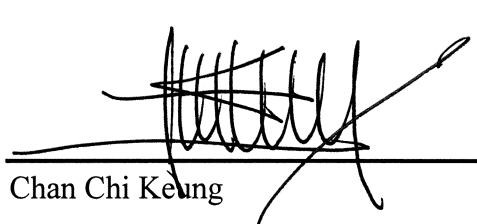
Yours Faithfully,

For and on behalf of
Convoy Asset Management Limited

For and on behalf of
Convoy Investment Services Limited



Mak Kwong Yiu



Chan Chi Keung

Convoy Group's Position Paper
in response to
SFC's Consultation Paper on Proposals to Enhance Protection
for the Investing Public

Introduction

Convoy Group consists of a number of member companies specializing in financial services, including Convoy Asset Management Limited ("CAM") and Convoy Investment Services Limited ("CIS").

CAM is licensed by SFC to carry out Types 1, 4 and 9 of regulated activities, whilst CIS is licensed for Types 1, 2 and 4.

As at the date hereof, there are approximately 1,000 individual SFC licensees accredited to either or both of CAM and/or CIS.

CAM and CIS support SFC's initiative to enhance protection for the investing public.

CAM and CIS, as key players in the market providing first class financial services to the investing public, and as representatives of Convoy Group are interested in sharing their views with the SFC.

General comments are therefore made on the subject consultation paper, followed by specific response in relation to these two parts of the subject consultation paper:-

1. Intermediary Conduct (i.e. Questions 18 to 28)
2. Cooling-off Mechanism (i.e. Questions 29 to 32)

Convoy Group's General Comments

1. Convoy Group supports any initiative that generates more effective regulations and offers genuine protection to the investing public.
2. Therefore, Convoy Group supports the high level objectives of the subject consultation paper.
3. Convoy Group is, however, mindful that the majority of general investing public in Hong Kong may not have a high level of knowledge in finance, and as such would benefit from a simpler and standardized information disclosure regime.
4. Further, new measures should not unreasonably escalate operation costs of market participants whereby undermining their ability to compete with other international and regional players.
5. As such, to ensure that the new measures, once implemented, will offer genuine benefits to the investing public as well as financial industry as a whole, it is desirable that the followings be first of all conducted:-
 - a. Consumer research, for estimating if new measures will be welcomed by the investing public, and the information proposed to be disclosed together with the calculations for the same, if any, can be readily understood by them or the new measures will only “mere compliance” formalities offering no real meaning to the investing public but hindering the conduct of speedy transactions;
 - b. Costs benefit analysis for SFC's proposal;
 - c. Development of web-based compliance tools for market participants to consider to adopt; and
 - d. Preparation of template documents and samples of generic disclosure of remuneration (if applicable) for market participants to consider to follow.
6. Besides, experience of other leading jurisdictions, whether positive or negative, in their implementations of comparable protection measures (NOT just whether they have such measures, and NOT just the letters of their provisions) should be examined by the SFC, with synopsis shared with market participants and

investing public, in order that all can make informed and more meaningful response to the SFC.

7. Last but not least, there should be clear depiction of scope of applicable products and services. Such terms as “unlisted products” and “derivatives” could be too vague and wide.

Convoy’s Specific Response

Question 18 – 28 Intermediaries Conduct

Scope of Application

Question 18

Question	While it is proposed that these proposals will generally apply to all investment products (securities and futures products), the SFC would like to seek your view as to whether you agree that some of these proposals may be more applicable to unlisted investment products because of the different operation needs, information disclosure framework etc of such products?
Answer:	Strongly Agree.
Explanation on views	<p>For listed products, such as stocks, warrants, options etc., the commission/brokerage fees to be charged are already clearly set out at the outset. Further, transactions for these listed products are very often done on a “dealing only” basis (except for discretionary accounts where the conduct of intermediaries and protection against conflict of interest are provided for by rules governing Type 9 RA and those regarding conduct of funds manager). Therefore, further “remuneration disclosure” has no meaningful application to listed products.</p> <p>Further, remuneration disclosure for sake of avoidance of conflict of interests arising from the offer of financial advice should have very limited application to those products which, while unlisted, are similar to listed products in that transactions are mostly done on “dealing only” basis, without much reliance on advice from</p>

	<p>financial advisors. By way of examples, units in mutual funds (particularly in light of increased public awareness regarding the same thanks to the high volume of advertisements in the market, and information regarding the same on the internet (e.g. through such popular websites as http://hk.mutualfund.yahoo.com)) are very often self-directed by investors without advice.</p> <p>At the end, it seems remuneration disclosure for avoidance of conflict of interests should be required only for those complicated structured products (such as those involving swaps and derivative arrangements, continuing payment obligations and/or complicated structures) regarding which retail investors may need to rely heavily on advice/recommendations by intermediaries.</p> <p>If remuneration disclosure will be required, it is very important that there will be a very clearly defined scope of applicable products, which will be complicated structured products, at the same time.</p>
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Investor Characterization

Question 19

<p>Question</p>	<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 than those professional investors) with such knowledge as “clients with derivative knowledge” to assist intermediaries in ensuring that 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>Answer:</p>	<p>Disagree at this stage. Further fine-tuning of the proposal is desired.</p>

<p>Explanation on views</p>	<p>The term “derivative” can cover a wide range of products.</p> <p>Investors with experience in such derivatives as warrants and options do not necessarily have experience and knowledge in such structured products as ELN etc. This problem is further magnified by the fact of ever-on-going evolution of both names and substance of structured products. Thus, it is unlikely that characterization which is based on client’s so called knowledge in derivative will help in ensuring suitability for clients.</p> <p>It appears that further classification of derivatives with examples and continuous updates must be in place before implementation of the proposed measures.</p>
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Question 20

<p>Question</p>	<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>
<p>Answer:</p>	<p>Agree with the idea for “deemed knowledge”.</p>
<p>Explanation On views</p>	<p><u>Further suggestions</u></p> <p>Under the current Code of Conduct, an intermediary will be relieved from the “suitability obligations” under paragraph 15.5 for professional investors. However, the intermediary is still required to comply with the Code of Conduct, which for example requires the intermediary to safeguard the best interest for clients. Will “best interest” nonetheless include suitability? Will this lead to confusion?</p>

	It appears that there should be a more comprehensive and clear “relaxation” provisions in relation to professional investors. Otherwise, further tightening or re-defining of the meaning of professional investors will not be helpful for the industry.
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Question 21

Question	What amount should the minimum portfolio requirement be set at? Please give your reasons.
Answer:	Maintain at \$8 million.
Explanation On views	Hong Kong’s requirement is still higher than that of U.K. Further, especially after the SARS episode in 2003 and economic crisis in 2008, Hong Kong dollar should not have experienced sharp reduction in purchasing powers in real terms, as compared with 2001.

Pre-sale disclosure of benefits

Question 22

Question	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 Option 1.3 – Generic Disclosure
Answer:	Option 1.3. – Generic Disclosure.
Explanation On views	Yet, disclosure obligation should be restricted to such kind of unlisted products over which clients will likely depend on advice and solicitation by intermediaries, and thus, non-disclosure will

	<p>potential lead to conflict of interest.</p> <p>Such products will naturally include complicated structured products like derivatives and swaps arrangements, but exclude mutual funds which are mostly transacted on a “dealing only” basis.</p> <p>Further, SFC should elaborate how generic disclosure may be made preferably with examples for different types of applicable products. In so doing, it should be borne in mind the importance of balancing client’s right to know, and the commercial needs to preserve secrecy. For example, it may be considered to require a highlighted reminder to client that advisers’ services are not free and that advisers will receive commission from product provider without the need to spell out the exact amount together with complicated formula not readily understandable to clients. This will need to depend on the result of suitable consumer research. Thus, the importance of having consumer research prior to implementation of any proposals is once again stressed.</p>
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Questions 23, 24 and 25

Same views as for question 22.

Question 26

Question	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?
Answer:	Strongly agree to restrict the use of such gifts.
Explanation on views	Intermediaries should focus on clients’ needs when advising clients.

Question 27

Question	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 benefit (d) discount of fees and charges available to investors?
Answer:	Agree with (a) and (b) for unlisted complicated structured products.
Explanation on views	<p>There is reservation regarding “non-monetary benefit”. For example, how should intermediary deal with sponsorship for corporate event (e.g. annual dinner) which is not contributable to a particular trade?</p> <p>Further, it is difficult to mandate intermediary to set out availability of discount, which will likely turn out to mean “necessity for discount”, whereby even more confusion can be caused.</p>

Audio Recording

Question 28

Question	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 be kept for? Please explain your views.
Answer:	Yes to a limited extent. It should be made mandatory only for unlisted complicated structured products.
Explanation on views	For protection of the investing public, and to avoid the argument that members of the investing public do not know the contents of written confirmation, it is wise to have some audio-recorded records.

	<p>Yet, it is unnecessary and impractical for the whole risk profiling and selling process to be recorded. Beside, there will be difficulty to define what constitutes the “whole” process.</p> <p>It is worthy to consider requiring audio-record client’s signification of understanding of key factors such as the fees structure, year term, risk disclosure and confirmatory instructions to proceed etc. for complicated structured products.</p>
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Questions 29 – 32: Post-sale Arrangements – Cooling-off Period

Question 29

Question	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?
Answer:	No. Cooling off period might not be beneficial investors, and the costs might outweigh the benefits. Perhaps SFC should consider first of all conducting costs benefits analysis in this regard.
Explanation on views	<p>For listed products, cooling-off period is not needed given the products can be relatively easily realized in the market.</p> <p>For products akin to listed ones, like mutual funds, cooling-off period is also not necessary given the ease of realization.</p> <p>For complicated structured products, it can be foreseen that it will be costly to unwind the underlying hedging mechanism (which costs will likely be included as part of the administrative costs for cooling off to be borne by the investors), and the costs involved can easily outweighs the benefits, whilst cooling-off mechanism might create a false impression to the investing public that tends to cause them to underestimate the importance of exercising cautions before entering into transactions and to mis-understand that they can have refund in</p>

	<p>full anyhow.</p> <p>Have there been successful examples of this sort of measures elsewhere? Can SFC share more information with the investing public and market players in this regards?</p>
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Question 30

Question	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 in 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.
Answer:	No. Not practicable.
Explanation on views	Consider this example: how if there will be a sharp rise in asset price during the delayed period? Will there be argument as to who should bear the loss of potential gain?

Question 31

Question	Please provide our 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.
Answer:	No.
Explanation on views	See explanation for question 29.

Question 32

Question	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.
Answer:	Not Applicable.
Explanation on views	No applicable given the response to questions 28 to 31.

Date: 30 December 2009