

**Consultation Paper on Code of Conduct  
for Regulated Persons Serving the  
Professional or Sophisticated Market:  
Consultation Conclusions**

**Hong Kong  
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## **I. INTRODUCTION**

1. The Consultation Paper on the Code of Conduct for Regulated Persons Serving the Professional or Sophisticated Market was issued for public consultation by the Commission on 26 July 2000. This document summarises the responses received and the Commission's conclusions on the issues on which the public's views were sought.
2. The consultation period ended on 15 September 2000 but late submissions were accepted and considered by the Commission. A total of 33 written responses were received. Respondents included industry practitioners, trade associations as well as professional firms. A list of the respondents is attached as Annex 1.
3. The consultation conclusions set out in this document should be read in conjunction with the Consultation Paper.

## **II. CONSULTATION RESPONSES AND CONCLUSIONS**

### **Overview**

4. The Consultation Paper proposed the right to waive specific areas of the Code of Conduct<sup>1</sup> for regulated persons dealing with professional or sophisticated investors. It set out a proposed definition of the term "professional investors" for this purpose as well as the procedures registered persons will have to follow in order for these specific areas to be waived. In addition, the Commission also invited comment on the general applicability of the concept to Rules that the Commission may make.
5. On the whole, the proposed changes, aimed at enabling dealers and advisers serving the sophisticated market to operate under a lighter regulatory framework, were welcomed. Representations received also included many constructive suggestions on improving specific aspects of the proposals.

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<sup>1</sup> The Code of Conduct sets out the guiding principles for conduct of business by regulated intermediaries. It indicates the manner in which, in the absence of any particular consideration or circumstances, the Commission proposes to perform its functions of ensuring that all regulated persons are fit and proper in relation to the manner in which they conduct the business for which they are registered.

6. The conclusions set out in this document will be reflected in a revised Code of Conduct. The Code of Conduct provisions for registered persons serving professional investors are attached as Annex 2.

### **Specific Areas of the Code of Conduct that may be Relaxed**

7. The Consultation paper proposed that the following eight specific provisions in the three sections of the Code of Conduct may be waived for registered persons dealing with or advising professional investors:

- a. Information about Clients (section C5 of the Code)

- i. the need to establish their financial situation, investment experience and investment objectives (section C5.1);
- ii. the requirement to ensure suitability of recommendation or solicitation for clients (section C5.2);

(The above waivers were not intended to be made available to registered persons providing advice on corporate finance work as they were expected to perform the required due diligence functions irrespective of the nature of their clients.)

- b. Client Agreement (section C6 of the Code)

- i. the requirement to enter into a written agreement with clients (section C6.1);
- ii. the requirement for client agreements to be in a language understood by clients, and to explain to the clients the contents of the client agreement (section C6.1);
- iii. the requirement to provide the respective ancillary risk disclosure statements to clients (section C6.2) of the Code;

- c. Information for Clients (section C8 of the Code)

- i. the requirement to provide clients with adequate information about the firm (section C8.1);
- ii. unless specifically agreed otherwise in writing by the client, the requirement to endeavour to confirm promptly with clients after execution of transactions (section C8.2); and

- iii. the requirement to provide each client with a regular statement of account, which shall be at least on a quarterly basis, or upon request (section C8.3).
8. The Consultation Paper did not propose changes to the Code of Conduct requirements on Rebates and Soft Dollars<sup>2</sup>.
9. Of course it remains open to a professional investor to require the provision of any of these services and in many cases no doubt they will require them.
10. The respondents generally commended the Commission on its efforts to facilitate the provision of investment services to sophisticated investors through the relaxation of specific areas of the Code of Conduct while maintaining investor protection and market integrity. However, a few expressed concern about certain proposals. The proposal to relax the client agreement requirement attracted substantial comment. While three respondents objected to the outright dispensation of this requirement, four respondents suggested that industry practitioners should be encouraged to enter into such agreements.
11. While the Commission accepts that a signed agreement setting out the rights and obligations of each party may help minimise any future disputes, it appreciates it is not uncommon for professional investors to refuse to enter into such an arrangement. Intermediaries frequently advise the Commission that getting an agreement signed can be very difficult, if not impossible. This category of investors should be able to look after their own interests in this respect. If a professional or sophisticated investor wants a written client agreement, no doubt they can ask for one. The Commission remains of the view that this requirement

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<sup>2</sup> Section C13.1 of the Code provides that a registered person who acts for a client in the exercise of investment discretion may receive goods or services (i.e. soft dollars) from a broker in consideration of directing transaction business on behalf of such client to the broker only if:

- a. the goods or services are of demonstrable benefit to the registered person's clients;
- b. transaction execution is consistent with best execution standards and brokerage rates are not in excess of customary full-service brokerage rates;
- c. the client has consented in writing to the receipt of such goods and services; and
- d. disclosure is made of the registered person's practices for receiving such goods and services, including a description of the goods and services received.

Section C13.2 of the Code provides that a registered person described in C13.1 who intends to receive and retain cash or money rebates in relation to client transactions may retain such rebates only if :

- a. the client has consented in writing to such retention of rebates;
- b. brokerage rates are not in excess of customary full-service brokerage rates; and
- c. disclosure of such rebates and their approximate value is made to the client.

of the Code of Conduct may be waived for professional investors. The industry is also encouraged, wherever feasible, to enter into written client agreements with or take other reasonable steps to ensure that the rights and obligations of the parties concerned are fully understood by these clients.

12. In relation to the requirement concerning the establishment of information about clients, two respondents stated that irrespective of the status of the investors, their financial capability and status should always be ascertained by the registered person. Investment professionals were always expected to ensure the suitability of their investment recommendations and actions.
13. First, we note that an assessment of a client circumstances will need to be made to determine that a client is and remains appropriately regarded as a professional. Secondly, an intermediary will need to make judgements about individual investment instructions: are they apparently lawful, within the credit risk parameters applying to that client, etc. The proposed change is to remove any implied obligation to advise on suitability. The Commission does not consider that the relaxation of the proposed requirement would undermine the protection available to professional investors. Their status as professionals will, by definition, say a great deal about their circumstances. They should, by virtue of their experience and resources, be in a position to make well-informed decisions, and protect their interests. If they want advice on suitability or other services beyond mere execution, they can contract for them. Accordingly, we take the view that this specific requirement may be waived for professional investors.
14. On the same proposal, one respondent indicated that while he generally agreed with the proposal, he questioned whether corporate finance advisers should be entirely excluded from the waiver. He argued that while an assessment of the client's financial situation might form part of their due diligence work, this might not necessarily include an assessment of the client's investment experience and objectives. One other respondent advocated that the requirements of provision C5.3 of the Code<sup>3</sup> on establishing information about the client prior to providing services in relation to derivative products should also be waived.

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<sup>3</sup> Section C5.3 of the Code states that a registered person providing services to any client in relation to derivative products, including futures contracts or options, or any leveraged transaction shall assure himself that the client understands the nature and risks of the products and has sufficient net worth to be able to assume the risks and bear the potential losses of trading in such products.

15. As regards corporate finance advisers, the Commission will shortly publish a Code of Conduct for Corporate Finance Advisers that will address this issue. Meanwhile, this specific relaxation should not be made applicable to corporate finance advisers.
16. Derivatives may be high-risk instruments, possibly complex in structure and having high price volatility. The Commission takes the view that registered persons should ensure that all their clients who trade in such products understand their nature and risks as well as have sufficient net-worth to be able to bear the potential losses. As a consequence, no waiver of this specific provision is envisaged.
17. The proposal regarding the provisions on Rebates and Soft Dollars drew little comment. While one respondent contended that investment professionals should never use client property such as soft dollars and rebates to benefit themselves notwithstanding that client consent had been obtained, another suggested that the Commission might like to consider making this issue the subject of its own independent consultation. In the Commission's view, the present framework governing the receipt of rebates and soft dollars (which was drawn up subsequent to a public consultation) requiring that the goods or services received are of demonstrable benefit to the clients, the transaction execution is consistent with best execution standards, and brokerage rates are not in excess of customary full-service brokerages rates, will continue to serve its purposes well. In any case, as noted in the Consultation Paper, section 9 of the Prevention of Bribery Ordinance and the policy that underlies it would appear to rule out any significant relaxation in this area. Therefore, no change is considered necessary.
18. One respondent contended that the Code of Conduct provisions regarding the handling of client orders, and execution and allocation of transactions, did not reflect the demands of institutional clients for handling large orders. He advocated that the dealer should be able to execute the order as agreed with the sophisticated investor, and that provisions C3.2<sup>4</sup>, C3.3<sup>5</sup>, C9.1<sup>6</sup> and C9.2<sup>7</sup> of the Code should be disapplied.

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<sup>4</sup> C3.2 states that a registered person when acting for or with clients shall always execute client orders on the best available terms.

<sup>5</sup> C3.3 states that a registered person shall ensure that transactions executed on behalf of clients are promptly and fairly allocated to the accounts of the clients on whose behalf the transactions were executed.

19. The Commission does not consider that these provisions hinder the proper execution and allocation of client orders, including large orders. The language of the provisions, such as “execute client orders on the best available terms” and “handle orders of clients fairly and in the order in which they are received”, should allow an intermediary to properly and sensibly handle large orders. They do not preclude agreement as to how a particular order should be handled and have never been interpreted in that way. Some changes to the current language of the Code will be introduced shortly following a separate consultation. Accordingly, the Commission does not believe that any amendment in this area is warranted.

### **Definition of “Professional Investors”**

20. The Consultation Paper noted that the term “professional investors” had not been defined in any of the Ordinances, subsidiary legislation or Codes. It was proposed that, for the purpose of compliance with the Code of Conduct, this category of investors should be limited to the following groups of entities:
- a. persons registered with or declared exempt by the Commission or persons whose regular business is the provision of investment services and which are licensed or regulated in another jurisdiction;
  - b. entities authorized by the Commission (exchanges, clearing houses);
  - c. authorized institutions under the Banking Ordinance or other credit institutions that are licensed or regulated in another jurisdiction;
  - d. insurance companies authorized by the Insurance Authority or which are licensed or regulated in another jurisdiction;

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<sup>6</sup> C9.1 states that a registered person shall handle orders of clients fairly and in the order in which they are received. Orders of clients or transactions to be undertaken on behalf of clients shall have in all cases priority over orders for the account of the registered person, or any account in which the registered person has an interest or the account of any employee or agent of the registered person.

<sup>7</sup> C9.2 states that a registered person shall, where he has aggregated an order for a client with an order for another client, or with an order for his own account, give priority to satisfying orders of clients, in any subsequent allocation if all orders cannot be filled.



- e. trustee companies under the Trustee Ordinance;
  - f. collective investment schemes and the management companies of such schemes;
  - g. pension funds and the management companies of such funds;
  - h. investors (private individuals or corporations) having a portfolio of at least US\$5 million (or equivalent) in securities and having declared themselves as professional investors; and
  - i. national governments and international and supranational institutions such as the World Bank, IMF and regional development banks.
21. The proposal to include high net-worth persons as professional investors (paragraph 20(h) above) attracted many comments. While only one respondent opposed the inclusion of this category of clients, a majority of the respondents observed that the portfolio wealth requirement of US\$5 million in securities was overly high. Threshold levels put forward for consideration ranged from US\$250,000 to US\$3 million, with quite a substantial number suggesting US\$1 million being the most appropriate figure. Some respondents were particularly concerned that if this test came to be applied in the context of share placements, it would seriously restrict the market as it now operates. Respondents also advocated that bodies corporate should be subject to different criteria, such as asset values.
22. A number of the commentators suggested that in addition to the wealth test, knowledge or expertise in investments should also be added as a criterion for classifying high net-worth individuals as professional investors. They contended that possession of wealth by itself may not necessarily imply having acquired a high level of sophistication about investments or investing. As discussed below, the Commission agrees.
23. Respondents also queried whether the monetary measurement limiting the qualifying portfolio to one consisting solely of securities would prove to be too conservative in nature. Several suggested the inclusion of bank deposits into the qualifying portfolio. One respondent further suggested that derivative products be included as well. The Commission agrees that bank deposits should be included.

24. The proposed inclusion of trustee companies also attracted comments. A respondent argued that these companies should be treated no differently from high net-worth persons as they do not necessarily possess expertise in the area of investments. Others have expressed a view that foreign registered trustee companies should be treated in the same way as local ones, qualifying as professional investors without having to meet any financial threshold. The Commission agrees that the test should not be limited to Hong Kong domiciled trustee companies.
25. The Commission appreciates the contribution to its thinking on this issue made by so many respondents.
26. The Commission accepts that the key concern is that professional investors should be knowledgeable or have sufficient expertise in relevant investments to protect their own interests. Only knowledgeable high net-worth or trustee company clients who understand the consequential risks of investments are able to protect themselves and should be regarded as professional investors. In this regard, the Commission believes that before treating a high net-worth or trustee company client as a professional investor, the regulated person should have reason to believe that the client possesses the requisite knowledge or expertise. In some jurisdictions, this is assumed by reason of a person's financial circumstances. There are other, arguably, more reliable indicators. The knowledge or expertise of the clients should be assessed having regard to matters including:
- a. the type of products in which they have traded;
  - b. frequency and size of trades (a professional investor would be expected to have traded not less than 40 transactions per annum<sup>8</sup>);
  - c. their dealing experience (a professional investor would be expected to have been active in the relevant market for at least two years<sup>9</sup>); and
  - d. their apparent awareness of the risks involved.

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<sup>8</sup> This is in line with the requirement of the Forum of European Securities Commissions ("FESCO"), which adopts a benchmark of "transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters".

<sup>9</sup> FESCO requires that "the investor works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged".

27. Some of these criteria call for a subjective assessment but, when combined with objective criteria, including a required net portfolio value, they appear to the Commission to be a sufficiently clear set of requirements.
28. In the light of the addition of the above criteria, the requirement for an investment portfolio of a certain value has less work to do in ensuring an investor is appropriately qualified. The Commission believes that the lowering of the monetary threshold proposed in the Consultation Paper and extending the range of applicable financial instruments to include cash or currency deposits at banks or elsewhere would not seriously undermine investor protection. The appropriate benchmark would be a portfolio of at least US\$1 million<sup>10</sup> in securities<sup>11</sup> or cash deposits in respect of natural persons. For bodies corporate, i.e. corporations, partnerships or trusts, the more appropriate measure would be the asset

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<sup>10</sup> FESCO requires a “financial instrument portfolio, defined as including cash deposits and financial instruments” that exceeds 0.5 million Euro.

In October 2000, the UK Treasury published a draft Financial Promotions (Exceptions) Order which, amongst other things, for the purposes of certain "cold calling" provisions defines high net-worth individuals as those who have a current certificate from an accountant that in each of the two preceding financial years his annual income was not less than GBP100,000 or that he held net assets of at least GBP250,000 and in addition that have signed an acknowledgement that they qualify as certified high net-worth individuals and that the communication is not regulated.

The Singapore Securities Industry Regulations, albeit in a slightly different context, defines an individual “accredited investor” as “an individual whose net personal assets exceed SG\$5 million or its equivalent in foreign currencies”.

In the United States, pursuant to Regulation D of the Securities Act of 1993, in a slightly different context, the term “Accredited Investor” includes, amongst others, i) a natural person whose individual net-worth, or joint net-worth with that person’s spouse, exceeds US\$1 million; and ii) a natural person who had an individual income in excess of US\$200,000 in each of the two most recent years or joint income with that person’s spouse in excess of US\$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

<sup>11</sup> In the current Securities and Futures Bill, “securities” means-

- a. shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- b. rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- c. certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, such shares, stocks, debentures, loan stocks, funds, bonds or notes;
- d. interests in any collective investment scheme;
- e. interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities;
- f. interests, rights or property which is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 379 of the Bill as being regarded as securities in accordance with the terms of the notice.

size, with a total asset figure of not less than US\$5 million<sup>12</sup> as stated in its latest audited financial statements, as the appropriate level. Further, trustee companies qualifying as professional investors should be limited to those having been entrusted with assets of not less than US\$5 million (or equivalent) as stated in their latest audited financial statements.

29. The Commission would also expect registered persons to have in place procedures to enable them to ensure that professional investors continue to fulfill the respective portfolio or total asset requirements. The responsibility for notifying the intermediary of a relevant change in circumstances can be placed on the client, but that must be done in clear and unambiguous terms. Prudent practice would also suggest at least an annual confirmation in respect of high net-worth individuals.

### **Clients' Right of Refusal**

30. The Consultation Paper stated that the Commission took the view that prior to treating relevant clients as professional investors for the purpose of the Code of Conduct, a registered person must:
- a. explain to the client concerned the consequences of being treated as a professional investor, in particular, identify the information that will not be provided;
  - b. sign a statement for the record indicating that the explanation has been provided to the client;
  - c. receive from the client a statement that the consequences have been explained to him, and that he understood the explanation; and
  - d. receive a declaration from the client that he wished to be treated as a professional investor.

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<sup>12</sup> FESCO's benchmark for large companies and partnerships is "meeting two of the following size requirements:

- balance sheet total : EUR 12,500,000
- net turnover : EUR 25,000,000
- average number of employees during the financial year : 250"

The Singapore Securities Industry Regulations defines a corporate "accredited investor" as "a corporation with net assets exceeding SG\$10 million in value or its equivalent in foreign currencies as determined in accordance with the most recent audited balance-sheet of the corporation".

In the United States, the term "Accredited Investor" pursuant to Regulation D of the Securities Act includes, amongst others, i) a corporation with total assets in excess of US\$5 million; and ii) a trust with total assets in excess of US\$5 million whose purchase is directed by a sophisticated person.

31. The Consultation Paper also proposed that the professional investor should be afforded a right to be treated in such capacity with respect to all or just some of the Code provisions, as well as a right to revert to the higher level of protection afforded by the Code by revoking his declaration. In addition, it was also advocated that in order to properly explain to a high net-worth client the consequences of being treated as a professional investor, an intermediary would need to make an initial assessment of that client's financial situation, investment experience and investment objectives as required under paragraph C5.1 of the Code.
32. Two aspects of the proposed procedures on the professional client's right of refusal attracted considerable response. A substantial number of the respondents queried the practicality of requiring professional investors to declare themselves in writing as such and to consent to being so treated. It was argued that apart from imposing additional administrative costs to the intermediaries, the investors, in particular established institutional clients, might also refuse to co-operate in this arrangement. However, most of these respondents conceded that these measures would be appropriate for high net-worth investors.
33. The Commission is sympathetic to these concerns. It agrees that with the exception of high net-worth clients and trustee companies qualifying as professional investors, this requirement may be relaxed.
34. The Commission concludes that the steps that must be taken prior to treating a client as a professional investor include:
  - a. in respect of clients other than high net-worth persons or trustee companies:
    - i. providing a written explanation to the client explaining the risks and consequences of being treated as a professional investor, in particular, the information that will not be provided, and has not received any objection from the client. This written explanation should also inform the client that he has a right to withdraw from being treated as a professional investor whether in respect of all products or markets or any part thereof;
  - b. in respect of clients who are high net-worth persons and trustee companies:

- i. making an initial assessment of the client's investment experience in order to be reasonably satisfied that the client is knowledgeable or has expertise in the relevant products or markets;
  - ii. providing a written explanation to the client explaining the risks and consequences of being treated as a professional investor, in particular, the information that will not be provided. This written explanation should also inform the client that he has a right to withdraw from being treated as a professional investor whether in respect of all products or markets or any part thereof;
  - iii. obtaining a written and signed declaration from the client that the consequences of consenting to being treated as a professional investor and the right to withdraw from being treated as such have been explained to him and that he wishes to be treated as a professional investor;
  - iv. having in place procedures to enable it to carry out a confirmation exercise annually to enable it to ensure that the clients continue to fulfill the requisite asset or portfolio requirements.
35. Several respondents also represented that the right of withdrawing from being treated as a professional investor, whether in respect of a specific product or market, or as a whole, could impose an additional administrative burden to the industry. One respondent further suggested that this should not be allowed on the basis that the client concerned could always patronise another intermediary.
36. The Commission does not believe that allowing a client to withdraw authorisation would necessarily create a substantial burden to the market. In reality, it is more a matter of form than substance in reminding the client that the terms of their relationship can be renegotiated. It does not oblige an intermediary to accept the new terms. We are sure that intermediaries will be well able to protect their own interests. If new contractual terms cannot be agreed, then the client will decide to use another intermediary. The client should not be locked into being treated as a professional investor, either as to the whole range of products or services, or any part thereof.

## **Applicability of Concept of Professional Investors to other Commission Rules**

37. In issuing the Consultation Paper, the Commission stated that there did not appear to be any impediment to extending the concept of professional investors to other Commission Rules. The industry and members of the public were invited to comment on the general applicability of this concept to Rules that the Commission might make.
38. While some respondents believed that the market would benefit from having a uniform concept of professional investors applied across the board, concerns were also expressed on several fronts. A few respondents were concerned that the extension of this concept to the areas of initial public offerings, placements and underwriting of securities might result in the exclusion of “retail professional” investors from participating in these transactions. The respondents contended that these retail investors are currently regarded as professional investors by virtue of section 3(1) of the Securities Ordinance<sup>13</sup>.
39. At the outset, the Commission would like to clarify that the licensing exemption in question as currently provided under section 3(1) of the Securities Ordinance has been preserved under the Securities and Futures Bill. Moreover, the introduction of the concept of professional investors is only intended to reduce the regulatory burden of dealers and advisers in complying with the Code of Conduct requirements. It should not in anyway hinder the participation of retail professional investors in public offerings or placements as contended.
40. In relation to the restrictions imposed by the Protection of Investors Ordinance on the promotion of securities and investment arrangements to the public, one respondent raised the feasibility of not treating professional investors as members of the public for the purposes of that Ordinance. Another respondent further sought a clarification as to whether the Code of Conduct provisions apply to “market counterparties” of registered persons. A suggestion that similar relaxations

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<sup>13</sup> Section 3(1) of the Securities Ordinance provides, among others, to the effect that a person shall not be regarded as having dealt in securities (and thus not requiring a licence) if that person, as a principal, had acquired, subscribed for, or underwritten securities, or effected transactions with a person whose business involves the acquisition and disposal, or the holding, of securities.

should also be afforded to the market in respect of the Commission's Fund Manager Code of Conduct was also received.

41. The Commission is persuaded that for offers to professional investors only, in relation to the current restrictions provided under section 4 of the Protection of Investors Ordinance, a wider concept of professional could be used and could be excluded from the definition of offers to the public without undermining investor protection. Apart from proposing this carve-out in the Securities and Futures Bill, we will also propose in the Bill that the requirement for the provision of documents by dealers in relation to offers of securities should not be applied where the offer is made only to professional investors.
42. As regards the clarification sought on the application of the Code of Conduct provisions to market counter-parties, the Commission would like to reiterate that the Code aims not only to ensure investor protection, but also the promotion of market integrity and prevention of systemic risk. Thus, to the extent relevant, the Code should be complied with by the registered persons as specified.
43. The Fund Manager Code of Conduct sets out conduct requirements for registered persons whose business involves the discretionary management of collective investment, including unit trusts and mutual funds, pension and provident funds. The Commission will review the Fund Manager Code of Conduct to determine whether some of its provisions should be amended to take into account the circumstances of professionals.

### **Final Note**

44. The Commission would like to thank the industry participants and other interested persons who have in one way or another made valuable suggestions and comments in response to the Consultation Paper.



## Annex 1

### List of Respondents

#	Name of Respondents
1.	Association for Investment Management and Research
2.	Baker & McKenzie
3.	Bank of Bermuda Limited, The
4.	BNP Paribas Hong Kong Branch
5.	BNP Paribas Equities Hong Kong Limited
6.	Celestial Asia Securities Holdings Limited
7.	DTC Association, The
8.	Fidelity Investments Management (H.K.) Limited
9.	Hong Kong Association of Banks, The
10.	Hong Kong Confederation of Insurance Brokers, The
11.	Hong Kong Exchanges and Clearing Limited
12.	Hong Kong Federation of Insurers, The
13.	Hong Kong Institute of Directors, The
14.	Hong Kong Institute of Company Secretaries, The
15.	Hong Kong Investment Funds Association
16.	Hong Kong Monetary Authority
17.	Hong Kong Securities Institute
18.	Hong Kong Society of Accountants
19.	Hong Kong Stockbrokers Association Limited
20.	Hong Kong Trustees Association
21.	HSBC Broking Securities (Asia) Limited
22.	Institute of Securities Dealers Limited, The
23.	Invesco Asia Limited
24.	Kingsway Group
25.	KPMG

**Annex 1**  
(Cont'd)

26.	Dr. John W.S. Lee
27.	Linklaters
28.	Mandatory Provident Fund Schemes Authority
29.	Nomura International (Hong Kong) Limited
30.	Office of the Commissioner of Insurance
31.	Richards Butler
32.	TD Waterhouse Investor Services (Hong Kong) Limited
33.	Vickers Ballas Hong Kong Limited

## **Annex 2**

### **Code of Conduct for Registered Persons Serving Professional Investors** **Professional Investors**

#### **15.1 Professional Investors : in general**

Where a client of a registered person is a Professional Investor, the registered person will not be required to fulfil the requirements set out in paragraph 15.5 while serving such clients in respect of relevant products and/or markets of which they are treated as Professional Investors.

#### **15.2 Professional Investors**

There are 2 categories of Professional Investors:

- A. The following persons may be treated as Professional Investors on the condition that the registered person has provided a written explanation to them explaining the risks and consequences of being treated as a Professional Investor, in particular, the information that will not be provided, and has not received any objection from such persons. This written explanation should also inform them that they have a right to withdraw from being treated as a Professional Investor whether in respect of all products or markets or any part thereof:
- (a) Persons registered with or declared exempt by the Commission or persons whose regular business is the provision of investment services and which are licensed or regulated in another jurisdiction;
  - (b) Entities authorized by the Commission (i.e. exchanges or clearing houses);
  - (c) Authorized institutions under the Banking Ordinance or other credit institutions that are licensed or regulated in another jurisdiction;
  - (d) Insurance companies authorized by the Insurance Authority or which are licensed or regulated by a similar agency in another jurisdiction;
  - (e) Collective investment schemes and the management companies of such schemes;

**Annex 2**  
(Cont'd)

- (f) Pension funds and the management companies of such funds; and
  - (g) National governments and international and supranational institutions such as the World Bank, International Monetary Fund and regional development banks.
- B. A person falling within the following groups of persons may be treated as a Professional Investor, if the registered person, after making an initial assessment of the person's investment experience, is reasonably satisfied that the person is knowledgeable and has sufficient expertise in relevant products and markets and if the conditions in paragraph 15.4 are fulfilled:
- (a) Trustee companies having been entrusted with assets of not less than US\$5 million (or equivalent) as stated in their latest audited financial statements;
  - (b) High net worth individuals having a portfolio of at least US\$1 million (or equivalent) in securities and/or currency deposits; and
  - (c) High net worth corporations and partnerships having total assets of at least US\$5 million (or equivalent) as stated in their latest audited financial statements.
- 15.3 In assessing the investment experience of any of the persons in paragraph 15.2B above, the registered person should have regard to:
- (a) the type of products in which the person has traded;
  - (b) the frequency and size of trades (a Professional Investor would be expected to have traded not less than 40 transactions per annum);
  - (c) the person's dealing experience (a Professional Investor would be expected to have been active in the relevant market for at least 2 years); and
  - (d) his awareness of the risks involved in trading in the relevant markets.

## **Annex 2**

(Cont'd)

- 15.4 Prior to treating persons in paragraph 15.2B as Professional Investors, the registered person should:
- (a) provide a written explanation to the person explaining the risks and consequences of being treated as a Professional Investor, in particular, the information that will not be provided to him. This written explanation should also inform him that he has a right to withdraw from being treated as a Professional Investor whether in respect of all products or markets or any part thereof;
  - (b) obtain a written and signed declaration from the person that the consequences of consenting to being treated as a Professional Investor and the right to withdraw from being treated as such have been explained to him and that he wishes to be treated as a Professional Investor; and
  - (c) have in place procedures to enable it to carry out a confirmation exercise annually to enable it to ensure that clients falling within paragraph 15.2B and who have elected to be treated as Professional Investors continue to fulfil the requisite asset or portfolio requirements.

### **15.5 Provisions that may be waived for Professional Investors**

- (a) Information about clients
  - (i) the need to establish a client's financial situation, investment experience and investment objectives (paragraph 5.1), except where the registered person is providing advice on corporate finance work; and
  - (ii) the need to ensure the suitability of a recommendation or solicitation (paragraph 5.2);
- (b) Client agreement
  - (i) the need to enter into a written agreement and the provision of relevant risk disclosure statements (paragraph 6.1);

## **Annex 2**

(Cont'd)

- (c) Information for clients
  - (i) the need to inform the client about the registered person and the identity and status of its employees and others acting on its behalf (paragraph 8.1);
  - (ii) the need to confirm promptly with the client the essential features of a transaction after effecting a transaction for a client (paragraph 8.2); and
  - (iii) the need to provide the client with regular statements of account (paragraph 8.3), with the exception of registered persons providing securities margin financing to clients.