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By Fax (2521 7836) & By Mail

30 December 2009

Ms Alexa Lam
Executive Director and Deputy Chief Executive Officer
Policy, China and Investment Products,
Securities and Futures Commission Hong Kong
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Dear Ms Lam

SFC CONSULTATION PAPER ON PROPOSALS TO PROTECT INVESTING PUBLIC

Thank you for inviting us to comment on the consultation regarding enhancing protection for the investing public.

We fully support the need to protect the investing public and are pleased that the SFC is taking a proactive position on this. However, we believe that there is an overly strong bias on product disclosure when, in our view, the focus should be on ensuring consistent advice from a range of distribution channels. The legal position taken by the SFC that ILAS and MPF products are not securities products is in our view detrimental to this.

We are proud of our distribution, which was not responsible for the sale of products that has been the focus of consumer, regulatory and Legislative Council attention over the last 16 months. We are also proud of our industry that has always through HKFI worked to protect our customers. Examples are the cooling-off period, minimum standards of Continuous Professional Development, Customer Protection Declarations for business switched from one company to another, educational pamphlets on medical insurance & investment-linked assurance schemes, and a range of other initiatives.

In the attachment we have set out our comments to each of the questions raised in the paper.

Our major areas of concern, other than ensuring a consistent and professional advisory framework are: -

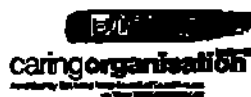
With-Profit Policies (Questions 16)

We are confused by this section as with-profits policies are generally Class A policies outside the scope of the SFC. Only where there is a specific market-value adjustment (not the regular investment smoothing mechanism inherent to these products) should the SFC have a role.

Commission Disclosure (Question 18)

Our concerns with any commission disclosure are: -

- It doesn't particularly help the customer as commissions can vary on products that have the same end-value to the customer. Much more important is that they understand the benefits and fees as these do impact the value to the customer.



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Page 2

Lv281/09

Ms Alexa Lam
Executive Director and Deputy Chief Executive Officer
Policy, China and Investment Products,
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- It may create situations where companies pay their distributors salaries instead of commissions/bonuses and so disclose minimal (if any) commission, but the policy is identical in every other way to a competitor product where full commission is disclosed. If monetary amounts are disclosed then distribution costs rather than commissions should be used.

If some commission disclosure is decided on, we would strongly recommend the generic version to avoid customer confusion.

Audio-Taping (Question 28)

For our distributors that visit the clients – tied agents, brokers, IFA's and some mobile bank sales people audio taping is not practical. The sale may be made over many visits and in most cases will take many hours. After the sale we would need to find a way to retrieve a number of audio tapes from the distributor, collate them and find a way to link them to the policyholder record. It is extremely difficult to do this effectively. There is also the additional factor that all audio taping facilities have limited capacity, even a laptop, and the tape may end part way through a sale.

As an industry we have recognized the principles that the regulator wants to achieve and our proposal is that after a sale we ensure the product was suitable for the customer and then for all ILAS sales make a post-sales phone call with a script approved by HKFI.

As mentioned earlier we also have a range of other protections already in place, notably the cooling-off period.

Yours truly,



Alex Chu
Deputy Chairman
Life Insurance Council

End.

c.c. LIC Councillors

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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Questions	LIC Response
<p>General Comments</p>	<p>We agree with the overall objectives of this consultation in terms of providing a better framework to protect investors. However, we do not agree with all the principles. Notably: -</p> <ol style="list-style-type: none"> 1. There is an overly-strong focus on whether customers fully understand all the details of the product they are buying. We believe the greatest focus should be on consistent advice across the range of possible investment products. 2. We would prefer to see companies be held responsible for complying with the SFO and codes, rather than SFC giving approval. When there is a problem with an SFC approved product or SFC approved marketing materials, then the SFC is in danger of being seen as the investigator and the culprit. 3. We don't believe MPFA products should be excluded. 4. Section 7.3 of the ILAS code states that "the authorized insurer should inform scheme participants as soon as practicable of any material adverse change in the financial condition or business of the key counterparties. This is potentially very onerous as many situations that don't impact policyholders could be deemed to be negative, e.g. remitting capital back to the parent. Clarification is needed as to what events will trigger the requirement for such a notice.

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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TO 25217896
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1.	Questions	LIC Response
	<p>Do you have any comments on the Overarching Principles Section of the Handbook generally or any particular provision in the Section? Please explain your views.</p>	<ul style="list-style-type: none"> In Section 1.11 it states that the SFC takes no responsibility for the contents of any offering document or advertisements authorized by it. We understand this is in relation to the information provided, but would have expected that the SFC would take some responsibility if it approved wording that is not intelligible to the consumer. This fits into Section 3.4. In paragraph 7.2 of the Overarching Principles section of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Products, it is stated that "Issuers of advertisements shall ensure that prior to its issue, each advertisement in relation to a product shall be subject to a due review process conducted by a competent delegate designated by the senior management of the issuer of the advertisement to ensure that the advertisement complies with the applicable product code". Based on our previous experience in seeking the Commission's approval on ILAS marketing materials, we submit that specific guidelines are needed on the designated person (e.g. qualification, preference on language, notification on change of designated person and duties etc). Furthermore, it would be helpful for the industry to understand the new approval flow of advertisements, specifically whether a written endorsement from the designated person is required before approval by the Commission.
2.	<p>What are your views on each of the proposals below?</p> <p>(a) The proposed disclosure requirements in Appendix C (Information to be Disclosed in Offering Documents for Unlisted Structured Products) to the SP Code.</p>	<ul style="list-style-type: none"> Derivatives are used for many purposes, including hedging, and so the requirement to buy products that use derivatives requires past experience or specific training about derivatives is unnecessarily onerous. We do not see a reason to have a special category of "professional investor" moving forward. All investors should be treated equally.
	<p>(b) The proposed disclosure requirements in Appendix D (Advertising Guidelines Applicable to Unlisted Structured Products) to the SP Code.</p>	<ul style="list-style-type: none"> No comment

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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3.	Questions	LIC Response
	(c) 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.	<ul style="list-style-type: none"> • No comment
	(d) Are there any other matters which you think an issuer should be obliged to disclose to investors on an ongoing basis?	<ul style="list-style-type: none"> • No comment
4.	What are your views on the eligibility requirements for issuers & Guarantors of unlisted structured products proposed by SFC?	<ul style="list-style-type: none"> • No comment
5.	(a) What are your views on the proposed requirements applicable to SPV?	<ul style="list-style-type: none"> • No comment
	(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?	<ul style="list-style-type: none"> • No comment
	(c) Do you think a Product Arranger should also be appointed for structured 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)?	<ul style="list-style-type: none"> • No comment

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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TO 25217936
FROM BRPI
31-DEC-2009 09:20

	Questions	LIC Response
	(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.	<ul style="list-style-type: none"> • No comment
6.	(a) What are your views on the proposed eligibility criteria for collateral in respect of structured products?	<ul style="list-style-type: none"> • No comment
	(b) Do you think that collateral should be subject to any additional eligibility criteria? If so, what criteria?	<ul style="list-style-type: none"> • No comment
	(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?	<ul style="list-style-type: none"> • No comment
7.	Do you believe that the SFC 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.	<ul style="list-style-type: none"> • No comment
8.	(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.	<ul style="list-style-type: none"> • No comment
	(b) With regard to the proposal to provide 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?	(a) No comment

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SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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	Questions	LIC Response
	(c) How often do you think issuers or their market agents should provide liquidity by way of making firm price quotations?	• No comment
	(d) 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?	• No comment
9.	Please give your views on the use of annualised returns in offering documents and advertisements for structured products.	• No comment
10.	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.	• No comment
11.	In relation to each of the proposals below, other than the proposed general requirements, what other requirements do you think should be included? Please explain your views.	
	(a) Proposals regarding investment activities set out in Proposal 1 (structured funds)	• No comment
	(b) Proposals regarding investment activities set out in Proposal 2 (funds that invest in FDI)	• No comment
	(c) Proposals regarding investment activities set out in Proposal 3 (investments in other schemes)	• No comment
12.	In relation to the proposals below, do you agree with the proposals? Please explain your views.	

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SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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	Questions	LIC Response
	(a) The disclosure and reporting requirements set out in Proposal 4 (bilingual annual reports)	• No comment
	(b) The disclosure and reporting requirements set out in Proposal 5 (Product KFS)	• No comment
13.	Do you have any comments on the revisions to the UT Code generally? Please explain your views.	• No comment
14.	What are your views about the idea of UCITS schemes which have issued KIDs under their own EU regulator's regime using those KIDs in place of the Product KFS? The issue here is how we should 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. 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.	• No comment
15.	(a) 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?	• No comment
	(b) 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)?	• No comment
16.	Do you have any comments on each of the following?	

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

Questions	LIC Response
(a) The Product KFS requirements	<ul style="list-style-type: none"> • ILAS KFS Document Page 1 Point 4 - The statement stating that the customer is investing in the underlying funds and does not have right of ownership of these funds, seems potentially misleading. We think it should clarify that the customer does have ownership of the life insurance policy, the value of which is linked to the underlying funds. • We request for guidance on the location of the Product KFS, such as whether it could be included as a content of the product brochure or an insert. Furthermore, clarification is needed on whether information contained in the Product KFS but duplicated in the product brochure, such as charges and upfront important risk warning, can be simplified /excluded in the product brochure.
(b) The enhanced disclosure requirements on "with-profit" features and internal funds	<ul style="list-style-type: none"> • Normal participating "Class A" insurance policies are outside the jurisdiction of the SFC and we believe these provisions should be deleted. The SFC should be concerned with Class C policies only.
(c) The deletion of Chapter 5, 8 and 9 of the current ILAS Code	<ul style="list-style-type: none"> • No comment
(d) The codification of the existing practices regarding the computation of surrender values and the notification requirements on scheme changes	<ul style="list-style-type: none"> • We do not understand what values will be shown as all amounts are non-guaranteed for an ILAS plan. That is, they are all subject to the underlying investment performance of the funds and so all benefits are non-guaranteed. • In view of the wide use of Initial Contribution Period products that carry substantial charges on the first 2-3 years premium that continue even if the customer takes a premium holiday we recommend that an illustration also be required to show what happens if a customer takes a premium holiday after, say, 3 years. • The new requirements regarding notice period offer greater flexibility to insurance companies and we welcome the change

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SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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17.	Questions	LIC Response
	(a) 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?	<ul style="list-style-type: none"> We agree in general with proposed approach however would state that the long stop date of the end of 9 – 12 months from the effective date appears inadequate given the SFC's need to review compliance of a large number of existing ILAS products and the past experience seen in the excessively long time period it requires to do so.
	(b) 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))?	<ul style="list-style-type: none"> We believe the proposed transition period of 9-12 months is acceptable provided that the SFC is indeed able to likewise provide for reasonable turnaround times to insurers in their review of materials submitted for approval / confirmation of compliance of the code. Where necessary the SFC should consider the extension of the Long Stop date to 24 months given that there are 230 ILAS contracts which will need to be reviewed from the effective date. For new requirements as introduced by the Commission from time to time, we expect a minimum of 6 months to be allowed to cater for the new changes, especially when significant system enhancements are required.
18.	Do you agree that some of the proposals in this part of the consultation paper should only apply to unlisted investment products? Please explain your views.	<ul style="list-style-type: none"> We generally agree. However, this part should be clarified as to expressly say that MPF and ILAS products are <u>not</u> covered by Part III. If some provisions of Part III apply to MPF and ILAS products, these provisions should also be expressly identified.
19.	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 the investment advice and products offered in relation to unlisted derivative products are suitable?	<ul style="list-style-type: none"> No comment as it is not applicable to ILAS sale.

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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TO 25217895
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	Questions	LIC Response
	Please give your views on the contents of the proposed measures for intermediaries to assess whether investors have knowledge of derivatives.	<ul style="list-style-type: none"> No comment
20.	<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>	<ul style="list-style-type: none"> As stated in Q2 Above, moving forward we do not see a need for a special category of "Professional Investors",
21.	What amount should the minimum portfolio requirement be set at? Please give your reasons.	<ul style="list-style-type: none"> As stated in Q2 Above, moving forward we do not see a need for a special category of "Professional Investors",
22.	<p>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.</p> <p>Option 1.1 – Disclosure of dollar amount or percentage</p> <p>Option 1.2 – Disclosure of percentage bands or ceiling (i.e. "x% to y%" or "up to y%")</p> <p>Option 1.3 – Generic disclosure</p>	<ul style="list-style-type: none"> We support 1.3 generic disclosure as products may not be identical in feature and options 1.1 and 1.2 may give investor bias against products with higher monetary benefits.
23.	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)?	<ul style="list-style-type: none"> We support option 1.3 generic disclosure.

SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public

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TO 28217836
FROM HMF1
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Questions	LIC Response
<p>24. Where a distributor does not explicitly receive any benefits for distributing an investment product, which of the following disclosure options would be more appropriate? Please explain your views. Option 2.1 – Specific disclosure of distribution reward Option 2.2 – Generic disclosure</p>	<ul style="list-style-type: none"> No Comment - The business model specified in Q24 is not applicable to us.
<p>25. 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. Option 3.1 – Disclosure of specific trading profit Option 3.2 – Generic disclosure</p>	<ul style="list-style-type: none"> No Comment - The business model specified in Q25 is not applicable to us.
<p>26. 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?</p>	<ul style="list-style-type: none"> We do not think that the restriction on offering gifts with monetary value is appropriate. We believe that gifts should not be the major cause for a customer to purchase an investment product provided that under the SFC's & HKMA's guidelines, customers should receive sufficient disclosure regarding product risks and suitability. We suggest that we should be allowed the flexibility of offering gifts, especially when rewarding the overall customer relationship where ILAS is included in a range of eligible products.
<p>27. Do you have any comments on the proposed information content of the Sales Disclosure Document which includes (a) capacity (principal or agents); (b) affiliation with product issuer; (c) monetary and non-monetary benefits; and (d) discount of fees and charges available to investors?</p>	<ul style="list-style-type: none"> We would welcome further guidance from the Commission on the format in which a sales disclosure document should take and whether it can be presented as part of the Principal Brochure's content.
<p>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?</p>	<ul style="list-style-type: none"> We believe this is beneficial but not mandatory, moreover in a field sales' this is indeed impracticable. We wish to reiterate that any new audio recording/ record keeping requirements that may be introduced by the regulators should apply to all intermediaries to ensure fair competition.

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	Questions	LIC Response
	<p>If audio recording is made mandatory, how long do you think these audio records should be kept for? Please explain your views.</p>	<ul style="list-style-type: none"> We do not recommend that audio recording be made mandatory, however, should it be made so, we suggest the audio recording requirement to be aligned with existing HKMA requirement i.e. 7 years.
29.	<p>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>	<ul style="list-style-type: none"> We do see this as being beneficial to investors. The Life Insurance industry has for many years provided this safety net to prospective customers of ILAS Contracts and there are already clear operating guidelines in place from the HKFI in this regard.
30.	<p>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.</p> <p>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>	<ul style="list-style-type: none"> No Comment
31.	<p>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 the investor's request.</p>	<ul style="list-style-type: none"> No Comment
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>	<ul style="list-style-type: none"> In principle yes.

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