MESSAGE

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From: Andrew.TURNER@fortisinvestments.com
Date: 31/12/2009 04:20 PM

Subject: comments on Consultation Paper on Proposals to Enhance Protection for the Investing Public

Dear Sir/Madam

Please find attached our comments.

regards

Andrew Turner
Head of Compliance
Legal & Risk,AMEAT

Fortis Investments

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<<SFC Consultation - Fortis submission 311209.pdf>> SFC Consultation - Fortis submission 311209.pdf

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Fortis Investments

BNP PARIBAS

31 December 2009

Online Submission

Securities and 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/Madam

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

ABN AMRO Asset Management (Asia) Ltd.

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We welcome the opportunity to participate in this SFC consultation process. We fully understand the need to review regulatory standards in light of the financial crisis, in particular to ensure that retail investors are adequately protected. Our comments mainly relate to the proposed amendments in the UT code and regulation of intermediary conduct and selling practices.

The collapse of Lehmans has highlighted significant concerns about how certain investment products have been sold to members of the public in Hong Kong. The SFC has indeed conducted a large number of investigations into the sale of minibonds (and other unlisted structured products) by intermediaries, resulting in a significant financial settlement for the vast majority of investors in these products, as well as actions to be taken by the financial institutions involved.

It is clear from the Consultation Paper that the SFC is seeking to align its overall regulatory approach with that of other leading financial centers, by continuing to adopt a largely disclosure based approach, coupled with regulation on intermediaries who sell products. We fully support this approach. However, the detailed proposals included in the consultation extend across the sale of all investment products, including regulated funds, even though there have not been significant failings in this sector.

Approximately 75% of the approved funds sold today in Hong Kong are UCITS III funds. The Luxembourg funds industry has also proved to be resilient in the face of the systemic pressures and has not seen widespread failings. We believe that the current regulatory framework for authorization and sale of funds in Hong Kong has generally shown itself to be robust and the SFC should therefore avoid gold-plating existing requirements. In order to maintain the competitiveness of and innovation in the funds industry in Hong Kong, we believe that further alignment with other jurisdictions is needed. In addition to the existing alignment of the overall regulatory approach for sale of investment products to the public, we would like to propose alignment in the detailed requirements wherever possible, particularly for the sale of UCITS qualifying funds. For example, the implementation of KFS clearly overlaps with very similar proposals currently under consideration in the EU. Ultimately, the costs of compliance with divergent regulatory requirements are passed on to investors through higher fees. We strongly believe there must be very clear benefits in investor protection to justify implementation of a different approach in Hong Kong.

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We would also like to make a general comment about the disclosure regime. Whilst we agree in principle with the disclosure based approach, we believe it is important that all parties understand an inherent problem with this approach. It is not always possible to summarise complex financial terms and concepts into plain English for the average investor to understand. A product which is perfectly appropriate and beneficial to a retail investor can be complex and difficult to understand. That does not in itself mean that these instruments are inappropriate for use in retail products. Indeed, they may provide liquidity and a cost effective means to achieve investment objectives. Investors often invest in funds precisely because they do not have a good understanding of investments. The requirement for detailed disclosure of sometimes complex product features and investments may actually detract from the intention to provide clear information to the investor on the risks associated with an investment.

Please find attached more detailed responses to some of the specific questions posed in the Consultation Paper. A number of other more specific comments on the text of the revised Code have also been provided to the HK Investment Funds Association and incorporated into a collective funds industry response.

Yours faithfully

Andrew Turner
Head Compliance, Legal & Risk, AMEAT
(Asia, Middle East, Africa & Turkey)

Question (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.

Chapter 5, paragraph 5.3 requires the Product Provider to exercise due care, skill and diligence in the selection and appointment of distributors for a product. Product Providers will of course as a matter of business prudence conduct their own assessment of distributors, taking into account reputational and other concerns. We do not, however, believe that it is appropriate for the Product Provider to have a regulatory obligation to assess appropriateness, other than to ensure that the distributor has the appropriate regulatory licence to conduct its activities.

Question (11):
In relation to proposals regarding investment activities set out in Proposal 1 (structured funds), Proposal 2 (funds that invest in financial derivative instruments – "FDI") 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.

The relationship between Chapter 8.8 and Chapter 8.9 in the context of UCITS III schemes is not entirely clear to us from the current drafting. While Chapter 8.9 is intended to regulate non-UCITS funds, could the SFC please clarify whether Chapter 8.8 is intended to regulated both UCITS and non-UCITS "structured funds"?

We understand that the UCITS III Interim Measures issued by the SFC in March 2005 and the SFC's "Streamlined Measures for Processing UCITS III Schemes with Special Features" dated 30 March 2007 should remain valid despite the introduction of the new Chapter 8.8 (paragraph 152, page 45). Could the SFC clarify for a UCITS fund falling under the definition of "structured fund", whether the UCITS III Interim Measures and the Streamlined Measures for Processing UCITS III schemes with special features" will continue to apply besides 8.8?

Question (12):
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

Proposal 4 (bilingual annual reports)
We support the proposal for schemes authorized in RJs to have the option to prepare Chinese annual reports. We agree that the fund prospectus should state that annual reports will not be available in Chinese. We believe that this approach should be adopted across all authorized funds. Under the current proposal, schemes domiciled outside RJs, for example Cayman funds, would need to publish a Chinese language annual report and this will create an unlevel playing field.

Proposal 5 (Product KFS)
In principle we agree with the implementation of a concise document to provide investors with an overview of key product features and risks. It is not clear to us why this must be part of the offering document itself. As with any other material produced by the firm, the KFS would already be subject to the requirement to be fair, clear and not misleading.

Other administrative burdens follow from making it a part of the official offering document, as it will now require this document to be approved in the home state.

Paragraph 165 states that the SFC is open minded about the possibility of UCITS schemes using the KIDs that satisfy their home E.U. regulator's requirements, provided that the KIDs in substance provide the same information and their format and presentation also adhere to the principle of providing information in manner which is user friendly and easy for investors to understand. Unless the templates are very closely aligned, we believe it will be extremely difficult to meet this requirement. Approximately 75% of the 2000 authorised funds are UCITS III schemes which will be subject to similar requirements under the evolving EU approach. Since the SFC is considering a phased implementation approach, it seems sensible to postpone the finalization of the content to ensure as far as possible alignment with the emerging E.U. standard documentation. We encourage the SFC to enter into a dialogue directly with relevant parties, including CESR to ensure a common standard which would be acceptable to the SFC. In this manner investor protection is preserved and escalation of costs, which will ultimately be passed onto investors, can be reduced. We strongly believe a coordinated approach is likely to lead to a clearer disclosure document standard. This should be viewed as a longer term enhancement and our view is that a minor delay in implementation in order to achieve a better outcome would be justified.

Question (15):
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)?

We support the adoption of at least a 12 month transition period from Effective Date for the implementation of the Product KFS and Other Disclosure Requirements. Depending on the Effective Date and the time needed to align the KFS with the E.U. equivalent, a longer timeline should be considered for both new and existing schemes. This is a long term enhancement and it is important in our view, for the reasons, mentioned above, that efforts are made to align the practices cross jurisdiction.

Question (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.

We believe it should be explicitly stated that funds which invest in FDIs are exempted from the requirement to ensure that the investors are "clients with derivatives knowledge". The main purpose of an investor choosing to invest via a fund is precisely because they do not have a sophisticated understanding of financial instruments. It is unlikely therefore that the average fund investor could meet this requirement, yet UCITS III funds allow a significant use of FDIs in a risk controlled framework.

Question (22):
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.

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

Question (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)?

We believe the key issue to disclose to investors is that the distributor may receive a fee for distributing the product, the precise level of commission itself is less important. It can be difficult to concisely set out the fee arrangements and this could further confuse this clear message. We would therefore favour option 1.3, a generic disclosure. If clients wish to receive further information, they could be entitled to request this information from the distributor. We note the investor is already made aware of the fund's charges and should understand that any fees paid in commission come from these fund charges. Our view is that the regulations already impose a requirement on distributors to ensure that they act in the best interests of the client under the existing Code of Conduct and disclosure of exact fee sharing arrangements does not further enhance investor protection.

Question (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?

We understand the concern that offering gifts might distract investors from assessing the validity of the investment itself. There may be circumstances, however, where a gift or promotion, other than by way of fees reduction or discount, can be of benefit to the investor, for example offering a guide to finance and investing. We believe the Code of Conduct should restrict use of gifts to appropriate circumstances but not impose a complete ban.

Question (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? Please explain your views.

It should be made explicit that authorized funds are not caught by any cooling off requirement, since funds are already required to provide regular dealing, generally daily and liquidity provision at the current NAV. If investors believe they have been mis-sold an investment they have the existing right to follow a complaints procedure. In the absence of mis-selling, providers should not be required to absorb the potential negative market movement.