



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

**A Consultation Paper on the Securities
and Futures (Gold Purchase) Notice**

《證券及期貨（購買黃金）公告》諮詢文件

Hong Kong
March 2002

香港
2002年3月

Consultation

This consultation document invites public comments on the draft Securities and Futures (Gold Purchase) Notice (“the draft Notice”) which the Financial Secretary proposes to make under section 393 of the Securities and Futures Ordinance (No. 5 of 2002) (“the Ordinance”) when it commences.

Introduction

1. Part IV of the Ordinance deals with the regulatory framework for the offering of investment products drawing on the provisions of the existing Protection of Investors Ordinance (Cap. 335) (“the PIO”). It imposes a general prohibition on the issue to the public of advertisements, invitations and documents relating to a wide range of investments. These investments mainly fall into a category described as “collective investment schemes”.

2. A breach of this general prohibition is an offence but the prohibition is subject to a number of exemptions that are mainly carried over from the current legislation. An important exception is the issue of advertisements, invitations and documents that the Securities and Futures Commission (“SFC”) has authorized to be issued.

3. Apart from authorizing the issue of advertisements, invitations and documents, section 104 of the Ordinance also empowers the SFC to authorize the collective investment schemes themselves. As in the case of authorizing the issue of advertisements, invitations and documents relating to investments, in authorizing collective investment schemes, the SFC may -

- (a) impose such conditions as it considers appropriate;
- (b) amend or cancel these conditions or impose new ones; and
- (c) in appropriate cases, withdraw any authorization granted.

4. The PIO imposes a general prohibition on the issue to the public of advertisements relating to “investment arrangements” but does not exhaustively define that term. Instead power is given to the Financial Secretary to enlarge or limit the type of arrangements to be regarded as “investment arrangements”. Similarly, the Securities and Futures Ordinance does not exhaustively define what is meant by “collective investment schemes”. There is a definition in Schedule 1 to the Ordinance but this envisages the scope of the term will be enlarged or limited from time to time by a Notice made under section 393. Under section 393, the Financial Secretary is given the power by Notice to prescribe arrangements that are to be regarded as “collective investment schemes” if they meet with certain specified criteria or are not to be so regarded. This provides the flexibility to address changing market conditions by quickly amending the Notice rather than the primary legislation.

5. There are controls built into the legislative system, whereby any Notice made by the Financial Secretary must be subject to negative vetting by the Legislative Council. The Financial Secretary first wishes to conduct a public consultation on the

terms of the draft Notice. The SFC therefore now releases the draft Notice (see Attachment 1) for public consultation.

6. The public may obtain copies of the consultation document and the attachments free of charge at the SFC's office and on the SFC's Internet website at <http://www.hksfc.org.hk>.

7. The SFC invites interested parties to submit written comments on the draft Notice or to comment on related matters that might have a significant impact upon the draft Notice **no later than 22nd April 2002**. Any person wishing to comment should provide details of any organization whose views they represent. In addition, persons suggesting alternative approaches are encouraged to submit proposed text to amend the draft Notice.

The draft Notice

8. The draft Notice prescribes for the purposes of the Ordinance that the following arrangements are to be regarded as "collective investment schemes". 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 persons -

- (a) to obtain the ownership of the coin or bullion for valuable consideration;
- (b) to defer taking possession of the coin or bullion; and
- (c) 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.

9. The draft Notice has been prepared having regard to the matters contained in the existing Protection of Investors (Gold Purchase) Order made under section 2A of the PIO.

New Policy Initiatives

10. No new policy changes have been incorporated into the draft Notice which are intended simply to replicate the existing subsidiary legislation.

Other matters

11. Please note that the names of the commentators and the contents of their submissions may be published on the SFC web site and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

12. You may not wish your name and/or submission to be published by the SFC. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.

13. Written comments may be sent -

By mail to: SFC (Gold Purchase Notice)
12/F, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

By fax to: (852) 2877 0318

By on-line submission at: <http://www.hksfc.org.hk>

By e-mail to: Gold_Purchase_Notice@hksfc.org.hk

14. The draft Notice should be read in conjunction with the Securities and Futures Ordinance itself.

Personal Information Collection Statement

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the PDPO.

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant Ordinances, Notice, regulations, codes and guidelines
 - made or promulgated pursuant to the powers vested in the SFC
 - for the purposes of performing the SFC’s statutory functions under the relevant Ordinances
 - for research and statistical purposes
 - other purposes permitted by law

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to the members of the public in Hong Kong and elsewhere, as part of the public consultation on the Consultation Paper. The names of persons who submit comments on the Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC web site and in documents to be published by the SFC throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

Enquiries

5. Any enquiries regarding the Personal Data provided in your submission on the Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
The Securities and Futures Commission
12/F, Edinburgh Tower, The Landmark
15 Queen’s Road Central, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486 (“PDPO”)