

VINCENT P. C. KWAN

5th February, 2002

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

Dear Sirs,

Consultation Document

The Draft Securities and Futures (Professional Investor) Rules ("draft Rules")

I refer to the captioned consultation document which is issued in February 2002 for public comments and consultation, in response to which this letter is issued.

As I understand it, the concept of "professional investors" is premised on the understanding and assumptions that due to their status as professional investors, they are able to protect themselves and accordingly certain investor protection measures that are intended to offer protection to the general public may be dispensed with if certain financial products or services are to be offered to them by the financial intermediaries. This concept is used widely in all major financial markets and is generally termed as professional exemption. This class of persons is generally classified and identified by reference to two general criteria, which are applicable to individuals, partnerships and/or companies, and as follows:

- (a) the net worth on the premise that if a person has a sufficient level of net worth, such person may engage a professional of his choice to advise him on his investments; or
- (b) the professional qualification and status on the premise that if a person has attained certain educational standard or is a member of certain professional bodies, such person may have acquired, or is able to acquire, sufficient financial knowledge to protect himself on his investments.

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“Net worth” is normally taken to include not only the wealth (by reference to an asset test) but also the income of a person. For example, the “income” concept is used in the UK for the definition of “certified high net worth individual” and in the US for the definition of “accredit investors”.

Based on the reasons as stated above, I suggest that the following classes of persons should also be included as “professional investors”, viz,

- (a) any individual, partnership or corporation having an annual income in excess of HK\$1,500,000 in each of the two most recent years; or
- (b) any individual being a member of recognised professional bodies, including, for example, members of the Hong Kong Society of Accountants and/or Law Society and/or Bar Association, but in each case not necessarily acting in his professional capacity – this will cover, for example, retired accountants or accountants not engaged in professional accountancy services.


As regards the means of ascertaining the status, the following may be considered:

- (a) as regards the income test, we may follow the English approach by relying on a certificate of high net worth to be issued by the employers (for individuals) and auditors (for partnerships or corporations) or we may rely on the tax assessments; and
- (b) as regards the professional status, we may rely on the certificates issued by the recognised professional bodies.

I have no comment on the other proposals as contained in the draft Rules.

This letter is issued in my private and personal capacity and does not represent the view of any organisation with which I am associated or by which I am employed.

Yours faithfully,


Vincent P.C. Kwan
Solicitor
Hong Kong SAR