BY HAND

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

23 December 2009

Our Ref:

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

We write in response to the consultation paper on the proposed measures to enhance protection for the investing public. We have set out below our views in response to some of the questions based on our industry experience.

Question 3

We disagree over the proposal for the issuers to disseminate ongoing disclosure information to investors via the distributing intermediaries. The proposal is administratively onerous and costly for the distributing intermediaries and it is difficult to control the timeliness of the chain of communications to retail investors.

Should the SFC decides to require issuers to make ongoing disclosures to investors, we suggest the SFC to look to the current disclosure model for Hong Kong listed companies whereby public announcements are made by the issuers accessible by the public. We urge the SFC to consider more efficient means of disseminating on-going disclosure information e.g. via designated websites of the issuers or a centralized website maintained by the SFC, similar to that currently maintained by HKEx, or publication of notices in newspapers.

Question 8

(a) From the perspective of a distributing intermediary, we believe that investors would have the benefit of being provided with periodical indicative valuations of structured products. However, disclaimers should be provided to alert clients that an indicative valuation is not necessarily the price that the product would be bought back by the issuers, which is subject to various factors including unwind cost, market condition and transaction size.

(b) We think that the SFC should allow a degree of flexibility over the liquidity provision for structured products as there may be circumstances where exemption is justifiable e.g. where the market is highly volatile, underlying asset is illiquid or, the underlying asset, if listed, is suspended from trading.

Question 10

From the perspective of a distributing intermediary, we believe that a transitional period of 6 to 9 months would be sufficient.

Question 18

We agree that some of the proposals in Part III of the consultation paper should only apply to unlisted products. Listed products are subject to regulatory governance under the relevant listing rules where adequate public disclosures are mandated. Enhanced measures for trading in listed products would not be necessary since average investors generally have better perception of trading traditional listed products and the relevant risks involved.

Question 19

We view that the current suitability obligations regime has already provided adequate measures and controls for customer protection. The current suitability obligations regime requires intermediaries to use their professional judgment to assess diligently whether the characteristics and risk exposures of each recommended investment product are actually suitable for the clients and are in the best interest of the clients, taking into account various Know Your Client information collected from the clients including investment objectives, investment horizon, risk tolerance and financial circumstances. Further, the current suitability obligations regime already requires, during the sales process, intermediaries to help clients to make informed decision by giving clients proper explanations of the nature and extent of risks the investment products bear and ask any questions clients may have towards the product to ensure that they have gained sufficient understanding before they enter into such transaction. We are concerned that over-prescriptive requirements or guidelines to mandate only clients who pass certain test or criteria in demonstrating sufficient derivative knowledge and experience would restrict the investment options available to clients.

While we welcome the SFC to provide some guidelines in ascertaining how to regard an investor as having knowledge of derivatives, the SFC should consider to accept "self-certification" by clients that they have sufficient knowledge and previous trading experience. It would extend beyond the scope of distributing intermediaries should they be required to request and verify documentary evidence provided by clients in demonstrating their knowledge and experience e.g. account statement, training certificate and job reference etc. In particular, it would be difficult and impractical for distributing intermediaries to make an objective judgment or assessment over the relevancy of the content of training courses attended by clients and the related product knowledge experience that clients gained from work.

Question 20

We find it very difficult and impractical for distributing intermediaries to make an objective judgment or assessment over the relevancy of the content of training or study courses attended by clients and the related product knowledge that clients gained from work.

Question 21

We believe that the minimum portfolio requirement should remain as HKD8million which is a threshold commonly accepted by the industry. Careful considerations should be taken to assess the direct impact to the private placement activities in Hong Kong for any anticipation to increase the minimum portfolio threshold.

In fact, the existing prerequisite requirement of 40 transactions per annum for the relevant type of product has already set a very high threshold for licensed corporations to apply section 15.3 of the Code of Conduct for waiving certain provisions under section 15.5, including suitability obligations, for average retail customers. As a result, licensed corporations are often required to comply with the suitability obligations even for high net worth clients who meet the minimum portfolio threshold. For such reasons, we do not believe that merely raising the minimum portfolio threshold under the Professional Investor Rules would necessarily have the benefit of providing better customer protection. On the other hand, we think that intermediaries should be encouraged to apply suitability test instead of a quantitative test of client assets for better customer protection.

Question 22

Where a distributor makes a sale of investment product to client on an agency basis, then we agree that the distributor should make a disclosure of monetary benefits from a product issuer. In such case, we think that "option 1.2 – disclosure of percentage bands or ceiling" is most appropriate. "Option 1.1 – disclosure of dollar amount or percentage" is too onerous for the distributing intermediary to quantify the exact amount or percentage of monetary benefit at or prior to the point of sale. "Option 1.2" would be preferred against "option 1.3 – generic disclosure" since it would provide more useful information.

Question 23

We suggest the percentage bands should be presented in the form x% to y%.

Question 24

Where a distributor does not explicitly receive any benefit for distributing an investment product, we think it would be sensible to adopt "option 2.2 – generic disclosure".

Question 25

Where a distributor makes a sale of investment product to client on a principal-to-principal basis, we believe it would be most appropriate to adopt "option 3.2 – generic disclosure". We understand that the rationale behind the disclosure of monetary benefit is to alert clients of the benefits received by the intermediary from the issuer with the ultimate aim to mitigate the conflict of interests. However, an intermediary does not actually receive any incentive or rebate from the issuer by entering into a principal-to-principal transaction. The price offered by counterparty for an investment product depends on various factors including market condition and transaction size. The level of mark-up profit determined by an intermediary is a purely commercial decision taking into consideration various factors including the costs and risks involved in the transaction. Further, the disclosure of specific trading profit may lead to unnecessary dispute or challenge by clients over the mark-up by intermediaries without a thorough understanding of such commercial arrangement.

We would like the SFC to refer to the leveraged foreign exchange trading business model which also operates on a principal-to-principal basis. While the Code of Conduct requires generic disclosure of the conflict of interests e.g. the licensed corporation may take the opposition position to a client's order, the Code does not require licensed corporations to disclose the specific trading profit generated from each transaction.

Question 26

We think that the key to customer protection is through the implementation of various measures including suitability assessment, explanation of product features and full disclosure of risks and conflict of interests involved under the existing suitability obligations regime. As long as these measures and controls are in place, we do not have a strong opposition to the use of gifts as a marketing or promotional tool for which clients could enjoy as a commercial gesture.

Question 27

We agree with the proposed 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.

In the broker-dealer industry, it is often that the sales process is made via telephone since timing is crucial in such fast-moving market. We think that the SFC should either allow the Sales Disclosure Document to be provided in a generic form or allow the Sales Disclosure Document to be provided to clients in the aftermath of transactions. In the later case, the SFC could consider to allow such content to be incorporated in the contract note (as opposed to sending a separate document) for efficiency and environmental friendliness.

Question 28

While we understand the regulators may be in the interest of maintaining a single level playing field across all intermediaries, we believe that the audio recording of the risk profiling and sales process should not be made mandatory for the brokerage industry due to its different operating and business model. The brokerage industry operates on a personalized service model and customer relationship is built closely between brokers and clients. It is often that meetings between brokers and clients take place out of the office premises through which brokers may gain more understanding on clients' investment objectives, interests and risk appetite and may lead to exchange of investment ideas. Implementation of audio recording requirement of the whole risk profiling, advisory or selling process would not be practical in light of such circumstances.

Since risk profiling forms part of the account opening process where Know Your Client Information are collected by licensed representatives who are bound by the SFC fit and proper requirements and clients are required to sign a declaration that the information provided are true and accurate, we do not envisage that the audio recording of the risk profiling process would offer any further protection to clients.

In our opinion, the current Code of Conduct requirement to audio record the instructions received from clients through the telephone is generally adequate. Based on our industry experience, we find that it is generally sufficient to keep audio records for 2 years for the purpose of conducting investigations and locating supporting evidence in handling client complaints and disputes.

Question 29

Acting in the interest of clients, we believe that an option to unwind an investment product would generally be beneficial for investors. However, investors have to be alerted that such unwind option comes with a cost to be borne by themselves.

Question 30

In our opinion, any measure to delay the execution of instruction by an investor would be impractical. The quotation of an investment product is made subject to various factors including the rapid changing market condition. Thus, delay in execution may result in a change of execution price effecting client's investment decision.

We find the current suitability obligations regime generally adequate in the context that intermediaries are required to give clients sufficient time to digest, consider and evaluate the information and recommendation provided to them and give sufficient opportunities to raise queries and that under no circumstances should an intermediary uses high-pressure or unfair techniques to force or entice clients to make hasty decisions.

Question 31

Please refer to our comments under Question 29.

Question 32

Where the transaction is made on an agency basis, we agree 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 administration charge to cover the cost.

Where the transaction is made on a principal-to-principal basis, we agree that a distributor should make a back-to-back buy back offer to the client. However, the distributor should not be required to refund to the client the mark-up profit generated from the product purchase by client considering the risks taken on by the distributor from entering into such transaction.

We do not wish for our name to be disclosed in this consultation exercise although we have no objection to the content of our submission being published on a no-name basis.

We are happy to provide further information if needed. Please do not hesitate to contact the undersigned at if you have any questions.

Yours sincerely