

CB(1)259/10-11(01)

**Securities and Futures and Companies
Legislation (Structured Products
Amendment) Bill 2010**

**《2010年證券及期貨和公司法例
(結構性產品修訂) 條例草案》**

26.10.2010

Major Proposals

主要建議

- (1) Introduce the concept of “structured product” (“SP”) in the Companies Ordinance (“CO”) and the Securities and Futures Ordinance (“SFO”)

在《公司條例》和《證券及期貨條例》引入“結構性產品”的概念

- CO and SFO currently differentiate shares, debentures and other securities but do not differentiate SP

兩條條例現有就股份、債權證和其他證券作區分，但沒有區分結構性產品

- Public offers of share and debentures to be conducted in accordance with CO

如屬股份和債權證的公開要約便會根據《公司條例》進行

Major Proposals

主要建議

- (2) Transfer the regulation of public offers of shares or debentures from CO to SFO if they are SP, except convertible bond and subscription warrant issued for fund raising purposes, etc. which will be excluded from the proposed definition of SP under the Bill

把屬股份或債權證形式的結構性產品的公開要約的規管，由《公司條例》轉移至《證券及期貨條例》。為籌集資金而發行的可轉換債權證及公司認股證等則屬例外：它們會從條例草案中有關結構性產品的建議定義中豁除

- SP (regardless of their legal form) will be regulated under one regime – i.e. the offers of investments regime under the SFO

結構性產品(不論其法律形式為何)將一律受同一制度規管—即《證券及期貨條例》的投資要約制度

Major Proposals

主要建議

(3) Adopt a wide definition of SP and empower FS to prescribe a product to be regarded as SP or not as SP

就結構性產品採納一個寬闊的定義，並賦權財政司司長訂明某產品為結構性產品或不為結構性產品

- Return by reference to changes in price, value or level of the underlying asset which can be securities, commodity, index, property, interest rate, currency exchange rate, futures contract, or occurrence/ non-occurrence of events, or a combination of the above

回報與參考資產（例如證券、商品、指數、財產、利率、貨幣兌換率、期貨合約）的價格、價值或水平變動掛鉤、或與事件的發生或不發生掛鉤，或與上述的組合掛鉤

- Provide flexibility to cater for future market development
提供靈活性以配合將來的市場發展

Major Proposals

主要建議

- (4) Deem all SP offered to the public as securities even if the SP are not in the form of securities

把所有向公眾要約的結構性產品視為證券，即使該產品並非證券

- Currently, most, if not all, retail SP are in the form of securities
現時，大部分（如非全部）的零售結構性產品屬證券形式
- In line with the regulation of other securities product, non-security based SP offered to the public will also be treated as securities, hence subject to:

一如就其他證券產品的規管，非以證券為基礎但向公眾要約的結構性產品，也會視作證券，因而受下列規管：

- Licensing requirements for persons that sell securities products to the public
向公眾出售證券產品的人士的發牌規定
- Conduct requirements on licensed persons
持牌人士的操守規定
- Offers of investments regime under SFO
《證券及期貨條例》的投資要約制度

Major Proposals

主要建議

- (5) Extend the offences of fraudulently or recklessly inducing others to invest money and the related civil liability under s.107 and s.108 of SFO respectively to cover non-security based SP, and expand SFC's investigatory power to cover such products

把分別載於《證券及期貨條例》第107及108條的欺詐或罔顧實情地誘使他人投資金錢的罪行及相關的民事責任，適用於非以證券為基礎的結構性產品，並把證監會的調查權延申至這些產品

Major Proposals

主要建議

- (6) Require offer documents of unlisted SP issued to the public to be authorized by SFC even if they are issued by persons holding Types 1, 4 or 6 licence issued by SFC

要求屬非上市證券的結構性產品的公開要約文件須獲證監會認可，即使文件是由持有證監會第1、4或6類牌人士發出

- Currently, offer documents issued to the public by these licensed persons in respect of securities (regardless of listed or unlisted) do not require SFC's authorization

現時，由這些持牌人士就證券(不論屬上市或非上市)向公眾發出的要約文件，不需證監會認可

- The existing arrangements in respect of listed securities including listed SP and unlisted securities other than SP will remain unchanged

現時就上市證券(包括上市結構性產品)及非上市證券(結構性產品除外)的安排維持不變

Justifications

理據

- Due to wide definition of “debenture”, public offers of SP in the form of debenture are conducted in accordance with CO
由於“債權證”的定義寬闊，屬債權證形式的結構性產品的公開要約是根據《公司條例》進行
- CO prospectus regime mainly caters for fund raising activities by companies, hence information to be disclosed focuses on the companies
《公司條例》的招股章程制度主要處理公司的融資活動，因此，須披露的資料集中於公司本身
 - e.g. name/address of directors/ auditors; shares/debentures issued in two preceding years; voting right of shares; indebtedness of the company; auditors’ reports
例如董事/核數師的姓名/地址；過去兩年發行的股份/債權證；公司債務；核數師報告
 - Overall disclosure requirement: sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion on the shares or debentures and financial condition and profitability of the company
總體披露要求：充分詳情及資料，使一個合理的人能對於公司的股份或債權證，及公司的財務狀況與盈利能力，達成一個確切而正當的結論

Justifications

理據

- For SP, investors also need to know information about the product issuer and nature and performance of the reference assets

就結構性產品，投資者亦需要知悉有關產品發行人及參考資產的性質和表現的資料

- SFC is applying requirements in addition to those stipulated in the CO administratively, previously with reference to the Listing Rules on listed structured products and the Code on Unlisted Structured Investment Products since June 2010

除《公司條例》的要求外，證監會亦以行政方式實施額外要求。過去參考有關上市結構性產品的《上市規則》；2010年6月起參考《非上市結構性投資產品守則》

Justifications

理據

- After the proposed transfer, the issue of all offering documents including advertisements and marketing material for SP in the form of shares or debentures will require SFC's authorization
在實施建議的轉移後，就屬股份或債權證形式的結構性產品而發出的所有要約文件(包括廣告和推廣材料)，須根據《證券及期貨條例》獲認可
- We also propose that SFC be empowered to authorize the SP. SFC may issue product codes and guidelines to set out the bases for the authorizations including disclosure requirements and structural features of products (e.g. eligibility of issuers and guarantors, obligations and responsibilities of product arranger, requirements on collateral, etc)
我們也建議賦權證監會認可結構性產品。證監會可發出產品守則和指引，列出披露規定和產品結構的要求(例如發行人及保證人的資格、產品安排人的義務和責任、抵押品的要求等)，作為給予認可的準則

Other Impact

其他影響

- (1) Safe harbours under SFO rather than CO will apply to all SP even if they are in the form of shares or debentures
《證券及期貨條例》（而非《公司條例》）下的安全港會適用於所有結構性產品（即使它們屬股份或債權證形式）

Under CO

根據《公司條例》

- An offer to not more than 50 persons
向不超過50名人士作出的要約
- An offer to professional investors
向專業投資者作出的要約
- An offer with a minimum denomination size of HK\$500,000 for each subscriber
每名認購者最低面額不少於500,000元的要約

Under SFO

根據《證券及期貨條例》

- Only regulate “offers to the public”
只規管“向公眾作出的要約”
- An offer to professional investors
向專業投資者作出的要約
- Prospectus authorized under CO
根據《公司條例》認可的招股章程

Other Impact

其他影響

(2) Wide definition of SP will capture currency-linked instruments and interest rate-linked instruments which are not securities and not subject to SFO at present

結構性產品的寬闊定義會涵蓋貨幣掛鈎票據和利率掛鈎票據，它們不是證券，現時也不受《證券及期貨條例》規管

- The sale of such products by banks are supervised by HKMA as part of its supervision of sale of investment products by banks

金管局監管銀行銷售這些產品，是監管銀行銷售投資產品的一部分

- In order not to affect the existing arrangement, offer documents issued by banks in respect of currency-linked instruments and interest rate-linked instruments will not require SFC's authorization and the expanded definition of securities (which will cover non-security based SP offered to the public) will not include such products issued by banks

為免影響現行安排，由銀行就貨幣掛鈎票據和利率掛鈎票據而發出的要約文件不需由證監會認可，而擴大後的“證券”定義（即包括非以證券為基礎但向公眾要約的結構性產品）亦不會涵蓋這些由銀行發出的產品

Other Impact

其他影響

- (3) Under the expanded definition of securities, any person dealing in or advising on non-security based SP offered to the public shall also be licensed

根據擴大後的“證券”定義，任何人就非以證券為基礎但向公眾要約的結構性產品作交易或提供意見，須領取牌照

- 6-month grace period for any such person
為這些人士提供6個月寬限期

Thank You

謝謝