



消費者委員會 CONSUMER COUNCIL

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來函檔號 YOUR REF.

本函檔號 OUR REF.

23 December 2009

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

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

Dear Sir,

**Consultation on
Proposals to Enhance Protection for the Investing Public**

We refer to your consultations issued in September and October regarding the proposal to enhance investor protection in Hong Kong. Attached please find Consumer Council's views for consideration of the Commission.

Should you need further discussion, please feel free to contact me at 2856 8585 or Ms. Vera Tam, Chief Research and Trade Practices Officer at 2856 8543.

Yours faithfully,

Connie LAU

Chief Executive
Consumer Council

Consumer Council
Submission to the Securities and Futures Commission
on Proposals to Enhance Protection for the Investing Public

1. The Consumer Council (the Council) is pleased to submit views to the Securities and Futures Commission (SFC) regarding the consultations (issued in September and October 2009) on proposals to enhance investor protection in Hong Kong.

2. The following sets out the Council's response to the key proposals raised in the consultations that have direct implications to consumer interests for consideration of the SFC.

1) Pre-sale documentation

Product key facts statements

3. The Council supports the proposal of prescribing standardized "Key Facts Statement" (KFS) across all investment products sold to the public in Hong Kong as far as possible as this would make it easy for consumers to understand a product's key features and risks and facilitate comparison between different products. To ensure the KFS to be well received by consumers, it should be user friendly and be kept concise.

4. The Council also urges that KFS should not be promoted as a substitute for the full information contained in an offer document, and a reminder in the KFS should be highlighted to remind investors to look into the offer document for further details.

2) Disclosure at the point of sale

Pre-sale disclosure of monetary and non-monetary benefits

5. To mitigate any potential conflicts of interest arising from the possibility that the level of commissions may encourage institutions to develop business strategies that inappropriately incentivize their sales staff to sell certain investment products, the Council supports making it a requirement for intermediaries to disclose to prospective investors at the pre-sale stage the level of commission (or benefits) receivable from product issuers for the sale of the products concerned.

6. Amongst the various disclosure options proposed in the consultation paper, the Council considers making disclosure of monetary benefits in dollar amount or a precise percentage of the investment amount would be more useful and easily understandable to consumers. Whilst understanding that there could be complications involved in establishing the level of commission or benefit as claimed by some intermediaries, the Council believes that commission disclosure could enhance consumer confidence in the financial market and therefore should be required of the intermediaries.

Ongoing disclosure requirements

7. The Council supports making it a mandatory requirement that intermediaries should disclose material information related to long-term investments to consumers on an ongoing basis to enable consumers to better monitor their investments. The Council shares the view that it is important to spell out clearly the responsibility of distributors to pass on to ultimate investors the information that they receive from the issuers.

8. However, more thoughts should be given to the types of information to be classified as "material" and the length of time allowed for such information to be passed on from issuers to distributors and then onward to consumers.

Sales disclosure document

9. The Council supports the proposal of requiring intermediaries to provide a uniform statement of key facts including information on the capacity in which they are acting and their relationships with the product issuers, to consumers prior to or at the point of sale.

3) Selling practices

Investor characterization

10. The Council supports making it an explicit requirement that intermediaries should gauge their clients' knowledge of derivatives as a prerequisite to selling structured products with such elements embedded.

11. Careful consideration should be given when assessing whether consumers have knowledge of derivatives, and consumers should not be classified as "clients with derivative knowledge" unless they accept being classified as such. A client characterized as a "client with derivative knowledge" should genuinely possess such knowledge and not tricked by an intermediary into such characterization for the sake of procuring a sale.

12. The Council urges that suitability check and post-sale controls should be carried out to ensure that the investment advice and products offering in relation to derivative products to a "client with derivative knowledge" are genuinely suitable.

Professional investors

13. As to what the appropriate definition of "professional investor" should be, the Council considers that the key criteria should be the size of the investment portfolio as well a genuine assessment of a consumer's product knowledge and investment experience. Again, the Council considers consumers who satisfy these criteria should not automatically be treated as professional investors unless they agree to be classified as such.

14. Furthermore, the Council is of the view that the portfolio threshold should be reviewed periodically to ensure the amount remains appropriate

taking into account investor behavior in Hong Kong.

15. Even if an investor has agreed to be classified as professional investor, the Council is of the view that intermediaries should spell out clearly to a consumer classified as a professional investor the consequences of being classified as such. For instance, if any cooling-off period would be given to professional investors. Adequate communications should also be made to remind consumers about such status and the means available to change it.

Use of gifts by distributors in promoting a specific investment product

16. To avoid any potential distraction of a client's attention from the features of the products, the Council is of the view that distributors should refrain from offering consumers gifts in promoting a specific investment product.

Audio recording of the client risk profiling process and advisory or selling process

17. Having regard to the difficulty that some smaller intermediaries may experience in establishing the appropriate infrastructure for audio recording as noted in the consultation paper, the Council is of the view that industry regulators should require all intermediaries to comply with the audio recording requirements as far as possible, with alternative methods of compliance allowed to address the different nature of operations in the market.

18. Nevertheless, the objective should remain the same for all, that is, to ensure that full and complete records of the client risk profiling process and the advisory or selling process for investment products are kept and traceable, for the protection of investors.

4) Post-sale arrangements

Cooling-off period

19. While agreeing that investors should take due responsibility for their investment decisions, the Council is supportive of the implementation of a cooling off period to give consumers a chance to get their money back within a prescribed time. The Council is of the view that cooling off period will be instrumental in reassuring the public after the Lehman Brothers Minibonds incident in Hong Kong.

20. Furthermore, the Council believes that it makes sense for Hong Kong as a major international financial centre to introduce cooling-off periods since cooling-off periods are in place in major overseas markets. The proportion of the local population investing in investment products is relatively high, and the proactive step of allowing them a cooling off period can provide an effective bar to later complaints and hence saves costs.

21. In considering under what circumstances cooling-off should be allowed, the Council is of the view that cooling-off is particularly necessary for

investment products that have the effect of locking consumers in for a considerable period of time and there is no liquid secondary market to enable consumers to immediately exit by selling the products.

22. However, consideration should also be given to applying cooling-off across the board to render full protection to consumers, with the period within which a consumer can exit from an investment to link up with the lock-in period of the investment.

23. Other factors such as client characterization should be taken into account, where appropriate, to allow a consumer to exit from a transaction after making an initial investment decision. For instance, in the case of a vulnerable consumer (an elderly) who entered into a transaction without fully understanding the risks involved in the investment product, or a consumer who has committed a substantial amount of his life savings in an investment product which is not appropriate in his circumstances.

24. About the appropriate cooling-off timeframe, the Council is of the view that sufficient time should be given to enable consumers to legitimately exercise their right to withdraw. Reference should be drawn from overseas markets.

25. In this regard, the Council suggests that there should be effective communication to the investing public of the types of investment products for which cooling-off periods apply, and consumers are to be made aware of the cooling-off timeframe available for various types of investment products if they are not standardized.

26. With respect to the way a refund amount would be determined under the proposed cooling-off mechanism, the Council understands that requiring consumers to settle the legitimate costs of their decision is intended to ensure consumers would not change their mind lightly. However, the Council is of the view that requiring consumers to pay for "reasonable" administration charge can become an economic barrier for them to exercise their cooling-off rights.

27. The Council also queries what means are available to ensure that a consumer who exercises his cooling off right would be treated fairly in the absence of a liquid secondary market to provide a legitimate market adjustment. The Council believes that consideration should be given to enhancing transparency as to how to arrive at a "reasonable" administration charge and market adjustment.

28. Referring to the cooling off period given to purchasers of life policies in Hong Kong, the refund amount would be all premiums paid, and for linked-life policies, the refund amount would be all premiums paid less market value adjustment only. According to the Australian Securities and Investments Commission, the number of consumers exercising cooling-off is negligible.

29. The Council is therefore of the view that a cooling off right should not come at an excessive cost to consumers in Hong Kong and a distributor

should promptly pass on to the client the full amount of refund (together with the sales commission) received from the product issuer.

5) Transfer of authorization of offer documents of unlisted structured products from CO to SFO

30. To ensure structured products sold to the public will be subject to appropriate authorization standards to provide enhanced investor protection, the Council supports consolidating the two separate regimes under which the SFC presently authorizes the offering documents and marketing materials of products sold to the public, that is, by transferring the regulation of the public offers of structured products in the form of debentures from the Companies Ordinance (CO) prospectus regime to the regulatory regime under the Securities and Futures Ordinance (SFO).