

30 December 2009

BY COURIER

Securities and Futures Commission
8/F Chater House
8 Connaught Road Central, Hong Kong
Attention: Consultation on proposals to enhance protection for the investing public

Dear Sirs,

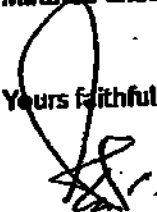
Consultation Paper on Proposals to Enhance Protection for the Investing Public

We are pleased to provide our comments in response to the Consultation Paper on Proposals to Enhance Protection for the Investing Public dated September 2009 issued by the Commission (the "Consultation Paper").

We welcome the initiatives to strengthen the existing regulatory regime in Hong Kong and are generally supportive of the principles of the proposals set out in the Consultation Paper. Nevertheless, it would be helpful if the Commission could further consider and clarify the matters raised in the attachment.

We hope you would find the submission useful and welcome opportunities to discuss further. We do not have any objection to the Commission publishing this letter and its attachment on the Commission's website. If you have any questions, please feel free to contact myself or Ms. Miranda Chau at 2800-2817.

Yours faithfully,



Ken Wai Ming Tam
Chief Executive

**RESPONSES TO THE CONSULTATION PAPER ON PROPOSALS TO ENHANCE
PROTECTION FOR THE INVESTING PUBLIC**

Part I: Section I - Overarching Principles

We are pleased to see that the SFC continues to adopt “disclosure based approach” coupled with conduct regulation on intermediaries who sell products.

Chapter 3.5 - Proper protection of the assets

While the seven general principles in Chapter 3 provide guidance to product providers, it is not clear what the product providers’ obligations are in relation to the oversight over the trustees/custodians in complying with GP3 - Proper protection of the assets. This principle appears to be relevant to the obligations of the trustees/ custodians. It is suggested that the SFC further clarifies how GP3 applies to a product provider where the product provider has entrusted the assets to the fund’s trustees/ custodians.

Chapter 4.1(c) – General duties and obligations

It is suggested that the SFC should clarify whether there is a materiality threshold under Chapter 4.1(c) in relation to reporting of breaches of the Handbook. If a breach is rectified in accordance with the requirements of the Handbook, does that breach still need to be reported? We note that under Section 12.5(a) of the Code of Conduct, only “material” breaches are required to be reported.

Chapter 5.3 – Selection of distributors

While we agree that product providers shall exercise due care and diligence in the selection and appointment of distributors, distributors/counterparties/service providers are regulated by their respective regulators and subject to their applicable laws and regulations. Accordingly, we do not think it would be appropriate for product providers to determine, nor should it be the product providers’ responsibility to oversee, whether such distributors/counterparties/service providers comply with their applicable laws and regulations and are suitably qualified and competent to discharge their obligations properly. In addition, a product provider will not have access to confidential information of these parties which may impact its assessment as to whether these parties are suitably qualified or competent. We would therefore suggest that the SFC clarifies what is expected of a product provider, in terms of the level of due diligence to be done on distributors in order comply with Chapter 5.3.

Chapter 7.2 – Issue of advertisements

It is proposed that a competent delegate be designated by the senior management of the issuer of an advertisement to ensure that the advertisement complies with the applicable product code. As the advertisement is issued by the corporate entity and not an individual per se, it should be the responsibility of such corporate entity together with its responsible officers to ensure that a system of due review process and controls are in place in relation to issuance of the advertisements. We believe that the proposal of appointing a designated delegate solely to undertake this task would not improve the process but would instead impose unnecessary burdens and liabilities on the designated delegate.

Part I: Section II – Code on Unit Trusts and Mutual Funds

Chapter 6.15 – Dealing

We support the flexibility that SFC will now give to payment of redemption proceeds when the markets in which a substantial portion of investments is made is subject to legal or regulatory requirements (such as foreign currency controls) thus rendering the payment of the redemption money within the one calendar month's time period not practicable. This relaxation will broaden investment choices available to local investors.

Chapter 6.18(b) – Performance fee

We support the relaxation to allow charging of performance fee based on a fund's out-performance vis-à-vis a benchmark. It is suggested that adequate disclosure be included in offering documents to provide investors with clear explanation of the calculation basis, including the possibility that pursuant to such calculation methodology, a performance fee would be charged on the fund's out-performance vis-à-vis that of the benchmark regardless of whether there had been an absolute increase in the net asset value of the relevant fund.

Chapter 8.1 and 8.2 – Unit portfolio management funds and money market funds

It would be helpful for the SFC to clarify which investment restrictions under Chapter 7 (if any) are intended to apply to unit portfolio management funds ("UPMFs") and money market funds.

In particular, we believe that Chapter 7.22 – *Limitations on securities in which directors/officers have interests* should not be applicable to UPMFs. This is because unlike shares of a listed company, the market price of which are determined by the supply and demand of the shares in the market, the net asset value of an open-ended unit trust is not directly affected by the market demand

for units of that fund. Whilst there is a danger that the director/officer of the investment manager of a fund may abuse his/her position to influence the investment decisions of fund managers in hope of bidding up the market price of the shares in which he/she owns in the fund at the expense of the interests of the other investors in the fund, we believe the same potential conflict of interest issue does not arise in the context of an UPMF. This is because the decision by an UPMF to subscribe to the units of an underlying fund should not have any direct impact on the value of the units of that underlying fund.

In addition, since the requirement of Chapter 7.22 already applies to the underlying fund, therefore, any potential conflict of interest issues that may arise from the director/officer's interests in the stocks held by the underlying fund would already have been addressed. As such, we strongly believe that this requirement should not be imposed on UPMFs.

Chapter 11.6 – Bilingual Financial Reports

Whilst Chinese is the preferred language for certain investors in Hong Kong, the proportion of such investors in the clientele of different funds may vary. The proposal may create an inconsistency and confusion for retail investors if the differentiation is jurisdiction based, namely mandatory for non-recognized jurisdiction schemes ("non-RJS") versus optional for recognized jurisdiction schemes ("RJS"). Especially in the case where a product provider offers and a distributor carries both non-RJS and RJS products, it will be difficult to justify to investors why Chinese language financial reports are available for some funds but may not be available for others. We believe that, in terms of the level of disclosure, funds should be treated equally regardless of their domicile as it is the appropriateness of content that should drive disclosure.

For the Chinese translated version when made available, an abridged version should suffice and it should be at the discretion of the relevant product provider to determine the contents.

Part III – Intermediaries Conduct

Investor characterization

We do not believe this requirement should apply to investment funds, in particular funds authorized pursuant to the Code on Unit Trusts and Mutual Funds which are allowed to use financial derivative instruments. One of the advantages investment funds provide to investors is the investment expertise offered by investment management professionals. Requiring the investors to possess prior

specific knowledge before investing in a fund would defeat this fundamental benefit and unduly limit investment choices available to the general public.

We believe the investor characterization requirement intends to address the "suitability" issue, i.e. whether a product is suitable for a particular investor. Therefore, we suggest that it would be more appropriate if the requirements should focus on documentation of the rationale of advice and know your customer ("KYC") requirement to include information about clients' knowledge of derivatives. While the suitability requirement already exists and the disclosure of risks has also been enhanced in the past year, we believe the existing regulations suffice. More guidance on the performance of KYC (e.g. amount of information to be obtained from clients) may be provided in respect of exotic products.

Pre-sale disclosure of monetary and non-monetary benefits and Sales Disclosure Document

Disclosing transaction based remuneration earned is workable in most cases, e.g. the initial charge is already being disclosed in either the receipt issued or the contract note. However, as non-transaction based remuneration (such as trailer fee) is often not quantifiable at the point of sale, it is not practical to issue the proposed sale disclosure document (or verbal disclosure) on specific disclosure of this type of information before every transaction. In particular, disclosing non-monetary benefits for intra group distribution is impractical as they are purely internal arrangements and would not be of any value to clients.

As explained above, many practical issues regarding possible disclosure requirements for non-transaction based benefits need to resolve in order to provide meaningful information to the investors. Thus, disclosure in relation to transaction based benefits at the point of sales can take a more specific format, whilst generic disclosure for non-transaction based benefits will suffice.

In terms of the Sales Disclosure Document, we suggest the SFC allows flexibilities for disclosures to be made in any form of documents provided to the investors, including the account opening document.

Use of gifts

We are supportive of the proposal of restricting the use of gifts as a marketing tool to promote a particular financial product. Yet, we believe that gifts should be allowed for brand promotion, relationship building and general non-product specific activities as these gifts do not serve to entice an investor to invest in a particular financial product.

Audio recording

We support the need to address documentation and audit trail of the selling process. Yet, the means of record keeping should be at the choice of individual distributor. As such, we believe the requirement of audio recording should not be mandatory for intermediaries who can show that have a system in place which adequately documents the sale process, for example the maintenance of a client relationship management system with adequate documentation.

However, if the audio recording requirement is made mandatory, it helps with the consistency across industries. We suggest the retention period of tapes should not be more than 3 years.

Part IV – Cooling-off period

Introduction of a cooling-off period to investment funds would inevitably compromise the interest of long term investors as it creates a free "option" to short term traders, allowing them a window to unwind their investment with reduced expense. The inherent cost of these unwinding transactions will unfairly be borne by genuine long term investors. This indirect expense - irrespective of how negligible the amount is - will be in direct conflict of the asset manager's fiduciary responsibility to these long term investors. Furthermore, the risk of additional short term investors may violate the principles which are promoted by regulators worldwide against short term trading activities.

To ensure that the product providers understand which products would be subject to a cooling-off period, we suggest the SFC clarifies that investment funds with regular redemption facilities such as daily or monthly dealing arrangements which allows investors to liquidate the investment at the market value would not be subject to the cooling off period requirement.