



SECURITIES AND
FUTURES COMMISSION
證券及期貨事務監察委員會

Consultation Conclusions on the draft Securities and Futures (Gold Purchase) Notice

《證券及期貨(購買黃金)公告》草擬本
諮詢總結

Hong Kong
June 2002

香港
2002年6月

引言

1. 證券及期貨事務監察委員會(“證監會”)在 2002 年 3 月 25 日發表諮詢文件，就《證券及期貨(購買黃金)公告》的草擬本(“《草擬公告》”)，徵詢公眾意見。
2. 一般來說，證監會獲《證券及期貨條例》(2002 年第 5 號) (“該條例”)第 IV 部賦權認可向香港公眾人士銷售一系列投資產品。這些投資產品主要屬於“集體投資計劃”的類別。
3. 爲了提供足夠的靈活性以配合不斷轉變的市場環境，“集體投資計劃”一詞在該條例內的定義並非詳盡無遺。正如該詞在該條例附表 1 的定義所指出一樣，其定義範圍可藉著根據第 393 條所發出的公告而不時予以擴大或收窄。
4. 根據該條例第 393 條，財政司司長有權藉通告訂明若干安排(如它們符合若干指定準則)須視爲或不得視爲“集體投資計劃”。該《草擬公告》是在考慮到載於根據《保障投資者條例》(第 335 章)第 2A 條所訂立的現有《保障投資者(購買黃金)令》的事項後而制訂的。該《草擬公告》訂明某些爲購買金幣或金塊及符合該條例第 393(1)(a)(i) 條所提及的特徵而提供的安排須爲施行該條例第 IV 部而視爲“集體投資計劃”。
5. 諮詢行動於 2002 年 4 月 22 日結束。
6. 在閱讀本文件時，應與該諮詢文件一併閱讀。

諮詢行動

7. 證監會於 2002 年 3 月 25 日就上述諮詢行動發出新聞稿。該諮詢文件及《草擬公告》載於證監會網站及透過金融服務網絡傳送予各註冊人。
8. 我們共收到 2 份意見書。其中一份來自立法會議員胡經昌。胡議員要求我們就該《草擬公告》的應用範圍提供多一些資料。另一份意見書則來自香港證券專業學會。該學會曾就該《草擬公告》對其會員進行意見調查，並將調查結果夾附在意見書內。根據香港證券專業學會的資料顯示，回應有關調查的 2 名會員均沒有就該《草擬公告》發表意見。
9. 該 2 份意見書及我們就胡經昌議員的要求而作出的回應均載於附件 1。

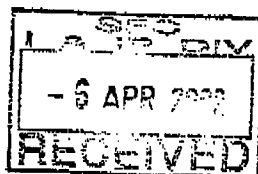
諮詢總結

10. 本會在諮詢行動結束後，認爲無需對該《草擬公告》的內容作出修訂。然而，爲了更充分地反映出有關條文在該條例第 393 條下的範疇，該《草擬公告》的名稱將會改爲《證券及期貨(集體投資計劃)公告》。

附件 1



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會 LEGISLATIVE COUNCIL
胡耀奇議員 Hon. Henry K. C. Wu

Ref: LC-02/079

April 4, 2002

Mrs Alexa Lam
Executive Director
Securities and Futures Commission
12th Floor, Edinburgh Tower, The Landmark
15 Queen's Road Central
HONG KONG

By fax and post

Dear Alexa,

Re: Securities and Futures Ordinance --
Consultation on the Securities and Futures (Gold Purchase) Notice

It is understood that the Financial Secretary is given the power under the Securities and Futures Ordinance by Notice to prescribe arrangements that are to be regarded as "collective investment schemes" of which the current consultation is intended for the purchase of gold coin or gold bullion that are made available in the course of business of enabling persons in such activities as defined under section 8 of the Consultation.

Since banks, bullion houses and retail jewelry shops have been carrying out dealing and trading of gold bullion and gold coins in their normal course of business, I would like your clarification on the following:

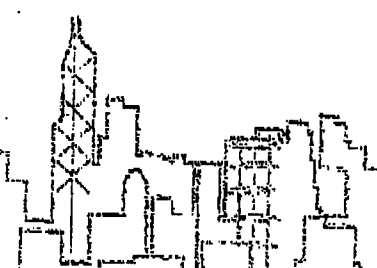
1. would banks (or authorized institutions) be subject to such Notice;
2. would members of the Chinese Gold and Silver Exchange Society (and other overseas bullion companies) be subject to such Notice;
3. would retail jewelry shops (both large and small) be subject to such Notice;
4. and if the answer of any of the above is affirmative, please clarify how they would NOT be committing an offence in their normal business and also the effect to their business; and
5. the number of cases that were dealt with in the past three years.

Should you require further elaboration, please do not hesitate to contact me. Thank you very much for your kind attention and assistance.

Yours sincerely,

Henry K. C. Wu
c.c. Mr. Stephen Ip, Secretary for Financial Services - FSB

繁榮中求增長 穩定時專理規



香港中區政府合署西座 420 室 Room 420, West Wing, Central Government Offices, Hong Kong.

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**SECURITIES AND FUTURES COMMISSION 證券及期貨事務監察委員會**

12th Floor, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong

香港中環皇后大道中十五號置地廣場公爵大廈十二樓

Alexa C Lam 張灼華
Executive Director 執行董事

BY FAX (3110 8809) & BY MAIL

9 April 2002

The Hon Henry KC Wu, BBS
Member of Legislative Council
Room 420, West Wing
Central Government Offices
Hong Kong

Dear Henry,

Securities and Futures Ordinance (No. 5 of 2002) (the "Ordinance")**- Consultation on the draft Securities and Futures (Gold Purchase) Notice (the "draft Notice")**

Thank you for your letter dated 4 April 2002 regarding the draft Notice.

As highlighted in paragraph 10 of the corresponding consultation paper issued by the Commission on 25 March 2002, the draft Notice is intended to replicate the existing Protection of Investors (Gold Purchase) Order (Cap. 335A) (the "**Order**") enacted in 1983.

Similar to its predecessor, the draft Notice is intended to include "paper gold schemes" offered by *any person* in the course of business as "collective investment schemes". In other words, the public offering of "paper gold schemes" would be subject to the general prohibition on financial promotion under section 103(1) of the Ordinance and thus require prior authorization from the Commission. To date, there are six "paper gold schemes" authorized by the Commission. Their names and promoters are listed on our website at www.hksfc.org.hk under the section on "Intermediaries, Licensing & Investment Products".

The features of "paper gold schemes" are specified in the draft Notice. In short, the purpose or effect of "paper gold schemes" is to enable participants:

- (a) to obtain the ownership of gold coins or gold bullion for valuable consideration;
- (b) to defer taking possession of the coins or bullion; and
- (c) to transfer or retransfer the ownership of the coins or bullion to a person who

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is a party to, or is referred to in, the schemes.

Our understanding is that the ordinary sale and purchase of gold coins or gold bullion would not normally involve the offering of "paper gold schemes". Nevertheless, we believe that it would be useful to set out briefly the reasons for introducing the Order in 1983 so as to further address the issues raised in your letter.

The Protection of Investors (Gold Purchase) Order

In 1980, Tse Lee Yuen Jewellery Limited, which operated a chain of jewellery shops, offered a "Gold Accumulation Plan" (the "**Plan**") to the public. In short, the Plan allowed participants to acquire gold in small units, which would be deposited with Tse Lee Yuen for safe custody. In return, Tse Lee Yuen gave an undertaking to deliver the gold on demand or to buy the gold back at prices it offered. As an acknowledgement, participants would be given a receipt or deposit book in which transactions were recorded. The problem was that Tse Lee Yuen had not been holding adequate stock of physical gold against its liabilities under the Plan. Due to cash flow problems, Tse Lee Yuen closed its shops without prior notice and went out of business in 1982.

As originally conceived, the Plan did not fall within the definition of "investment arrangements" under the original Protection of Investors Ordinance (Cap. 335) ("**PIO**"). The service offered under the Plan involved transactions in physical gold only. It did not provide for a distribution of profits or income to participants -- an element required under the statutory definition.

It was, however, considered that the Plan, while outside the ambit of the original PIO in the strict letter of the law, was nonetheless within its spirit. It was clear that the public exposure to the Plan would not have been so extensive but for the highly aggressive advertising campaign carried out by Tse Lee Yuen.

It was, therefore, proposed in 1983 that the PIO be amended to enable the then Governor in Council to specify certain arrangements having some specific features as "investment arrangements". The public offering of such arrangements would, as a result, be subject to the general prohibition on financial promotion under section 4(1) of the PIO. Following the amendment, the Order was introduced.

Since the introduction of the Order in 1983, "paper gold schemes" offered to the public in Hong Kong would need to be authorized by the Commission. For your information, the Commission has not prosecuted any person for offering unauthorized "paper gold schemes"



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in the past three years.

The Draft Securities and Futures (Gold Purchase) Notice

As mentioned in the consultation paper on the draft Notice, section 393 of the Ordinance empowers the Financial Secretary to prescribe any arrangement as a "collective investment scheme" provided that the arrangement satisfies certain specified criteria. The intention of the draft Notice is to set out those criteria in relation to "paper gold schemes" as specified in the Order.

We trust the above clarifies. If not, please feel free to contact me at 2840-9337 or Harold Ko, Senior Manager of Investment Products Department at 2840-9269.

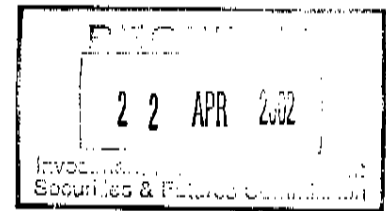
Yours sincerely,

Alexa C Lam
Executive Director
Intermediaries and Investment Products

c.c. Mr Stephen Ip, Secretary for Financial Services, Financial Services Bureau

22 April 2002

Securities and Futures Commission
12/F Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong



Dear Sir/ Madam

Securities and Futures (Gold Purchase) Notice

Following the release of the Public Consultation on Securities and Futures (Gold Purchase) Notice, the Hong Kong Securities Institute (HKSI) has sent a questionnaire to our corporate members to seek their views on the document. We are pleased to enclose, for your information, the results of this survey.

As a professional organization our aim in consulting our members was firstly to draw their attention to the consultation paper, and secondly to act as a forum for them to present their views.

A total of 180 questionnaires were sent out to our corporate members on 17 April, 2002 and at the close of the consultation period we had received 2 responses. Enclosed for your information is a copy of the results of the questionnaire we sent to our corporate members. Please do not hesitate to contact Ms Donna Canestra on 3120 6158 or Ms Daisy Lo on 3120 6159 if you have any queries about our survey.

Yours faithfully

Sam KH Lee
Acting Chief Executive

**QUESTIONNAIRE ON CONSULTATION PAPER ON
SECURITIES AND FUTURES (GOLD PURCHASE) NOTICE
April 2002**

The following information is presented using the same paragraph numbering in the draft Notice. Please indicate your view as to whether you agree with the SFC recommendations by using the following scaling system:

- 1 Agree
- 2 No comment
- 3 Disagree

You may put forward other suggestions using the space provided in each question or on a separate sheet of paper.

| Paragraph | Description | Answer |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Securities and Futures (Gold Purchase) Notice | | |
| 2 | <p><i>Certain arrangements to be regarded as collective investment schemes</i></p> <p><i>For the purposes of the Ordinance the following arrangements are to be regarded as collective investment schemes -</i></p> <p><i>any arrangements for the purchase of gold coin or gold bullion that are made available in the course of business and have the purpose or effect, or pretended purpose or effect, of enabling the participating persons -</i></p> <p>(i) <i>to obtain the ownership of the coin or bullion for valuable consideration;</i></p> <p>(ii) <i>to defer taking possession of the coin or bullion; and</i></p> <p>(iii) <i>to transfer or retransfer the ownership of the coin or bullion to a person who is a party to, or is referred to in, the arrangements.</i></p> | <p>1 - 0%</p> <p>2 - 100%</p> <p>3 - 0%</p> <p>1 - 0%</p> <p>2 - 100%</p> <p>3 - 0%</p> <p>1 - 0%</p> <p>2 - 100%</p> <p>3 - 0%</p> |