

**Legislative amendments effective from 13 May 2011 relating to
the regulation of public offers of structured products**

In the wake of the LB incident, SFC took forward the proposals to amend the Companies Ordinance (Cap. 32) (CO) in respect of the public offers of structured products separately and ahead of other initiatives to reform CO under a phased exercise. In October 2009, SFC issued the Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance and the Offers of Investments Regime in the Securities and Futures Ordinance. The proposals aimed to transfer the regulation of public offers of structured financial products in the form of shares and debentures from the CO prospectus regime to the offers of investments regime under Part IV of SFO. Following the consultation, SFC provided its recommendations on legislative amendments to the Administration which introduced the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 into LegCo in July 2010.

2. In September 2009, SFC conducted in parallel a consultation exercise on Proposals to Enhance Protection for the Investing Public. Subsequently, a package of measures dealing with investment products and the conduct of intermediaries was introduced for the purpose of strengthening investor protection. A new Code on Unlisted Structured Investment Products was made by SFC under section 399 of SFO in June 2010 and incorporated in the SFC Products Handbook¹. To enhance product transparency and disclosure, the Code establishes guidelines for authorization of structured financial products and sets out the criteria that SFC will normally consider before authorizing the issue of offering documents or advertisements for these products. Eligibility requirements are stipulated for issuers, guarantors and product arrangers of structured products. The offering documents are required to disclose the details of the key components making up a structured product and information with respect to key product counterparties whose credit or counterparty risks may have an impact on the risks and returns of the product. In addition, issuers will be required to disclose specified information on a continuous basis during the tenor of the structured

¹ The SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (G.N. (S) 30 of 2010) effective from 25 June 2010.

products. Pursuant to this new Code, a Product Key Facts Statement highlighting the key features and risks of a product in a clear, concise and effective manner will form part of the offering document of the product.

3. New requirements to enhance regulation of intermediaries conduct and selling practices relating to the sale of investment products were also made to SFC's Code of Conduct and implemented in phases within a period of 12 months from 4 June 2010². The new requirements on intermediaries include the following:

- (a) not to offer any gift in promoting a specific investment product;
- (b) to assess the customers' knowledge of derivatives in the "know your client" process and not to promote a derivative product to customers without such knowledge;
- (c) to disclose the monetary and non-monetary benefits received from the product issuer for distributing an investment product; and
- (d) to cancel the order and refund the customer in case the customer exercises his right to cancel the transaction under a cooling-off mechanism.

4. The Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 was passed by LegCo on 4 May 2011 and came into effect on 13 May 2011. Henceforth, the public offers of structured financial products are regulated under SFO; and the new Code on Unlisted Structured Investment Products will also apply to such products. The "safe harbour" provisions in the Seventeenth Schedule to CO will no longer apply to structured products as they are now regulated under SFO which has its own exemptions set out in sections 103(2) and (3).

² Amendments to SFC's Code of Conduct (G.N. 3217 of 2010) gazetted on 4 June 2010.