



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

## **INTRODUCTION**

1. On 25 March 2002, the Securities and Futures Commission ("SFC") issued a consultation paper to solicit comments on the draft Securities and Futures (Gold Purchase) Notice (the "draft Notice").
2. In general, the SFC is empowered under Part IV of the Securities and Futures Ordinance (No. 5 of 2002) (the "Ordinance") to authorize a wide range of investments that are offered to the public in Hong Kong. These investments mainly fall into a category described as "collective investment schemes".
3. With a view to providing adequate flexibility to address changing market conditions, the term "collective investment scheme" is not exhaustively defined in the Ordinance. As set out in the definition of the term in Schedule 1 to the Ordinance, its scope can be enlarged or limited from time to time by a notice made under section 393.
4. Under section 393 of the Ordinance, 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. 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 Protection Investor Ordinance (Cap. 335). It prescribes that those arrangements for the purchase of gold coins or gold bullion which have the characteristics as specified in section 393(1)(a)(i) are to be regarded as "collective investment schemes" for the purposes of Part IV of the Ordinance.
5. The consultation exercise ended on 22 April 2002.
6. It is advisable to read this document in conjunction with the consultation paper itself.

## **CONSULTATION EXERCISE**

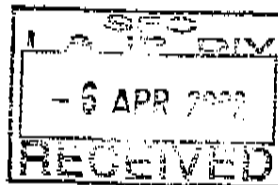
7. A press release regarding the consultation exercise was issued on 25 March 2002. The consultation paper and the draft Notice were posted on the website of the SFC and distributed to all registrants through FinNet.
8. Two submissions were received. One of them was from Legislative Councilor Hon. Henry Wu King-cheong, BBS, who sought to obtain more information on the application of the draft Notice. The other one was from the Hong Kong Securities Institute attaching the results of a survey to its members on the draft Notice. According to the Hong Kong Securities Institute, the two members who responded to the survey had no comment on the draft Notice.
9. The two submissions and our response to Hon. Henry Wu are set out in Attachment 1.

## **CONSULTATION CONCLUSIONS**

10. After the completion of the consultation exercise, it is considered that no amendment to the substance of the draft Notice will be necessary. However, its name will be changed to "Securities and Futures (Collective Investment Schemes) Notice" to better reflect the scope of the provisions under section 393 of the Ordinance.



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

胡經昌議員 Hon. Henry K. C. Wu

Ref: LC-02/079

April 4, 2002

Mrs Alexa Lam  
Executive Director  
Securities and Futures Commission  
12<sup>th</sup> 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.

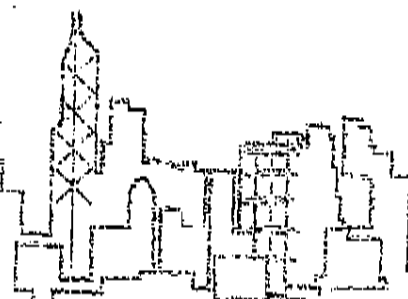
Yours sincerely,

Henry K. C. Wu

c.c. Mr. Stephen Ip, Secretary for Financial Services - FSB

/pc

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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

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**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](http://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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The Hon Henry KC Wu, BBS  
Member of Legislative Council  
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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"



*9 April 2002  
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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.

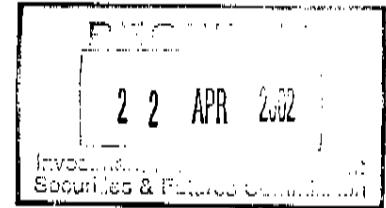
Yours sincerely,

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
<b>Securities and Futures (Gold Purchase) Notice</b>		
2	<p><b><i>Certain arrangements to be regarded as collective investment schemes</i></b></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>