

MESSAGE

To: consult/SFC@SFC CEOO Ext :
cc:
From: "Daniel Lau" <daniel_lau@standardlife.hk>
Date: 21/12/2009 12:57 PM
Subject: Consultation on proposals to enhance protection for the investing public

Dear Sirs,

We welcome the opportunity to provide comment on the Consultation Paper on Proposals to Enhance Protection for the Investing Public issued by the Securities and Futures Commission (the "Commission") on 25 September 2009 and acknowledge that the Commission has spent tremendous effort in introducing additional measures to provide protection for investors.

Integral to our corporate mission, we aim to build valuable customer relationships by helping customers grow and protect their assets. Aspiring from this, we strongly patronize the overarching principles underlying the initiative, with its goal of defining a regulatory infrastructure that better protects the interests of investors. In addition, we also appreciate to the proposed holistic approach in regulating the products, intermediaries conduct and post-sales arrangement. Attached is our responses to the proposal and we respectfully submit this to the Commission for consideration.

<<SLA Reply to SFC Consultation 2009 (20091217).doc>>

Should you have any inquiry, please feel free to contact us.

Kind regards

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SLA Reply to SFC Consultation 2009 (20091217).doc

**Comment from Standard Life (Asia) Limited to SFC Consultation Paper on the Proposals
to Enhance Protection for the Investment Public**

Part II

Q1-17 Proposed SFC Handbook, SP Code, UT Code & ILAS Code

Q1 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.

Ans: Overarching Principles: Ch 4.2 – Avoidance of conflicts of interest

We agree that the Product Provider shall avoid situations where conflict of interest may arise including any actual or potential ones. However whether such conflict exists potentially may sometimes be arguable because of the different interpretation of the facts. It is therefore suggested that a comprehensive guidance provided by the SFC would definitely help to clarify the implementation of the rule.

Overarching Principles: Ch 5.3 – Selection of distributors

For our own business we shall exercise due care and diligence in the selection and appointment of distributors for our products. However, we are concerned for the outcome to make it a regulatory requirement which follows that we are accountable to certain extent to the misconduct of our distributors.

Overarching Principles: Ch 7.2 – Issue of advertisements

We noted that the delegate designated and duly authorized by the senior management of the issuer of the advertisement will be on behalf of the issuer accordingly. Our concern is that if so whether the delegate will be personally accountable towards investors for the accuracy of advertisements and further there is any justification if it happens that the delegate is sued.

Q16 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?

Ans: We have no comment except that the Product KFS template for ILAS may have to be updated as a result of the recent revised Cooling-Off Initiative after the issue of the Consultation Paper.

Q17 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))?

Ans: We agree to the proposed approach to implementation of the revised ILAS Code which is considered acceptable and practicable.

For existing schemes which are no longer marketed to the public in Hong Kong as of the Effective Date, it will not be required to comply with the Product KFS and other disclosure requirements. Does it also include in-force insurance policies under those existing schemes which are not marketed as such? If so, do we have to send the Product KFS, etc or its revised version (e.g. with deletion of the non-applicable cooling-off period provision) to existing clients?

Part III

Q18-28 Intermediaries Conduct

Q18 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.

Ans: We agree that some of the proposals in the consultation paper may be more applicable to unlisted investment.

So long as the focus is on the wider issue to restore the trust and confidence in our market and to review on the existing investor protection requirements and take appropriate action, there is no concern whether the proposals (or some of them) may be more applicable to unlisted investment products or not.

It was noted that some of the proposals adopt the principle based approach (e.g. Sales Disclosure Document). In order to avoid the discrepancy in interpreting the rules, it is suggested that wherever possible (though might be difficult) samples & templates could be provided to facilitate the uniform application of the rules.

Q19 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 ?

Please give your views on the contents of the proposed measures for intermediaries to assess whether investors have knowledge of derivatives.

Ans: We also think that intermediaries should, as part of their KYC procedures, seek for clients’ information about their knowledge of derivatives.

However, we do not agree that intermediaries should take the role to characterize those clients (other than professional investors) with such knowledge as “clients with derivative knowledge” because the issuers / intermediaries should not be in a position to judge if an investor has knowledge of derivatives based on attendance of training / courses, or relevant trading or work experience. It is suggested that more specific rules be developed for the assessment.

Due to the complexity of unlisted derivative products making it difficult for investors to understand, it is suggested that not less than 3 years of relevant trading or current / previous work experience may be suitable to be the threshold to distinguish between those clients with derivative knowledge from the others. Further, it is considered if the process to reassess the knowledge, expertise and investment experience of professional investors may also apply with modification.

Another issue is about the handling of the unlisted derivative products that are new to the market or may be very risky to investors. Should the clients, whether with or without derivative knowledge, receive the same or similar protection treatment for such products?

Q20 Should a high net worth investor be considered to have specific knowledge and expertise if:

(a) he is currently working, or has previously worked in the relevant financial sector for at

<p>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> <p>Do you have any other suggestions?</p> <p>Ans: We agree that a high net worth investor (HNWI) should be considered to have “specific knowledge and expertise” if 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.</p>
<p>Q21 What amount should the minimum portfolio requirement be set at? Please give your reasons.</p> <p>Ans: To align with the trend to uphold investor protection, we propose the minimum portfolio requirement to be not less than HK\$16 million.</p>
<p>Q22 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 Option 1.2 – Disclosure of percentage bands or ceiling (i.e. “x% to y%” or “up to y%”) Option 1.3 – Generic disclosure</p> <p>Ans: We consider Generic Disclosure (option 1.3) would be more appropriate to strike for a balance between consumers and distributors by such disclosure including the method of calculating each benefits which can also give the insurers & the distributors the flexibility to deal with ever changing circumstances.</p> <p>For protection of consumers interests, the disclosure of commission, fees and charges can only be good for the public at large and the industry as a whole. However, these interests should be protected regardless of the channel adopted and whether the sales personnel is representing the customer or the financial institution.</p>
<p>Q24 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.</p> <p>Option 2.1 – Specific disclosure of distribution reward Option 2.2 – Generic disclosure</p> <p>Ans: We consider “Generic Disclosure” (Option 2.2) would be more appropriate. Otherwise it may indirectly reveal sensitive information of market practitioners.</p>
<p>Q25 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>Option 3.1 – Disclosure of specific trading profit Option 3.2 – Generic disclosure</p> <p>Ans: We consider “Generic Disclosure” (Option 3.2) would be more appropriate. Otherwise it may distort the picture where the profit may be overstated without reflecting the counterparty credit risk, financing cost etc.</p>

Q26 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?

Ans: We do not 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.

From experience, our investors are rational and will consider the market climate before deciding whether to buy the ILAS products. It means that they are unlikely to be distracted from the features of our products by gifts offered to them.

Furthermore, if there have already been the measures as proposed in the Consultation Paper taking place, such restriction will probably become unnecessary because of the sufficient protection thereunder.

If the SFC still think necessary to limit the use of gifts, it is suggested that the approach in Singapore should be adopted which means that the offering of gifts should not be restricted but proper systems and controls to ensure not to distract the client's attention from the features of the investment product. It may provide guidelines on the nature or value of the gifts e.g. not more than certain % of initial premium.

Q27 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 benefits; and (d) discount of fees and charges available to investors?

Ans: We agree to include information on the principal / agent capacity in the Sales Disclosure Document.

For disclosure of the information on any affiliation of the distributor with the product issuer, it is suggested to elaborate under what circumstance would it be considered as constituting affiliation between the parties.

Q28 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 explain your views.

Ans: We do not think audio recording of the client's risk profiling process and the advisory or selling process for investment products should be made mandatory.

For practical implementation issue (i.e. selling process typically does not take place the place where audio recording is available) the view is that such requirement may tremendously affect the daily operation of the business of the market practitioners.

Part IV

Q29 – 32 Post-sale Arrangements

Q29 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?
Ans:	We have no comment to whether a cooling-off period would generally be beneficial for investors, or whether the costs associated with its implementation would outweigh the benefits for investors.
	If a cooling-off period is implemented, rules must be developed such that the investors have to be well informed of the possible market value adjustment, etc and lesser sum of money refunded.
	We believe that if the proposal for cooling-off period is implemented it can be of the same calculation method along different products to avoid complication of the issue and confusion to clients.
Q30	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.
Ans:	We do not agree to give investors a period of time (cooling-off period) after placement of their orders during which execution of the trade is delayed to cancel before execution. It is not sure if this proposal can benefit for all the investors particularly where the market climate may be fast changing causing fluctuation of fund prices.
	Choice should be given to investors as to whether they would want their orders be executed without delay or a cooling-off period be granted to postpone the same (in which event the end day of the cooling-off period must be very clear to both issuers & investors to avoid complaint case). Further, the investors must be well informed in writing of the outcomes of the two scenarios. In any event, rules must be developed such that the investors have to be well informed of the possible market value adjustment, etc.
Q31	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.
Ans:	We do not agree that a window should exist to allow investors to request an issuer to buy back the product after executing a trade. Such attempt may expose issuer to unbearable risk particularly in suddenly deteriorating market situation when large number of investors may make such request.
Q32	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.
Ans:	We also consider that a distributor should promptly pass on to the client the full amount of refund (including sales commission received from the product issuer), less a reasonable administrative charge. We propose the time frame for payment to be more than 14 days.

Disclaimer This paper is prepared in response to the Consultation Paper on Proposals to Enhance Protection for the Investing Public issued by the Securities and Futures Commission (the "Commission") on 25 September 2009 and represents Standard Life (Asia) Ltd.'s ("SLA") views on the subject matter. Unless otherwise noted, SLA makes no representation or warranty, expressed or implied, as to the accuracy of the information and data contained in this paper nor the suitability of the said information or data for any particular purpose otherwise than as stated above. SLA or any party associated with this paper or its content assumes no liability for any loss or damage resulting from the use or misuse of any information contained herein or any errors or omissions and shall not be held responsible for the validity of the information contained in any reference noted herein nor the misuse of information nor any adverse effects from use of any stated materials presented herein or the reliance thereon.

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