

MESSAGE

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From: "Steve Chan" <steve.chan@oskasia.com.hk>
Date: 24/12/2009 03:03 PM

Subject: Consultation on proposals to enhance protection for the investing public

Dear Sirs,

Please find attached the submission from **The Hong Kong Association of Online Brokers** for the "Consultation on proposals to enhance protection for the investing public". We would like to draw your attention to the fact that as most of our members are not product issuers, we do not have much input on the first part of the consultation. Our comments focus more on the selling practice and post-selling practice.

Also, we would like to give an overall comments that in fact the existing regulatory regime managed and operated by SFC is very effective and efficient in providing investors protection. Further tightening of any measures will of course give further protection. However, the impact on the financial markets and intermediaries should also be considered.

Should you require further information, please feel free to let us know.

Merry Christmas!

Best regards,

Steve Chan
Chairman
The Hong Kong Association of Online Brokers Limited

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SFC consultative paper-selling process.doc

SFC Consultation on Code of Conduct and Selling Practices – Sept 2009

	Questions	Response
	Question in relation to Overarching Principles	
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.	
	Questions in relation to the SP Code	
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?	
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?	
4	What are your views on the eligibility requirements for Issuers and Guarantors of unlisted structured products proposed by the Commission?	
5	<p>(a) What are your views on the proposed requirements applicable to SPV Issuers?</p> <p>(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?</p> <p>(c) Do you think a Product Arranger should also be appointed for structured products issued by Issuers (whether SPVs or not) or guaranteed by</p>	

	<p>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>	
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>	
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 liquidity by way of making firm price quotations, do you think an exemption</p>	

	<p>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>	
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>	
	<p>Questions in relation to the UT Code</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>	
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>	
13	<p>Do you have any comments on the revisions to the UT Code generally? Please explain your views.</p>	
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 balance the importance of developing broadly standardized Product KFS across</p>	

	<p>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>	
	<p>Questions in relation to the revised ILAS Code</p>	
16	<p>Do you have any comments on (1) the Product KFS requirements, (2) the enhanced disclosure requirements on "with-profit" features and internal funds, (3) the deletion of Chapters 5, 8 and 9 of the current ILAS Code, and (4) the codification of the existing practices regarding the computation of surrender values and the notification requirements on scheme changes?</p>	
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>	
	<p>Questions in relation to Selling Practices</p>	
18	<p>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.</p>	<p>Yes, there are already regulatory rules in place governing listed investment products..</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 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?</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 do not think intermediaries should perform further investor categorization. An investor without sound knowledge of derivatives does not necessarily imply that he/she is not suitable to purchase unlisted derivative product as long as adequate explanation of the product and disclosure of associated risks have been made by the intermediary.</p> <p>It is difficult and impracticable for an intermediary to assess the contents of the training, the extent of previous trading experience or work experience in derivative products to determine whether an investor has knowledge of derivatives. Most intermediaries do not have adequate resources or possess sufficient technical knowledge to conduct such assessment.</p> <p>A written declaration by the investor is sufficient to serve the purpose.</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"> (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? <p>Do you have any other suggestions?</p>	
21	<p>What amount should the minimum portfolio requirement be set at? Please give your reasons.</p>	<p>The present requirements for professional investor are sufficient.</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</p>	<p>Option 1.3 – generic disclosure is more appropriate.</p> <p>It is a normal market practice for some product issuers to give monetary benefits to intermediaries as remuneration for selling the investment product in lieu of or in addition to charging commission/brokerage to the investor.</p> <p>We consider generic disclosure is sufficient because</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>	<p>we believe that investor should focus on the services provided by an intermediary rather than the remuneration received by it..</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, same comment as in question 22</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>same comment as in question 22</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>same comment as in question 22.</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 charges) in promoting a specific investment product to investors?</p>	<p>Yes</p>
27	<p>Do you have any comments on the proposed information content of the Sales Disclosure Document which includes</p> <p>(a) capacity (principal or agent);</p> <p>(b) affiliation with product issuer;</p> <p>(c) monetary and non-monetary benefits; and</p> <p>(d) discount of fees and charges available to investors?</p>	<p>(a), (b) & (d)-no comment</p> <p>(c), see comment for question 22</p>
28	<p>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</p>	<p>Current records keeping requirements are sufficient for the operations of securities business.</p> <p>The current “3 months” requirements for audio records are sufficient because disagreement and dispute between the intermediary and the investor should be resolved as soon as possible.</p>

	explain your views	
	Questions in relation to Post Selling practices	
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>.Whilst we do not object the basic principle of “cooling off period” which would generally be beneficial for investor, we do not agree the principle be applied to the unlisted investment product sold by an intermediary.</p> <p>Unlike life insurance product, an investor purchases investment product with a view of return or profit. No investment is riskless. Each investment decision should have undergone a detailed analysis of risks and return. It is unfair for the intermediary to bear the responsibility and the administrative costs arising from the investor’s change of decision subsequently.</p> <p>Furthermore, liquidity is small for unlisted investment product. There is usually no secondary market to re-sell the product after the “cooling off period”</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.	See comment on question 29
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.	Intermediary always welcome a window could be opened to an investor by the issuer to provide more liquidity of the product
32	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?	We do not agree to refund the sale commission earned by an intermediary to the investor as it represents remuneration of the brokerage services provided and the risks premium involved. It is also fair and reasonable for the investor to bear the administrative costs for selling back the product to the issuer

	Please explain your views.	
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