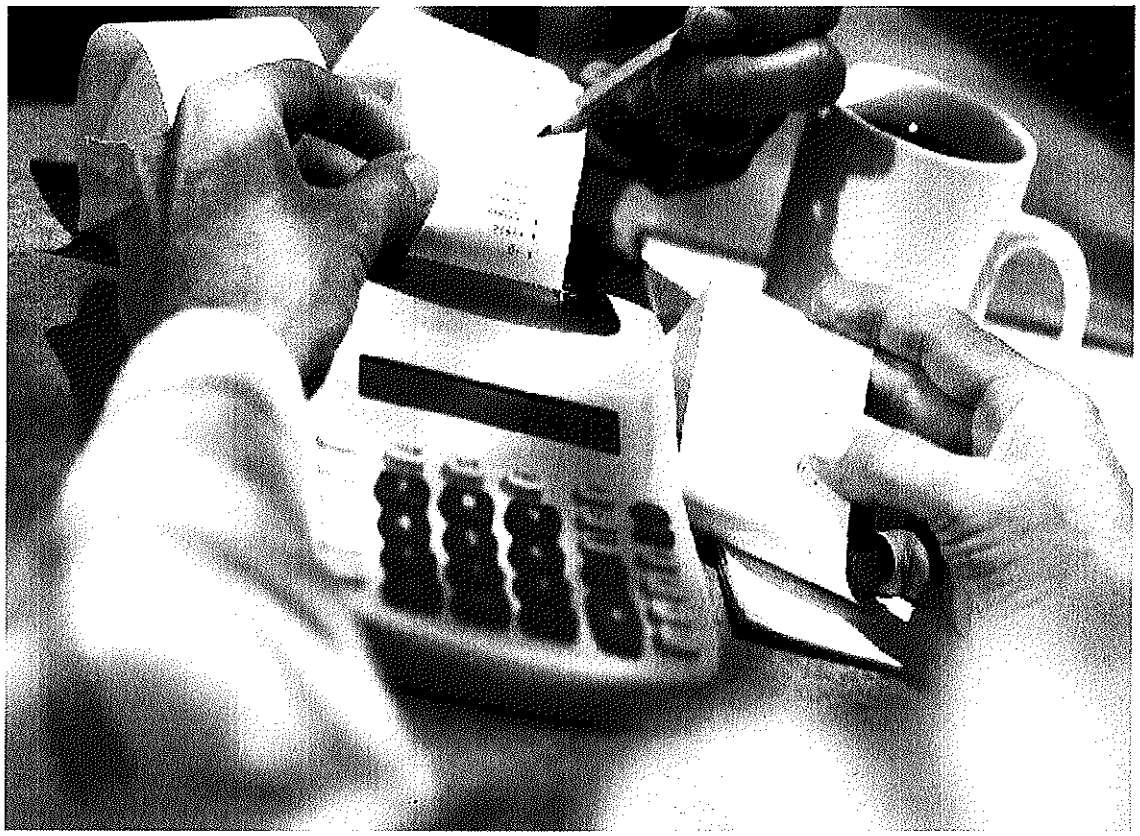
Institute of Financial Planners of Hong Kong

The premier professional body representing financial planners who uphold the highest standards in financial planning that benefit the public

IFPHK Response to the Consultation Paper by the Securities and Futures Commission on Proposals to Enhance Protection for the Investing Public



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IFPHK Profile

The Institute of Financial Planners of Hong Kong (IFPHK), set up in 2000, is the premier professional body in Hong Kong representing financial planners who uphold the highest standards in the financial planning industry. It is the sole licensing body for the testing and certification of CFP℠ professionals in Hong Kong and Macau, and for issuing the CFP[1] certification marks to qualified financial planning professionals in Hong Kong.

IFPHK is supported by 60 corporate members who are leading firms in Hong Kong's financial services industry and is an affiliate member of an international assembly of financial planning bodies called Financial Planning Standards Board[2] (FPSB). The organization currently represents over 10,000 individual members of whom around 3,800 hold the CFP℠ professional designation.

To develop and maintain its high professional standards and self-discipline, IFPHK has put in place a vigorous certification process to ensure that all its CFP professionals satisfy the requisite standards known as the 4Es, namely education, examination, experience and ethics. It would normally take at least 2 years to complete the CFP certification.

[1] CFP℠, CERTIFIED FINANCIAL PLANNER℠ and CFP℠ are certification marks owned outside the U.S. by Financial Planning Standards Board Ltd. (FPSB). The Institute of Financial Planners of Hong Kong is the marks licensing authority for the CFP marks in Hong Kong and Macau, through agreement with FPSB.

[2] FPSB was established in October 2004 by 17 non-profit associations that together certify over 45,000 individuals outside the U.S. to use CFP, CERTIFIED FINANCIAL PLANNER℠ and CFP℠ marks and that have joined FPSB as members. FPSB will protect financial planning consumers and foster professionalism in financial planning through the ongoing development and enforcement of relevant international competency and ethics standards. FPSB will also promote greater global recognition of CFP certification and its related marks as the international hallmarks of financial planning professionals.

Its CFP professionals are also required to follow the FPSB 6-step financial planning process in their front-line activities that is designed to provide suitable advice to clients:

Step 1: Establishing and defining the relationship with the client
Step 2: Gathering client data
Step 3: Analyzing and evaluating the client's financial status
Step 4: Developing and presenting the financial planning recommendations
Step 5: Implementing the financial planning recommendations
Step 6: Monitoring

Since its inception, IFPHK has strived to promote public awareness of the financial planning industry in Hong Kong and uphold the standard of CFP professionals. In addition to consumer seminars, IFPHK has also joined hands with regulators on various projects, including developing educational literature and organizing pro bono financial clinics. In 2006, with contributions from and patrons of leading industry practitioners and experts, IFPHK published the *IFPHK Practice Guide for Financial Planners*. The Guide is the first set of guidance materials for financial planners to practise in Hong Kong. To supplement this effort, IFPHK recently launched the first Guidance Notes, *Suitability of Advice Obligations: Documenting your Financial Advice* for members. In the near future, we will continue providing more practical support to members and will target to roll out more guidance notes for practitioners' daily references.

IFPHK is also participating in a global job analysis review and international studies on financial planning job skills analysis. Through this process, IFPHK will have professional insights into core characteristics and practice *vis-à-vis* Hong Kong's financial planning practitioners and international CFP professionals.

Executive Summary

The recent global financial crisis and the associated widespread loss of consumer wealth alerted international governments, and regulatory and industry bodies to critically review their existing financial foundations. Like Hong Kong, many are now seeking to implement ranges of regulatory reforms to improve ways in which consumers receive financial advice and ways which financial products are marketed. In light of the widespread consumer losses associated with the alleged mis-selling of Lehman Minibonds, we therefore endorsed the need to critically review the existing regulatory regime.

The key focus of the SFC Consultation Paper is to enhance the protection of the investing public. In response to each of the proposals in the consultation paper, IFPHK has addressed the following:

a) its effectiveness in enhancing consumer protection;
b) the tangible and/or intangible costs to the industry, balanced against the effectiveness;
c) the possible unintended negative consequences;
d) the critical success factors.

In addressing the proposals, IFPHK specifically sought industry feedback on reforms relating to sales process changes, commission disclosure, as well as cooling off provisions. In addition, it studied international practices in order to identify measures that might be either beneficial or harmful to the market. Effectiveness of consumer protection and a healthy balance of robust regulations and market development were the areas of focus for IFPHK. To provide a holistic view, IFPHK also identified areas that were not covered in the consultation paper. Although the current consultation is driven by the SFC, IFPHK considered that it was critical to involve other regulators in the implementation of the recommended measures for the market to function properly, where applicable, to enable a level playing field across the market.

Of the reforms outlined,

IFPHK endorses:

- The adoption of a holistic disclosure regime that provides consumers with easy-to-understand information on the scope of the financial advice they are being given and information on the commercial / financial arrangements between product providers and distributors, e.g. key facts, role of the intermediary and commission payments, etc.

- Banning the practice of using gifts when promoting a specific investment product.

- Sales disclosure documents which are in short form and consumer friendly format for all investment products, including commonly distributed retail financial products which are not defined as "securities" under the Securities & Futures Ordinance.

- Cooling off provisions for long term illiquid investment products.

- The inclusion of "knowledge of consumers" as one of the qualifications of "professional investors" and the implementation in a pragmatic manner.

IFPHK's concerns:

This **IFPHK submission paper highlights industry concerns** raised on certain reform initiatives proposed in the consultation paper that it would like to bring to the attention of the SFC.

- Investor categorization – The industry views the proposed "investor categorization" as no different from the suitability requirements currently in place, and questions the likelihood of changes in certain areas of market practice which needs improvement as a result of this proposal. Whilst IFPHK has no real objections to this proposal, industry representatives have expressed skepticism as to the amount of additional consumer protection this will provide. IFPHK recommends that any enhancement in relation to the use of derivative products should instead be focused on increasing the education requirement for intermediaries who are responsible for the sale of "complex" products.

- Revisions to the threshold amount for "professional investors" – IFPHK recommends suitability provisions as best practice for all investors

including "professional investors" which provides more consumer protection than the revision of the existing threshold amount as there is no evidence that the threshold was the main reason for the recent problems.

- Audio recording – Industry views the existing practice of written records to comply with the "know your client" and "suitability" provisions as a more effective audit trail than audio recording. It is acknowledged that the market should focus on strengthening the documentation of client's profile, needs and product suitability rather than changing the format. As a result, IFPHK does not endorse the implementation of audio recording for general clients, but does acknowledge the benefit of audio recording for vulnerable clients.

- Commission disclosure – The industry recognized the benefits of a higher level of transparency to facilitate informed customer decisions. There is also acknowledgement that mere disclosure of monetary and non-monetary benefits of the intermediaries can only have limited success in removing conflict of interest in the market. Nevertheless, the industry agreed to a disclosure method for monetary and non-monetary benefits which could be easily understood by consumers and is a fair representation of the commercial benefits across the field. In order to create a healthy market, it was felt that this needed to be applied uniformly across different industries and distribution models. However, industry representatives have raised serious concerns that the proposed disclosure options could not provide consumers with true and accurate information on the commercial benefits received. IFPHK considers that consumer research should be conducted to obtain a better understanding on the impact of such disclosure on their decision making process

- Level playing field – IFPHK recommends that the standards of disclosure should be applied universally across financial services intermediaries including banks, IFAs and insurance distributors. Implementation exclusively on products defined as "securities" under the Securities & Futures Ordinance regulated by SFC is NOT ENDORSED.

IFPHK recommendations – critical success factors:

In considering the various proposals of the SFC Consultation Paper, IFPHK identified certain critical factors which are vital for the enhancement of consumer protection.

Professional standards of front-line sales staff

It was felt that without addressing certain existing deficiencies in professional standards of intermediaries who sell financial products in the retail market, attempts to strengthen disclosure or the sales process could not adequately address the issue. Industry leaders and members have also acknowledged during our discussions the need to raise the standards of front-line sales staff. Views were also exchanged that many publicly voiced consumer complaints regarding the Lehman incidents were specifically related to the poor quality of financial advice that consumers received from front-line sales staff.

IFPHK believes that qualified intermediaries, well informed and educated consumers together with a robust framework for regulating sales process form the core pillars for assurance of benefit to the investing public. It is believed that the expected outcome of the SFC recommended sales process and product disclosure enhancements will be jeopardized without a series of specific recommendations on improving professional standards of front-line sales staff. IFPHK therefore recommends that SFC work with other regulators (such as the Hong Kong Monetary Authority (HKMA) and the Office of the Commissioner of Insurance (OCI)) to undertake a critical review of the existing entry level licensing and on-going training requirements for financial advisers to ensure that standards are sufficiently robust to cater for the increasing complexity of financial products being offered.

In addition, if the professional standards of financial intermediaries do not keep up with the demands of the market, even if all the measures proposed are implemented, Hong Kong would not be able to maintain its reputation as an international financial centre and build its wealth management business.

Level playing field across distribution channels and different sectors of the industry

It should be noted that **the key assumption throughout the IFPHK submission is that the endorsed and/or recommended reforms should be adopted consistently by all financial intermediaries servicing retail consumers operating in the IFA, banking and insurance sectors.** IFPHK believes that failure to implement a consistent approach across the industry could result in significant **negative consumer and industry consequences.** The industry has also specifically expressed concerns that the lack of a consistent set of standards across financial services intermediaries would expose Hong Kong consumers to regulatory arbitrage whereby financial advisers and product providers could "opt out" from the more heavily regulated SFC regime but instead migrate towards financial advice models under the more lightly regulated industries.

In a free market economy, different business models are allowed to flourish. This is generally seen as beneficial for a long term sustainable market.

However, IFPHK considers that there must be every effort to maintain consumer protection with the same regulatory requirements for different business models. The risks in allowing room for regulatory arbitrage would inevitably lead to problems and issues which are precisely what the SFC consultation paper is attempting to avoid. In addition, regulations which unintentionally and without apparent reasons favoring one business model over another, thereby preventing market operators to compete on a fair and transparent basis, will not benefit consumers. Regulations can never be perfect in a free market economy but when issues have wide and significant implications, IFPHK believes that they should be carefully considered and addressed before they are executed in order to avoid unintended negative consequences for consumers that the market will subsequently regret.

The SFC Consultation

As a result of the financial crisis, the SFC, the HKMA and the government announced a number of reform initiatives in April 2009. Those reform initiatives were developed directly in response to the Lehman Minibonds investigation and had identified specific deficiencies in the ways the financial products were being sold to consumers and information was being provided to consumers. The HKMA rolled out its reforms in April and the SFC published its Consultation Paper on "Proposals to Enhance Protection for the Investing Public" in September.

The SFC Consultation Paper contains proposals in three parts, namely:

- Part 1 which covers Questions 1-17 on improving the pre-sale process mainly related to product document disclosures
- Part II which covers Questions 18-28 on sale process reform regarding intermediaries conduct and disclosure issues
- Part III which covers Questions 29-32 on post-sale disclosures mainly on the feasibility of a cooling-off period

By its proposals, the SFC attempts to introduce market reforms which could affect the way financial advisers are required to conduct their business and which might change the way in which product issuers are required to disclose product risks and features to consumers. As IFPHK focuses more on financial planning practice, we have intentionally focused our attention and response on questions 18-32, which we believe have more impact on the businesses of financial planners.

IFPHK Response Methodology

The regulatory reforms proposed in the SFC Consultation Paper will have a direct impact on ways in which financial planners are required to conduct their business and in which product issuers are required to disclose products risks and key product features to consumers. Due to the broad impact of the proposed reforms on both corporate and individual members, IFPHK believes that it is important to develop a detailed submission to the regulator on their proposed reforms.

SFC Consultation Task Group formed

During the nine-month soft consultation process by the SFC, IFPHK formed its "SFC Consultation Task Group" representing sectors of the financial planning industry for the purpose of relaying industry feedback to preliminary proposals put forward by the SFC. Members of the SFC Consultation Task Group include Mrs. Francine Fu, President of IFPHK; Ms. Angeline Chin, CEO of IFPHK; Mr. Derek Young (former CEO of IPAC); and Mr. Ernest Chan of Convoy.

Subsequent to the release of the SFC Consultation Paper in late September 2009, IFPHK involved more industry leaders and professionals from the banking industry, insurance sector, IFAs as well as academics, to source more comments on the proposals in the consultation paper. Members of this enlarged Task Group include Mrs. Francine Fu, President of IFPHK; Mr. Steve Chiu, Vice President of IFPHK; Ms. Angeline Chin, CEO of IFPHK; Mr. Paul Pong of Pegasus; and Mr. Ernest Chan of Convoy.

Monetary Disclosure Focus Group formed

During the discussions, it became apparent that industry representatives were most concerned about the practicality and effectiveness of monetary and non-monetary benefit disclosure. In order to develop a more informed response, a "Monetary Disclosure Focus Group" was established to discuss industry concerns regarding the implementation of commission disclosure, its practical application and its effectiveness. Members of the Focus Group included more product practitioners who were familiar with international practice on commission disclosure. Members of this focus group included (in alphabetical order), Mr. Andy Robinson, Regional Director of Zurich International; Ms. Brooke Patterson, Director Financial Advisory ANZ Private Bank; Ms. Eleanor Wan, ex-CEO of Allianz Asset Management; Mrs. Francine Fu, President of IFPHK; Ms. Lynn Pi of the University of Science and Technology; Mr. Paul Pong of Pegasus; and Mr. Steve Chiu, Vice President of IFPHK.

Apart from the Focus Group, we had also specifically sought the views of Ms. Jo-Anne Bloch, CEO of the Financial Planning Association of Australia, on the Australian disclosure regime.

Industry Leaders' Views Sought

Senior executives' feedback has also been canvassed with 10 industry leaders from the insurance, IFA and banking sectors. Discussions with these leaders, which employed more than 14,000 agents in the insurance sector, more than 1,700 relationship managers in the banking sector and 1,200 advisers in the IFA sector respectively, have helped shape our submission. Although there was agreement on most issues, not all industry leaders' views on each specific consultation question were the same. **As such, not all views expressed in this submission paper have been directly endorsed by industry leaders consulted.**

Individual Members' Views Sought

Our individual members had also been offered the opportunity to express their views to us on the specific reforms proposed in the SFC Consultation Paper. A Members' Information Session had been organized in mid-November to ensure interested members had the opportunity to discuss the proposed sales process reforms with the SFC and other task group members. A members' questionnaire was also widely distributed to IFPHK individual members to seek their comments. IFPHK received valuable comments and responses from its members and some of whose concerns have been addressed in this submission paper as industry views. The IFPHK submission outlined here was also made available for members voting in late December. A total of 167 IFPHK members responded to the online survey posted on our website and 89% of the responded members in general agree to our proposed answers contained in this paper[3].

[3] Breakdown of our survey results:

Questions	% of responded members agreed to IFPHK proposed response
Question 18	89%
Investor Characterization	96%
Professional Investors	92%
Commission Disclosure	83%
Use of Gifts	80%
Sale Disclosure Document	96%
Audio Recording	83%
Cooling Off Provisions	92%

Conclusion by the Institute of Financial Planners of Hong Kong

After collecting the industry's views on various levels and from different sectors, IFPHK had then analyzed information obtained together with its own research and data collected from affiliates across relevant markets such as Australia, the UK and Singapore. It attempted to objectively analyze the effectiveness of the various measures proposed in the SFC Consultation Paper, the critical factors of success, the costs to the industry and unintended negative consequences, if any. **As such, views expressed herein this submission paper are not necessarily summaries of views from the industry but one which had undergone more independent and critical analysis and consideration by IFPHK as a professional institute. As a result, not all individual's views expressed (by members and/or industry players) were recorded in this submission paper and some of them might have expressed different views.**

IFPHK Submission

Below is the IFPHK submission which is the result of our view-seeking process in addition to our own independent internal analysis.

Any new measures proposed would have different types and degree of impact in the various segments of the market. It is never possible to have a perfect solution which fits all the needs and circumstances but IFPHK endeavored to consider as a first priority the impact on the retail investing public in addition to the impact to the development of the financial planning industry as a whole. It is therefore also appreciated that some of our members may hold a slightly different view and that it is important that we work together with our members to come up with solutions which take into account everyone's concerns.

CONSULTATION QUESTIONS IN PART III – INTERMEDIARIES CONDUCT

Question 18: Application to unlisted investment products only

IFPHK Response

IFPHK acknowledges that investors in listed products are currently being provided with detailed information regarding the scope of the services offered and the basis of commission payments they will be charged when they open an account with a stockbroker and when they sign a client agreement with that broker. In addition, the purchase of a lot of such products is self-directed and did not necessarily involve advice. As a result, IFPHK recommends that some of the enhancements to intermediaries' conduct be made applicable to unlisted products only.

Questions 19 : INVESTOR CHARACTERIZATION

IFPHK Response

IFPHK endorses the need to strengthen the "know your client" rule and to provide greater clarity on suitability tests which obliges intermediaries to ensure that product selection is "suitable" and "appropriate" for individual investor based on their needs and risk profiles. In the existing SFC Code of Conduct, intermediaries are already obliged to take into account the investment experience of consumers when considering an appropriate

product recommendation. As reasonable investment experiences may confer knowledge, the proposal to include knowledge of derivatives as part of the "know your client" process is seen as a logical extension of that requirement. IFPHK has no objection to including knowledge as part of the "know your client" process.

IFPHK Concerns Regarding Proposed Reforms

IFPHK does not see the proposal to expand just one element of the 'know your client' process to be effective in enhancing customer protection. We are of the opinion that the critical factor of success and perhaps a more important area to be addressed would be the knowledge and professionalism of intermediaries. Intermediaries with suitable knowledge and high level of professionalism who would rigorously apply the suitability test would ensure better consumer protection in the long run.

Currently, a large number of investment products in the market already have embedded options which are used for risk management purposes rather than yield enhancement. There are concerns that investors who are not deemed to have the requisite degree of derivatives knowledge would be deprived of the right to access these low risk products under the proposed regime. It is our understanding that SFC does not see the need for customers purchasing such products to have the necessary derivative knowledge and IFPHK would like to seek a clarification on this area.

IFPHK Recommendation

As stated previously, IFPHK endorsed the need to improve existing sales process that we felt had not been kept up with the development and growing maturity of the market. Consumers need to understand what they are investing in, and the specific risks and rewards of those investments. IFPHK believes that the financial adviser has an important role to play in assisting consumers understand their investments and in undertaking the required financial analysis to ensure suitability of the products being offered to a client's individual investment portfolio.

IFPHK considers that consumers would benefit from higher standards of professional financial advice generally and more specifically, enhanced standards of professional advice in relation to complex investment products in the future. IFPHK proposed that consumers who purchase "complex investment products" be required to receive advice from a suitable qualified professional financial adviser with specific education experience in "complex investment products". This approach follows the recently announced

Singapore proposal by the Monetary Authority of Singapore (MAS) where representatives involved in the sale and marketing of "complex financial products must have undergone adequate training and have competencies to sell complex investment products"[4]. The MAS proposal suggested that financial advisers selling complex investment products should have more specialized training to enable them to better explain the features and risks of complex investment products to customers and propose the introduction of a new examination model specifically in relation to product knowledge on complex investments. IFPHK recommends that the overall knowledge and competency requirements of intermediaries be reviewed together with a proper job analysis and gaps addressed through either education or examination or a combination of both.

In conclusion, IFPHK has no objection to adding experience as an additional element in the "know your client" process but would like to see the knowledge and professionalism of intermediaries reviewed.

Questions 20-21 : PROFESSIONAL INVESTORS

IFPHK Response

Revisions to minimum asset portfolio requirement

IFPHK has not come across a lot of evidence that suggested a large number of consumers have been disadvantaged because they were considered professional investors based on the current low threshold of wealth assessment. In fact, HKD8 million is relatively not a low threshold of wealth assessment in comparison with many jurisdictions. Rather we were given to understand that some professional investors might have invested into products which they did not truly understand and intermediaries were exempted from complying with the "know your client" and "suitability test" in accordance with paragraph 15.5 of the current SFC Code of Conduct. As there appears to be limited additional consumer protection achieved by raising threshold provisions, IFPHK would not recommend that changes to threshold provisions be made.

[4] MAS Consultation Paper on Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products, March 2009

Review of knowledge, expertise and investment experience assessment criteria

IFPHK felt that the assessment of customers' understanding on products they bought by gathering information on their knowledge of the same or similar products to be a reasonable measure to protect these consumers.

IFPHK Concerns Regarding Proposed Reforms

Revisions to minimum asset portfolio requirement

IFPHK believes that the implementation of any upward revisions in threshold amounts is likely to result in additional compliance costs for product providers and sales intermediaries with no clearly defined consumer benefit. IFPHK is concerned that the industry would be required to bear additional costs for implementation of this change without a clearly defined benefit.

Review of knowledge, expertise and investment experience assessment criteria

IFPHK agrees in the general principal of using knowledge, expertise and investment experience as a useful tool to assess an investor's knowledge. Whilst the principle suggested in Question 20 of the consultation paper appears reasonable, the industry has raised concerns regarding the proposed reforms that require that this experience must be 'relevant to the product type and market under consideration'. The industry is concerned that these requirements may prove to be difficult in implementation due to the large variety of products potentially existing within the typical investment portfolio of a "professional investor". They comment that these investors typically hold diversified investment portfolios with a wide range of products including derivatives, bonds, exchange traded funds, foreign exchange and equity structured products etc. They note that providing proof and verification of training documentation and the assessment of the relevancy of this training for each product within a typical "Professional Investor" investment portfolio may not always be practical. The industry would like to see this additional requirement be implemented in a pragmatic and effective manner.

IFPHK Recommendation

IFPHK believes that all investors will benefit from gaining professional advice on the suitability of an investment product offering to their overall

portfolio. As a result, IFPHK would like to suggest that as best practice that all financial advisers conduct suitability tests regardless of a client's net worth or previous investment experience.

In summary, IFPHK believes that there is only cost and no benefit in revising the minimum threshold for professional investors. Instead, IFPHK endorses the inclusion of knowledge as part of the criteria for qualifying a professional investor when done in a pragmatic manner and proposes applying the suitability test for all investors, including professional investors, as a best practice.

Questions 22-25 : PRE-SALE DISCLOSURE OF MONETARY AND NON-MONETARY BENEFITS

IFPHK Response

IFPHK acknowledges that if suitable advice was to be given, conflict of interest would need to be managed. This view is largely supported by members who had been consulted. However whilst there are varying degrees of support for commission disclosure from the market, the difficulty of achieving a level playing field and the practical difficulty of establishing a truly transparent dollar value model of disclosure for distributors who do not explicitly receive any monetary benefits (Business Model 2 in the consultation paper) and those who make a trading profit from the transaction (Business Model 3 in the consultation paper) was acknowledged by all. There also appeared to be little evidence that consumers in UK and Australia truly understood what was disclosed or conflict of interest greatly removed even though commission disclosure had been introduced for a number of years. The industry was also of the opinion that an informed decision should be based upon a number of factors including effectiveness of the product to achieve the consumer's financial objectives, risks, affordability, etc and commission disclosure could divert the attention of the consumer from considerations which should be equally important.

IFPHK Recommended Approach to Commission Disclosure

As noted earlier, in the consultation process, IFPHK has undertaken extensive discussions amongst FPSB affiliate members who have been operating in a commission disclosure environment for lengthy periods of time. Whilst FPSB affiliate members acknowledged some consumer benefits of commission disclosure (which were actually some unintended but positive consequences), they noted that positive consumer outcomes are often compromised by the implementation of lengthy, compliance

focused legal documents which serve as the source of consumer confusion rather than serving as means to equip consumers with more information in relation to any potential conflicts of interest in service delivery. The direct experience and insights of FPSB members operating in commission disclosure business environments have been used to assist in the development of the IFPHK critical success criteria for the implementation of effective disclosure (including product, commission and sales disclosure) outlined below.

Critical success criteria 1: Any disclosure documentation must be short, simple, easy to understand and consistent plain English/Chinese terminology must be used throughout product disclosure, commission disclosure and sales disclosure documentation.

Whilst IFPHK understands that the SFC takes a principal based approach to the regulatory reform, experience from other international jurisdictions suggested that in the absence of prescriptive direction from the regulator, disclosure documentation often developed into lengthy legal documents, neither read or nor understood by the consumer for which disclosure documentation was developed to protect.

In 2008, the Financial Planning Association (FPA) Australia undertook consumer testing of short form statement of advice disclosure documentation. The study highlighted some interesting consumer insights into what information consumers read and absorb in statement of advice disclosure documentation. The research found that shorter documents are more effective and the research recommended that the consumer should be able to read the document in one sitting. The research also found that when documents are lengthy, consumers typically skip large pieces of information, believing that information would be generic and not relevant. As noted by one consumer involved in the survey,

> *"My own disclosure document has 43 pages and you have forgotten by the end what they said at the start"*[5]

In summary, IFPHK believes that it is critical that any disclosure documentation should be presented to consumers in a clear and concise fashion. **IFPHK also believes that it is critical that the industry be given specific instructions from the regulator regarding the length of such disclosure documents to ensure that these documents**

[5] FPA Australia Consumer Test of Statement of Advice May 2008

remain consumer friendly and are not allowed to develop into compliance focused disclosure which fails to protect the consumer and ultimately add significantly to the overall cost of providing financial advice.

Critical Success Criteria 2: Commission disclosure should be standardized across retail financial products overseen by different regulators

When implementing revisions to disclosure requirements, IFPHK suggests that key regulatory bodies including the HKMA and OCI adopt common standards of disclosure for all industry participants/intermediaries who provide financial advice to consumers. Unlike perhaps 10 years ago, financial products have evolved and the distinction between banking, investment and insurance products is less obvious and they share many similar features. Failure to implement consistent standards across the industry may result in significant **negative consumer and industry consequences.**

Different standards of regulation may expose Hong Kong consumers to regulatory arbitrage whereby financial intermediaries "opt out" of the jurisdictions which have tighter controls, such as those which impose more comprehensive commission disclosure requirements, but instead support financial advice business models operating under the more lightly regulated industries. **IFPHK therefore does not endorse commission disclosure for products defined as "securities" under the Securities & Futures Ordinance and regulated by SFC alone.** It would be unreasonable to expect consumers to understand the differences. Even in UK, where the Financial Services Act was first introduced, retail financial products are still largely sold and not bought. For effective consumer protection outcomes, commission disclosure requirements and standards should be made consistent across the various products.

<u>IFPHK Concerns Regarding Proposed Reforms</u>

Whilst IFPHK endorses the need to provide consumers with detailed and relevant information regarding the nature of the relationship between the product provider and the intermediary, industry consultation has highlighted some concerns regarding the proposed commission disclosure models as outlined in the SFC consultation paper.

1. ***Industry does not believe that a % value or dollar value disclosure under the proposed Business Model 2 will provide consumers with true and accurate information regarding the***

commission paid. Industry is uncertain as to the significance of commission in a consumer's decision making process when compared to a products distributor's branding and product yield.

The IFPHK Task Group had spent an extensive period of time critically reviewing the proposed commission disclosure requirements under Business Model 2 in the consultation paper. After much analysis, IFPHK believes that the proposed process to report commission rates in Business Model 2 is not workable solutions for product providers and may not result in accurate reflection of commission rates to consumers. These concerns were also identified by SFC in the consultation paper *"the commission recognizes that this approach will entail higher compliance costs and any internal allocation and budgeting is likely to be subjective"*[6]. IFPHK would question whether or not consumers would actually benefit from the publication of "subjective" commission rates.

A solution to this issue might then be to suggest generic disclosure of commission for business operating under Business Model 2. However, IFPHK is concerned that this would create an uneven playing field between the distribution models. Consumers may perceive third party distribution providers as more "expensive" if they are required to reveal that they get paid, for example, commission of up to 5% when compared to those distributing in-house products which may only be required to make generic statements regarding payment structures. In a healthy market economy, different business models should be allowed to flourish. Such measures would therefore not only be seen as a backward step for a vibrant maturing market but also failed to serve the interest of the investing public.

Industry players had also shared their experience in particular after the Lehman Minibonds incident, that many of their consumers began to place more emphasis on the branding of product providers and distributors and product yield, and less concerned with the 0.5% or 1% commission charge difference. Certain distributors doubt the significance of commission in a consumer's decision making process.

Given the possible significant increase in compliance and disclosure costs to achieve a specific disclosure of commission in business model 2, industry players urged the regulators to carefully study and consider the efficacy of imposing such disclosure model, and whether the level of

[6] SFC Consultation Paper, p. 80

consumer protection expected of by implementation of the same could outweigh the costs to introduce the measures.

In light of the comments received, and while striking to achieve a level playing field across the industry, IFPHK believes that consumer research should be conducted to understand the pattern of consumers' decision making process and the significance of commission vis-à-vis distributor branding and product yield before any meaningful recommendation could be made.

IFPHK considers that consumer research should be conducted to obtain a better understanding of consumer behaviour in Business Model 2 before developing a more satisfactory disclosure arrangement for businesses operating under this model.

2. ***The industry is generally concerned that the regulators may be placing too much emphasis on disclosure as a consumer protection tool***

International affiliate members operating in commission disclosure environments note that regulators and governments should be wary of relying on disclosure tools alone to improve consumer protection. Consumers need to understand the product they are buying, its risks and reward structure in addition to understanding how the intermediary is paid.

As highlighted recently by Jon Pan of the Financial Services Authority, UK,

"... we have seen the limits of what can be achieved with tools such as disclosure of product details and charges. In the past, we have attached great importance to ensuring that consumers were given the right information in order to enable them to make the right choices. ***However, experience has shown that although this might be a necessary, it is not a panacea to enable consumers to deal with product complexity and make informed choices.*** *The consumer must be able to understand the nature of the products they are actually buying and how it meets their needs"*[7]

[7] Jon Pain, FSA Managing Director Retail Markets Speech September 19th 2009

IFPHK Recommendations

For Business Model 1 and 3, IFPHK recommends the implementation of % band disclosure of monetary benefits quantifiable at the point of sale.

IFPHK believes that a % band commission disclosure for Business Models 1 and 3 will provide consumers with some useful information regarding how the distributor is being remunerated which **is one tool to assist the management of conflicts of interest issues**.

As stated previously however, IFPHK believed that the way in which this information is communicated to consumers will be critical in the ability of the policy to achieve its stated objective. The recent "Australian Parliamentary Inquiry into Financial Products and Services" specifically recognized the limitations of disclosure policy tools when they are not communicated to consumers in an effective manner,

> *"Evidence to the committee strongly suggests that the current **disclosure requirements had not been an effective tool for managing conflicts of interest.** One problem is that the present arrangements enable or encourage licensees to take a risk-averse approach to compliance, rather than providing disclosure material that is focused on informing consumers ... disclosure documents are often lengthy and complex, reflecting the nature of products and providers all encompassing approach to legislative compliance. Such material is unlikely to serve informed decision making where consumers are dis-engaged or unable to comprehend it."*[8]

IFPHK does not endorse specific dollar value commission disclosure.

The consultation process has highlighted concerns that dollar value commission disclosure will require industry participants to reveal commercially sensitive information regarding specific relationships between product providers and intermediaries under a dollar value disclosure regime.

Whilst IFPHK endorses the need to provide consumers with easy to understand information regarding commercial relationships existing between product providers and distributors, IFPHK does not believe the

[8] Parliamentary Joint Committee on Corporations and Financial Services, November 2009, p.81

consumer benefits of dollar value disclosure (above and beyond the proposed % band dis-closure) are significant enough to warrant it's introduction in Hong Kong. In summary, IFPHK does not believe that the additional consumer benefits outweigh industry implementation costs and therefore do not recommend the introduction of dollar value commission disclosure.

IFPHK does not endorse either generic, % band or dollar value commission disclosure under Business Model 2.

As outlined previously, IFPHK does not believe that the suggested disclosure mechanisms for Business Model 2 will ensure that consumers are able to receive true and accurate information regarding the commission paid when firms operate as both a product issuer and distributor. IFPHK questions the value of providing consumers with "subjective" commission rates and does not believe that subjective commission rates will help manage conflict of interest issues for consumers. IFPHK considers that more study on consumers' behaviour and decision making pattern should be conducted before proposing a meaningful distribution model which works best to achieve investor protection.

Implementation Approach

When appropriate solutions could be found for all business models, IFPHK recommends consumer education to be undertaken prior to the introduction to ensure that the best consumer results could be achieved. Once appropriate solutions have been identified, the investing public should be educated on factors they need to consider when making an informed investment choice, the different distribution models and how commission may pose conflict of interest for the intermediaries and finally how to interpret the commission disclosure document. This has not been done adequately in other jurisdictions which may be one of the reasons of their limited success.

When considering implementation time frames, IFPHK recommends that the regulator be mindful of industry implementation issues in relation to systems changes required and the additional staff training required for the roll out of commission disclosure in an effective manner which will enhance the consumer outcomes. Whilst distribution agreements signed among product providers and distributors, and terms reached thereat come out for a variety of factors but never for being disclosed to consumers and the public. Subject to the extent of the disclosure requirements, IFPHK recommends that the industry be provided adequate time to review their

business model and to likely re-negotiate those terms such that they could be disclosed appropriately and in a user friendly manner. Experience elsewhere demonstrated that consumers stand to gain the most when adequate preparation has been conducted.

Question 26 : USE OF GIFTS BY DISTRIBUTORS IN PROMOTING A SPECIFIC INVESTMENT PRODUCT

IFPHK Response

IFPHK endorses the proposal to restrict gifts with monetary value (except discount of fees and charges or where the value is nominal) to prevent any possible distractions to investors from product features and suitability. IFPHK agrees that incentives which could be used to enhance the investors' return could be considered.

Question 27 : SALES DISCLOSURE DOCUMENT

IFPHK Response

As per previous recommendations on commission disclosure, IFPHK endorses sales disclosure documents which provide consumers with clear and concise information on potential conflict of interest issues, provides them clear and easy to understand reporting of commission costs and fee structures and clearly outlines product key features and product risks. As noted previously, **IFPHK recommends that the SFC give the industry specific guidelines on the length and language usage of these sales disclosure documents** to ensure that they do not become lengthy compliance focused documents which are not read by consumers and simply add to the overall cost of providing financial advice.

IFPHK recommendation

The FPA Australia has used their extensive experience of working with Statement of Advice disclosure requirements and has recently developed a list of 5 essential components they recommend for inclusion in future sales disclosure documentation which IFPHK felt could be a useful reference FPA core items include[9]:

- Risk profile of the client- appetite to risk and implications

[9] FPA Submission to Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Products and Services in Australia, July 2009

- Relationship with the client- expectation and services to be provided
- Remuneration – what the client will be charged for the agreed service
- Related parties – including ownership links and relevant conflicts of interest
- Returns – projected investment returns over the long term, along with the impact of market cycles and other relevant issues

Question 28 : AUDIO RECORDING

IFPHK Response

IFPHK Task Group and members consider that the current SFC's record keeping requirements already suffice for the protection of investors and do not agree to make audio recording mandatory. IFPHK has not seen a lot of evidence demonstrating that the current form of record keeping led to the recent problems in the market but rather the lack of strict adherence to the "know your client" and "suitability" test which appeared to require addressing. Merely introducing a new form of recording would fail to address the more fundamental problem and add new elements of ambiguity as audio recording was not commonly used as formal records in many other jurisdictions.

Some industry players who have introduced audio recording have noted that some consumers were reluctant to have their personal financial condition audio-taped. Besides, it may also be unduly burdensome and costly for some advisers to implement and maintain such records which would appear hard to justify when there was no apparent consumer benefit.

IFPHK Recommendation

IFPHK Task Group and members however agree that for vulnerable consumers such as the aged and illiterates, audio recording could offer a means of protective measure in safeguarding their interests. We also recommend that as a best practice, full recording of the sales process should be made with those categories of consumers but not simply recording the disclaimer declarations required from them.

CONSULTATION QUESTIONS IN PART IV – POST-SALE ARRANGEMENTS: COOLING OFF PERIOD

Questions 29 – 32 : Cooling Off Period

IFPHK Response

- IFPHK believes that consumer have the right to and should always be guided to understand the product or service properly before committing themselves to it. As a result IFPHK in principle agrees that the introduction of "cooling off" period for long dated illiquid products.

IFPHK Concerns Regarding Proposed Reforms

It was noted that most closed-end products sold in the market were of a shorter tenure but in practice, it would be technically problematic to introduce a cooling off period for such products and dubious consumer benefits achieved. However for the longer tenure products, consumers would be expected to opt for the "cooling off" when the market went against them. In such situation, the cost of unwinding their positions would be quite significant and the exact amount unknown until the action has been done. As a result, consumers may get a substantial reduction in their investment and that could lead to complaints.

IFPHK Recommendation

IFPHK would recommend that appropriate consumer education funding be allocated prior to the introduction of cooling off provisions to ensure that consumers fully understand that any loss occurring as the result of negative market movements may mean that the total face value of their investment may be reduced when closing out their investment product under cooling off provisions. The industry also proposed a change in the term "cooling off" to ensure that consumers understand that they may not get their capital back.

IFPHK ADDITIONAL RECOMMENDATION ON REGULATORY REFORMS TO "ENHANCE PROTECTION FOR THE INVESTING PUBLIC"

The broad industry discussion led by IFPHK in seeking response to the SFC consultation paper has raised additional regulatory reform initiatives which IFPHK believes are critical to ensuring consumer protection moving forward. IFPHK and industry leaders in general believe and invite the SFC to seriously consider that market reform initiatives for the purpose of enhancing consumer protection should also contain a series of specific regulatory reforms aimed at improving professional standards of front-line sales staff.

IFPHK is of the view that qualified intermediaries is a core pillar for ensuring consumer protection and which should be working together with consumer education and improved sales process to the benefit of the investing public. It has been suggested that the professional standards and technical knowledge of front-line sales staff responsible for the sale of Lehman Minibonds were not sufficiently high and as a result consumers suffered. IFPHK is concerned that this issue has not been addressed in the SFC consultation paper and believes that the expected benefits of sales process and product reforms will be jeopardized unless standards of front-line staff employed by banks, IFAs and insurance companies are improved moving forward.

Raising professional standards of front-line sales staff has been addressed by the UK Financial Services Authority (FSA) in their June 2009 consultation paper, "Distribution of retail investments: delivering the Retail Distribution Review" and is currently being proposed in Australia as outlined in their recently published "Parliamentary Inquiry into Financial Products and Services in Australia", November 2009. The FSA commented that they are striving *"to create professional standards which inspire consumer confidence and build trust, ultimately turning financial advice into a profession whose reputation is on par with others"*[10].

IFPHK recommends that the Hong Kong financial regulatory community should also undertake a critical review of the professional standards of front line sales staff to establish whether or not existing entry level requirements and ongoing professional education requirements are at a sufficiently high level *"to inspire consumer confidence and build trust"* moving forward.

[10] Speech by Dan Waters, Director of Retail Policy and Conduct Risk, FSA July 10th 2009

Whilst IFPHK is not specifically recommending a preferred licensing examination for the financial planning industry, IFPHK recommends that the respective regulators work closely together to critically review whether existing entry level and on-going professional education and training requirements are sufficiently robust in their current format to provide consumers with an adequate level of protection given the complexity of many financial products existing in the market place.

IFPHK will be conducting its own review of practice standards of financial planners in 2010 as part of a global job analysis survey initiated by our international affiliates. The job analysis survey will be conducted across our local CFP practitioners. The objective of the survey is gain specific insight into the skills required by a Hong Kong financial planner in their daily business activities. The results of this survey may form the basis of future IFPHK recommendations in relation to the adequacy of existing licensing and on-going professional education requirements for financial planning practitioners in Hong Kong. IFPHK would be happy to share the results of this survey with the regulatory community to assist them in reviewing existing entry level and on-going professional training requirements as recommended above.

CONCLUSION

In summary, IFPHK believes that sound regulatory reform which improves existing sales processes makes marketing material more factual and meaningful to customers and offers appropriate levels of disclosure which help manage conflict of interest issues are all positive steps for the industries development. In addition, IFPHK recommends that the government and regulatory community also consider specific reforms aimed at professionalizing the standards of financial advisers at the customer interface. For the above reforms to be effective long-term, consumers however also need to develop basic financial literacy skills which will allow them to more critically review their investment decisions and more effectively plan for their long term financial future. Combined, IFPHK believe that this holistic list of initiatives will begin to help re-build the relationship of trust between consumers and financial service providers that has been significantly tarnished in recent times.

Key Recommendation

Question No.	Description	IFPHK response / recommendation
18	Do you agree that some of the proposals in this part of the consultation paper should only apply to unlisted investment products?	**Response** Agree.
19	Investor Characterization	**Response** Although the IFPHK Task Group and members agree and endorse the principle that intermediaries should, as part of their "know your client" procedures, seek clients' information about their knowledge of derivatives, hence do not object to the proposed "derivative knowledge" characterization for investors, it was felt that it would be more important to address the professional standards of the intermediaries. **Reason** We considered that investors are already adequately protected under suitability requirements and a higher professional standard of intermediaries who sell complex financial products would be more effective in enhancing investor protection. **Recommendation** As an alternative mechanism to enhance the protection of consumers in the sale of complex products, IFPHK proposes to refer to the Singapore model to introduce additional educational and/or training requirements for front line sales staff responsible for the sale of "complex financial products" to retail consumers.
20-21	Professional Investors	**Response** IFPHK agrees that working experience and training could add value to investors' "specific knowledge and expertise". However we do not see the necessity of increasing the minimum portfolio threshold for "professional investor". **Reason** We consider that the more important issue in enhancing investor protection was to ensure that "suitable" advice is being provided. We also

Question No.	Description	IFPHK response / recommendation
		anticipate technical difficulties that could arise in ascertaining whether a course and/or training are "relevant" for a consumer's portfolio. **Recommendation** The IFPHK Task Group and members suggest that an intermediary completes the suitability tests for all consumers including 'professional investors" the extent of training received by and working experience of the consumer, as well as his financial portfolio, could be taken into account when qualifying an investor as a 'professional investors" but need to work out the practical implications.
22-25	Pre-Sale Disclosure of Monetary and Non-Monetary Benefits	**Response** Unless the critical issues of an uneven playing field between different retail financial products and different distribution channels is addressed, IFPHK feels that commission disclosure should not be implemented. For Business Model 1 and 3, IFPHK recommends the implementation of % band disclosure of monetary benefits quantifiable at the point of sale. IFPHK does not endorse either generic, % band or dollar value commission disclosure under Business Model 2. **Recommendation** For Business Model 2, IFPHK recommends that a consumer research shall be conducted to understand the impact of commission on a consumer's decision making process before recommending any disclosure models. Commission disclosure should be standardized across retail financial products overseen by different regulators. Consumer education should be the first milestone before imposing commission disclosure on intermediaries. Consumers should first be educated on the factors they need to consider when making an informed choice, the different distribution models and how commission may pose conflicts of interest and finally how to interpret the commission disclosure document. The second phase then follow shall be for

Question No.	Description	IFPHK response / recommendation
		intermediaries to build in systems and conduct trainings to facilitate proper disclosure.
26	Use of Gifts by Distributors in Promoting a Specific Investment Product	**Response** Agree to ban.
27	Sales Disclosure Document	**Response** Agree to the proposed disclosure. **Recommendation** Sale disclosure should be made in a user friendly manner at the initial sale process and one-off to consumers. Specific guidelines should be provided to the industry on the length and language to be used in the disclosure documents to ensure that they do not become lengthy compliance focused documents.
28	Audio Recording	**Response** IFPHK considers that the current SFC record keeping requirement suffice and does not agree to mandatory audio recording. **Recommendation** IFPHK however considers that audio recording could be made mandatory for vulnerable clients.
29-32	Cooling off period	**Response** Agree in principle that a cooling off period would be beneficial for investors. **Recommendation** Recommend that cooling off provisions should only be applied to long term illiquid products. Also recommend that adequate consumer education should be provided. A change in the description of this proposed measure is also recommended.

Appendix A

CONSULTATION QUESTIONS 18-32 OF THE
SFC CONSULTATION ON
PROPOSALS TO ENHANCE PROTECTION FOR THE INVESTING PUBLIC

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.

INVESTOR CHARACTERIZATION

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 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.

PROFESSIONAL INVESTORS

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? And, do you have any other suggestions?

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

PRE-SALE DISCLOSURE OF MONETARY AND NON-MONETARY BENEFITS

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)?

Question 24 – Where a distributor does not explicitly receive any monetary 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

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

USE OF GIFTS BY DISTRIBUTORS IN PROMOTING A SPECIFIC INVESTMENT PRODUCT

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?

SALES DISCLOSURE DOCUMENT

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?

AUDIO RECORDING

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.

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?

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.

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.

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.

Appendix B

LIST OF RESEARCH MATERIALS

1. MAS Financial Advisers Act (Cap.110) FAA-N07 "Notice on Minimum Entry and Examination Requirements for Representatives of Licensed Financial Advisers and Exempt Financial Advisers", 31 December 2007
2. Australia Consumer Test of Statement of Advice, Financial Planning Association Australia, May 2008
3. Retail Distribution Review Feedback Statement 08/6, UK Financial Services Authority, November 2008
4. Review of the Regulatory Regime Governing the Sale and Marketing of Unlisted Investment Products, Consultation Paper by the Monetary Authority of Singapore, March 2009
5. Staff Paper on Regulating and Supervising Financial Advisers, New Zealand Securities Commission, 18 June 2009
6. Distribution of Retail Investments: Delivering the Retail Distribution Review Consultation Paper 09/18, UK Financial Services Authority, June 2009
7. Speech by Dan Waters, Director of Retail Policy and Conduct Risk, UK Financial Services Authority, 10 July 2009
8. Submission by Financial Planning Association of Australia to Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Financial Products and Services in Australia, July 2009
9. Speech by Jon Pain, Managing Director Retail Markets, UK Financial Services Authority, 19 September 2009
10. Report on Parliamentary Inquiry into Financial Products and Services, Australia Parliamentary Joint Committee on Corporations and Financial Services, November 2009