

10 November 2009

Securities & Futures Commission
8/F, Chater House
8 Connaught Road Central
Hong Kong
Attention: Consultation on Proposals to Enhance Protection for the Investing Public

Dear Sir

As a private citizen, but practicing member within the financial services industry, I write to comment on your September 2009 Consultation paper.

Before I begin I affirm my support for the efforts of the SFC to enhance investor protection.

Your objectives of **protection**, seeking **clarity** and **fairness** for the *investing public* are to be admired.

My concern relates to the SFC's proposals about "Pre-sale Disclosure of Monetary and Non-Monetary Benefits" [pp 76 – 82 of the consultation paper] and how the eventual outcomes juxtapose with the eventual outcomes of the Hong Kong Confederation of Insurance Brokers [CIB] "Position Paper on Disclosure and Consent to Brokers Remuneration" dated 26 November 2008, and which was presented to The Commissioner of Insurance, a copy of which was sent by the CIB to the Members of CIB under cover of a letter dated 15 December 2008, entitled "Insurance Brokers' Remuneration – Disclosure and Consent".

The CIB (and apparently now PIBA, the brother Broker organization) initiative was apparently driven by the requirements within the Prevention of Bribery Ordinance [PBO]**, requiring all Insurance Brokers to disclose remuneration, on all insurance products sold [unit-linked life assurance, health and general insurance, traditional whole life and endowment insurance], because an Insurance Broker is deemed to be acting on behalf of the buyer and therefore the Broker should place the buyer, in terms of knowledge, in exactly the same position as the Insurance Broker, otherwise the Insurance Broker will be deemed to be receiving an advantage. *Insurance Agents*, because they act on behalf of the insurance product provider (and not the buyer) are *not required* to disclose remuneration *on precisely the same insurance products*.

The CIB/PIBA approach is based on distribution type, and ignores product type.

The SFC approach is based on product type (that is, those products falling under the SFC auspices) and ignores the distribution type.

So we could end up having:

- Insurance Agents working for insurance companies not having to disclose on some insurance products but having to disclose on others
- Insurance Brokers having to disclose on all types of insurance products
- Non insurance Agents/Brokers having to disclose on non-insurance products, where these non-insurance products fall under the auspices of the SFC

Additionally, the formula and format of disclosure between the (insurance) products that fall under the SFC and the (insurance) products that fall outside the SFC [but are sold by the Insurance Broker distribution channel] could end up having wide ranging differences.

If nothing is done to co-ordinate the efforts of the various regulatory bodies to arrive at a consistent and uniform solution of disclosure, then the investing public will end up extremely confused and lacking clarity, and where confusion exists protection is diminished and fairness negated.

Therefore, as a suggested solution, perhaps the SFC, the HKFI and the CIB/PIBA might form a joint task force so that there will emerge a uniform set of rules on this most important of issues for the Hong Kong investing public, that is remuneration disclosure.

** The need for remuneration disclosure by the Insurance Broker community is apparently based upon the "Prevention of Bribery Ordinance (Cap 201)" and the fact that an Insurance Broker acts on behalf of the buyer and is not an Agent of the product provider.

The relevant reference Sections within this Prevention of Bribery Ordinance (Cap 201) are:

Section 9(4):

If an agent solicits or accepts an advantage with the PERMISSION of his principal, being PERMISSION which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2).

Section 9(5):

For the purposes of subsection (4) PERMISSION shall-

- (a) be given before the advantage is offered, solicited or accepted;
or
- (b) in any case where an advantage has been offered or accepted without prior PERMISSION, be applied for and given as soon as reasonably possible after such offer or acceptance,

and for such PERMISSION to be effective for the purposes of subsection (4), the principal shall, before giving such PERMISSION, have regard to the circumstances in which it is sought

As an individual I disagree that these two Sections lead to the interpretation that Insurance Brokers must now *disclose* remuneration (and should have done so in the past) but the powers that be (presumably the Office of the Insurance Commissioner and the Attorney General's office) have concluded that these Sections compel the need for the Insurance Broker community to *disclose* remuneration on all insurance products.

(I do agree that PERMISSION should be obtained, and this is done more or less universally by the Financial Planning community, through the signing of the "Client Agreement".) PERMISSION does not have the same meaning, however, as *disclosure*.

Nevertheless, since I am bound by the interpretation of my governing body I will, of course, comply with the letter and the spirit of the ruling.

I trust my concerns above will be addressed in due course.

Yours sincerely,



Glenn Turner

Cc The Honorable CHAN Kin Por – Legislative Council Member
The Hong Kong Confederation of Insurance Brokers
The Hong Kong Federation of Insurers
The Office of the Commissioner of Insurance