

December 28, 2009

Dear Sir/Madam,

Financial Planning Limited is pleased to have the opportunity to provide input on the Securities & Futures Commission ("SFC")'s Consultation Paper on Proposals to Enhance Protection for the Investing Public issued in September 2009. As a responsible independent financial advisor ("IFA"), is acutely aware of its role of working for the customer and supports reasonable, practical and effective regulations and measures to promote and protect customer interests.

As an intermediary, 's comments on the Consultation Paper are focused on Part III Intermediaries Conduct and Part IV Post-sale Arrangements – Cooling-off Period. 's comments are based on the principles of promoting customer interest and creating a level playing field in the marketplace. A level playing field is essential to promoting healthy competition among market players, which in turn will drive product innovation, better service levels and lower costs, thereby ultimately benefiting investors.

believes the Consultation Paper is a good step forward to promoting investor interests and foster healthy growth in the investment and financial services industries. However, its proposals must be carefully thought out and implemented to ensure that a level playing field is maintained among intermediaries so that investor benefits will not be compromised.

Yours truly,

Specific Responses to Consultation Paper Questions

Part II – Products

Questions 1 – 17 = no comment

Part III – Intermediaries conduct

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.

The consultation paper proposals evolve mainly around more transparent product disclosure and selling practices and are applicable to all investment products.

Question 19 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 those 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.

As an IFA, believes it is important to identify suitable investment products for its clients. Clients’ knowledge of and experience with derivatives provides intermediaries additional information to assess products’ suitability for the client. The proposed measures for intermediaries to assess whether investors have knowledge of derivatives will enhance “know your client” procedures. However, investment products which indirectly buys/sells derivatives purely for the purpose of hedging and portfolio management purposes (such as in many unit trusts) should be excluded from the proposed measures.

Question 20 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 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?

Do you have any other suggestions?

agrees with the proposed definition of high net worth investors considered to have specific knowledge and expertise. However, the definition may be more relevant if the recency of the training or work experience is also considered since financial products’ life cycles are becoming shorter and new products and product features are being introduced more quickly. In terms of working experience, the scope may be expanded to include some relevant professions, such as lawyers and accountants in financial services practices. We also believe that investors with proven trading experience of the relevant class of investment products should be considered as qualified.

Question 21 What amount should be the minimum portfolio requirement be set at? Please give your reasons.

The minimum portfolio requirement is only one of the Professional Investor criteria. Relevant product knowledge and training are also important criteria to define a Professional Investor. It may be more important if the minimum portfolio requirement can be align across the various regulatory bodies of the financial and investment industries, thereby a providing consistent definition for investors, intermediaries and the general public. The current HK\$8MM requirement can be maintained since the SFC has found significant market concerns to increase it since the Professional Investor definition is widely used in private placement and direct placement of newly listed shares.

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

Option 1.3 Generic Disclosure will be more appropriate because it is more important that investors select products based on suitable product features, cost to the investor and acceptable risk-return trade-off. A product’s cost to the investor already factors in monetary benefits to the distributor. Furthermore, monetary benefits (such as commission) are not industry or product standardized and can be up-front, recurring, based on subscription amount, based on asset-under-management or other methods. Thus, it is extremely difficult to conduct an “apple-to-apple” comparison of monetary benefits across different products and issuers.

Having attended your seminar on 7 December 2009, we failed to see how the disclosure of monetary benefits in UK and Australia helped to prevent meltdowns in consumer investment products in these markets. As an IFA, we strongly believe that offering wider access to quality investment advice for consumers is a better solution to address the key issue of fostering consumer confidence. Specific disclosure of benefits by distributors is driving the attention of consumers to comparisons of fees (and very likely creating a misconception of “the cheaper the better”), instead of educating consumers to seek quality investment advice. Investment advice is not a commodity service to be selected based on fee levels. Regulatory changes can profoundly re-shape the market. A market environment of encouraging competition of fee levels amongst distributors is unlikely to help consumers in getting better quality investment advisory services.

As a recommendation if we may, there can be rules to regulate, and as direction to gradually improve, the quality of advice to consumers. As a minimum starting point, a written document accepted and signed by clients must be provided to clients as proof of the advice given by a distributor. Having this foundation, many improvements may take place thereafter to further enhance the quality of advice step-by-step.

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.)

No. supports generic disclosure.

Question 24 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.

Option 2.1 – Specific disclosure of distribution reward

Option 2.2 – Generic disclosure

Generic disclosure is more appropriate because of the reasons detailed in the answer to Question 22.

Question 25 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.

Option 3.1 – Disclosure of specific trading profit

Option 3.2 – Generic Disclosure

Option 3.2 Generic Disclosure is more appropriate since trading profit may be part of the distributor's normal business activity and thus part of the distributor's profit margin. It should be common understanding that the distributor will make a profit on the product. When selecting investment products, investors should be more concerned with a product's features, returns and suitability in reference to his/her risk profile.

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?

Investors should be focused on the product's suitability in reference to the product features, costs and risk and not on supermarket gift coupons and promotion gifts. However, loyalty based rewards should be not restricted since these are not used to promote products but are given based on the customers' length and depth of relationship with the distributor or product issuer.

Question 27 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?

supports disclosure that is relevant, practical and helps investors make suitable investment decisions.

Question 28 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.

supports and is a practitioner of proper documentation of the client risk profiling and advisory/selling processing for investment products. requires clients to read and sign a comprehensive financial plan detailing the client risk profiling, needs assessment and product recommendation. A copy of the signed financial plan is given to the client for his/her records. Audio recording can be considered but is only kept by the distributor and the client does not have a copy of the records.

If audio recording is made mandatory, the record retention requirement should be consistent across all financial and investment industry regulatory bodies.

Furthermore, all documentation requirements should be applied to all distributors including IFAs, brokers and agents (who exclusive represent a specific product issuer) to ensure a level playing field.

Part IV – Post-sale arrangements – cooling-off period

Question 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?

A cooling-off period would generally be beneficial for investors provided that:

- the investment product is suitable and practical to apply a cooling-off period (such as ILAS)
- investors clearly understand that cooling-off period does not imply a full refund and subject to the nature of the product, loss and transaction costs may be incurred

However, the cooling-off period should not be applicable to investors classified as Professional Investors or deemed to possess specific knowledge of the relevant product.

Question 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.

This measure may not be necessary if investors are properly classified as Professional Investor and/or deemed to have specific knowledge of the product. Furthermore, it may hurt investor interests to delay trade after placement in order to provide cooling off for short term investment products since the product price may be time sensitive.

Question 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.

A window could 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 if:

- There was insufficient or improper product disclosure for the relevant product
- There was improper sales practice
- Investor is not deemed a Professional Investor or to have specific knowledge of the relevant product

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.

Yes. If an investment product provides a cooling-off period and the client exercise this right, then the client should receive the full amount refund less a reasonable administrative charge. The administrative charge should cover the cost of product subscription and refund and should not contain any profit margin for the distributor nor the product issuer.