

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

Proposed Committee Stage Amendments

Purpose

This paper presents the amendments we intend to make to the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010 for Members' consideration.

Proposed Amendments

2. The proposed Committee Stage Amendments ("CSA") are marked up at the Annex.

1. Clause 2 (Commencement) and New Clause 30 (Fees)

3. These proposals were discussed at the meetings of the Bills Committee held on 6 January, 20 January and 31 January 2011. At present, prospectus for shares and debentures, including structured products in such legal forms, require the Securities and Futures Commission ("SFC")'s authorization under the Companies Ordinance ("CO"). The applicant has to pay relevant fees to the SFC, about \$30,000 generally, as prescribed in the Securities and Futures (Fees) Rules ("Fees Rules") (Cap. 571AF). The latter is a subsidiary legislation setting out all the fees charged by SFC¹. For structured products not in the legal form of shares or debentures, their offer documents require SFC's authorization under the Securities and Futures Ordinance ("SFO"). The applicant also has to pay relevant fees (also \$30,000) to the SFC as prescribed in the Fees Rules.

4. Apart from transferring the regulation of public offers of structured products in the form of shares or debentures from the CO to the SFO, the Bill also proposes empowering the SFC to authorize structured products per se

¹ Section 395 of the SFO provides that the Chief Executive in Council may, after consultation with the SFC, make rules to, inter alia, require and provide for the payment to the SFC of, and prescribe, fees for an application to the SFC under or pursuant to any of the relevant provisions.

(under Clause 5 of the Bill which adds the new section 104A). This is similar to the existing arrangement for collective investment schemes (“CIS”) wherein the SFC is empowered under the SFO to approve CIS.

5. For this new power to authorize structured products under section 104A, the SFC has proposed a corresponding product authorization fee – \$2,000 payable upon application for authorization, \$1,000 payable upon the grant of authorization. Having regard to the feedback from SFC’s soft consultation with the key market players, we consider that the proposed fee is reasonable and modest. The existing fee for authorization of offer document, being \$20,000 (for application) and \$10,000 (for authorization) will remain unchanged. Further, it is proposed that an incidental fee of \$3,000 be chargeable for the modification of a previous authorization (which would only be applicable as and when it is necessary for the modification of a previous authorization). Such modification fee level is also in line with the current modification fee charged for documents authorized under section 105 of the SFO.

6. The original plan was to amend the Fees Rules to provide for the new fees by way of negative vetting after enactment of the Bill. In this connection, Clause 2 of the Bill currently provides that the enacted Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

7. To enable early implementation of the proposals in the Bill, we propose providing for the new product fees and amending the Fees Rules for the purpose by moving a CSA to the Bill. We also propose moving a CSA to delete the commencement clause for the Bill so that the amendments in the Bill will commence on gazettal of the Ordinance. Legal advice has confirmed that this is legally in order and within the ambit of the Bill. The SFC has soft consulted the major market participants on the proposed fee levels and the latter had no objection.

II. Clause 4 (4) and (9) (Exemption for non-securities or non-structured product property businesses)

8. Section 103(2)(i) of the SFO exempts public offer documents issued by non-securities property businesses in the ordinary course of that business from SFC’s authorization. With the introduction of the concept of and definition for “structured product” in the SFO, it is necessary to add (under clause 4(4) of the Bill) the reference of “structured products” to section 103(2)(i)

to preserve its intention of exempting public offer documents issued by non-securities **or non-structured product** property businesses in the ordinary course of that business. Clause 4(9) of the Bill adds a new section 103(11A) to limit the exemption in section 103(2)(i) so that these businesses are not able to make use of this exemption to issue structured products to investors outside their ordinary course of business.

9. At previous meetings of the Bills Committee, Members expressed that the scope of exemption under the existing section 103(2)(i) seemed very wide and that the actual effect of the new section 103(11A) was not clear. As requested by Members, we have reviewed sections 103(2)(i) and 103(11A). Using the case of a property developer as an example, we believe that a property developer, who provides an arrangement possibly constituting a structured product which is incidental to and is part and parcel of a property transaction, would be covered by the exemption in section 103(2)(i) since the property transaction and the arrangement would be in the ordinary course of the business of selling and purchasing property other than securities or structured products. On the other hand, if the developer issues, as a standalone transaction, a structured product, e.g. equity-linked note, to investors, our view is that this would not be in the ordinary course of “that business” (namely, property development) and the developer would not be covered by section 103(2)(i). As such, the proposed section 103(11A) is unnecessary and we propose a CSA to delete it from the Bill.

III. Clause 15(6) (Exemption for non-negotiable and non-transferable debentures)

10. This is in response to the deputations’ comments as set out in Part G on page 12 of LC Paper No. CB(1)1093/10-11(02). Non-negotiable and non-transferable debentures are not publicly offered. At present, they are excluded from the definition of “securities” in the SFO. In connection with the introduction of the concept of and definition for “structured product” in SFO, the SFC considers that it is necessary to specify that the existing exemption for non-negotiable and non-transferable debentures does not apply if they are structured products. In this regard, Clause 15(6) of the Bill amends the existing exclusion for non-negotiable and non-transferable debentures as underlined below:

"(vi) any debenture that specifically provides that it is not negotiable or transferable (excluding a debenture that is a structured product);"

11. When the Bills Committee met the depositions from trade associations and professional bodies, a deputation suggested that the above be refined as follows-

"(vi) any debenture that specifically provides that it is not negotiable or transferable (excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance);"

so that it did not cast an unnecessarily wide net over structured products that do not require authorization under the SFO.

12. Our policy intent is to provide that non-negotiable/non-transferable debenture-type structured products only become securities, hence subject to the regulatory requirements for securities, if they are publicly offered. We agree with the above proposed amendment and propose moving a CSA for this purpose. In the Chinese text, we also propose to consequentially amend the new paragraph (g) of the definition of "securities" (i.e. clause 15(5) of the Bill) so as to align the Chinese wording used in paragraphs (vi) and (g) of the definition.

IV. Clause 15(7) (Currency and interest rate-linked instrument)

13. We propose moving a CSA to amend the Chinese text of the definition of "currency and interest rate-linked instrument" in order to more explicitly spell out the concept of "combination".

V. Clause 15(8) (Exemption for employees incentive schemes)

14. This is in response to the depositions' comments as set out in Part B on page 3 and Part H on page 16 of LC Paper No. CB(1)1093/10-11(02). Clause 15(8) of the Bill proposes adding a new section 1A to Part 1 of Schedule 1 to the SFO to provide for the definition of structured products. The new section 1A specifies that a structured product does not include, inter alia, -

a product that is offered by a corporation only to a person who is –

- (i) a bona fide employee or former employee of the corporation or of another corporation in the same group of companies; or
- (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i).

15. When the Bills Committee met deputations, a deputation considered the above exclusion potentially too wide as it could include any structured product offered by a corporation to its employees regardless of whether it is referenced to the securities of the corporation itself or a related corporation.

16. We have reviewed the above clause and propose moving a CSA to amend it to the effect that the exclusion will only apply to employee incentive schemes issued by the corporation and referenced to securities of the corporation itself or a related corporation.

VI. Clause 4(3) (Exemptions under Section 103(2)(e))

17. In addition to the above, the deputations sought clarification as to how the proposed section 103(2)(e)(iii) was intended to operate in the context of the exclusion of employee incentive schemes under the new section 1A in Part 1 of Schedule 1. We mentioned in Part B on page 3 of LC Paper No. CB(1)1093/10-11(02) that we would tighten up the wording in the new section 1A and refine the wording in the proposed section 103(2)(e)(iii).

18. The existing section 103(2)(e), which is derived from the Protection of Investors Ordinance, provides an exemption to the issue, or the possession for the purposes of issue, of any advertisement, invitation or document made by or on behalf of a corporation in respect of securities of the corporation, or of a related corporation of the corporation, to -

- (i) holders of securities of the corporation or related corporation;
- (ii) creditors of the corporation or related corporation;
- (iii) employees employed by the corporation or related corporation; or
- (iv) agents acting in a professional capacity on behalf of the

corporation or related corporation.

19. During the SFC's public consultation on Possible Reforms to the Prospectus Regime in the Companies Ordinance and the Offers of Investments Regime in the SFO conducted in October – December 2009, there were suggestions that the exemption in the proposed section 103(2)(e) should be extended to cover employee incentive schemes that fall under the proposed definition of "structured product". We agreed that such employee incentive schemes should be facilitated and added the reference to "structured product" to the proposed section 103(2)(e) in the Bill.

20. In the light of the deputations' comments, we have reviewed the effect of the proposed amendment to section 103(2)(e), and concluded that since employee incentive schemes would be excluded from the definition of "structured product" under the new section 1A in Part 1 of Schedule 1, it would not be necessary to provide an exemption for employee incentive schemes in the form of structured products in the proposed section 103(2)(e) again.

21. We have also reviewed the existing exemption in section 103(2)(e) in respect of holders of securities and creditors of a corporation. The provision allows a corporation to issue documents, which are not SFC authorized, offering securities to existing shareholders and creditors of the corporation. We propose that, following the introduction of the definition of "structured product" into the SFO, the expansion of the definition of "securities" and the transfer of the public offer regime for structured products in the form of shares or debentures from the CO to the SFO, this exemption should not apply to structured products (be they in the form of securities or not) even if they are issued by corporations to shareholders or creditors. Neither should this exemption cover offers to holders of structured products (be they in the form of securities or not) issued by the corporation.

22. As for the existing exemption for documents issued to agents acting in a professional capacity on behalf of the corporation or related corporation, similarly, we do not think such an exemption should be extended to structured products because the ambit of this limb of section 103(2)(e) appears to be very wide and there has been no request for extension of the exemption. Accordingly, taking a prudent approach, we propose that documents offering structured products issued to agents acting in a professional capacity will not be

exempted from SFC authorization.

23. We propose moving CSAs to reflect the policy intent as stated in paragraphs 20 – 22 above.

**Financial Services and the Treasury Bureau
Securities and Futures Commission
February 2011**

**SECURITIES AND FUTURES AND COMPANIES
LEGISLATION (STRUCTURED PRODUCTS AMENDMENT)
BILL 2010**

MARKED UP WITH PROPOSED CSAS

A BILL

To

Transfer the regulation of public offers of structured products in the form of shares or debentures from the prospectus regime of the Companies Ordinance to the offers of investments regime of the Securities and Futures Ordinance and to make consequential and related amendments.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Securities and Futures and Companies Legislation (Structured Products Amendment) Bill 2010.

~~2. Commencement~~

~~This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.~~

PART 2

AMENDMENTS TO SECURITIES AND FUTURES ORDINANCE

3. Section 102 amended (Interpretation of Part IV)

(1) Section 102(1) of the Securities and Futures Ordinance (Cap. 571) is amended, in the definition of “approved person”, in paragraph (a), by repealing “or”.

(2) Section 102(1) is amended, in the definition of “approved person”, by adding –

“(aa) in relation to a structured product, means an individual approved by the Commission under section 104A(3); or”.

(3) Section 102(1) is amended, in the English text, in the definition of “representative”, in paragraph (b)(ii), by repealing the full stop and substituting a semicolon.

(4) Section 102(1) is amended, in the Chinese text, in the definition of “獲豁免團體”, by repealing the full stop and substituting a semicolon.

(5) Section 102(1) is amended by adding –

““securities” (證券) has the same meaning as that given by the definition of “securities” in section 1 of Part 1 of Schedule 1 except that it does not include structured products that are securities only because of paragraph (g) of that definition.”.

4. Section 103 amended (Offence to issue advertisements, invitations or documents relating to investments in certain cases)

(1) Section 103(1)(a)(ii) is repealed and the following substituted –

“(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or”.

(2) Section 103(2)(a) is repealed and the following substituted –

“(a) made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of –

(i) listed securities; or

(ii) unlisted securities (excluding unlisted securities that are structured products);”.

(3) Section 103(2)(e) is repealed and the following substituted –

“(e) made by or on behalf of a corporation in respect of securities (excluding securities that are structured

products)~~or structured products~~ of the corporation, or of a related corporation of the corporation, to –

- (i) holders of securities (excluding securities that are structured products) of the corporation or related corporation;
- (ii) creditors of the corporation or related corporation;
- (iii) employees employed by the corporation or related corporation; or
- (iv) agents acting in a professional capacity on behalf of the corporation or related corporation;”.

(4) Section 103(2)(f) and (i) is amended by adding “or structured products” after “securities”.

(5) Section 103(3) is amended by adding –

“(ea) of any advertisement, invitation or document made in respect of the issue, whether in Hong Kong or elsewhere, of a currency-linked instrument, an interest rate-linked instrument or a currency and interest rate-linked instrument by an authorized financial institution;”.

(6) Section 103(3)(j) and (k) is repealed and the following substituted –

“(j) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to persons outside Hong Kong;

(k) of any advertisement, invitation or document made in respect of securities or structured products, or interests in any collective investment scheme, that are or are intended to be disposed of only to professional investors.”.

(7) Section 103(5)(a) is repealed and the following substituted –

“(a) as or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) any advertisement, invitation or document made in respect of –

- (i) listed securities; or
- (ii) unlisted securities (excluding unlisted securities that are structured products);”.

(8) Section 103(6)(a) is repealed and the following substituted –

“(a) in the case of any advertisement, invitation or document made in respect of any of the following to an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity, or a representative of such an intermediary that carries on such a regulated activity for the intermediary –

- (i) listed securities; or
- (ii) unlisted securities (excluding unlisted securities that are structured products);”.

~~(9) Section 103 is amended by adding –~~

~~“(11A) Nothing in subsection (2)(i) applies to anything done by a person in respect of any structured products that –~~

~~(a) are not authorized by the Commission under section 104A; or~~

~~(b) are not listed securities.”.~~

5. Section 104A added

The following is added –

“104A. Commission may authorize structured products

(1) On an application by any person, the Commission may authorize a structured product, subject to the condition specified in subsection (2) and to any other conditions it considers appropriate.

(2) It is a condition of authorization of a structured product that, at any time when the product is authorized –

(a) there is an individual approved by the Commission under subsection (3) as an approved person for the purpose of being served by the Commission with notices and decisions for the product; and

(b) the Commission is informed –

(i) subject to subparagraph (ii), of the current contact details of the approved person, including, as applicable, the address, telephone and facsimile numbers, and electronic mail address of the approved person;

(ii) if there is any change in those contact details, of the change within 14 days after the change takes place.

(3) For the purposes of subsection (2)(a), on an application by any person, the Commission may approve an individual nominated in the application in respect of a structured product as an approved person for the purpose of being served by the Commission with notices and decisions for the product.

(4) The Commission may at any time, by notice in writing served on the approved person for a structured product –

- (a) amend or revoke any of the conditions (other than the condition specified in subsection (2)) imposed, or impose new conditions, in respect of the authorization of the product; or
- (b) withdraw the person's approval under subsection (3).

(5) Without limiting any other ground on which the Commission may refuse to authorize a structured product under subsection (1), the Commission may refuse to do so if it is not satisfied that the authorization is in the interest of the investing public.

(6) An application made under subsection (1) or (3) must be accompanied by any information and documents that the Commission requires.

(7) If the Commission refuses to authorize a structured product, or to approve an individual as an approved person, the Commission must notify the applicant in writing of the refusal and the reasons for it.

(8) The Commission may publish, in any manner it considers appropriate, particulars of a structured product authorized under subsection (1).

(9) Particulars published under subsection (8) are not subsidiary legislation.”.

6. Section 106 amended (Withdrawal of authorization under section 104 or 105, etc.)

(1) Section 106 is amended, in the heading, by adding “, 104A” after “104”.

(2) Section 106(1) is amended by adding “an authorization of a structured product under section 104A,” after “scheme under section 104,”.

(3) Section 106(1)(a) is amended by adding “, 104A(6)” after “104(6)”.

- (4) Section 106(1)(b) and (c) is amended by adding “, 104A” after “104”.
- (5) Section 106(2) is repealed and the following substituted –
- “(2) Subject to subsection (3), the Commission must withdraw the authorization of a collective investment scheme, a structured product or the issue of an advertisement, invitation or document on a request in writing made by the approved person for the scheme, product or issue (as the case may be).”.
- (6) Section 106(3) is amended by adding “or structured product” before “or of”.
- (7) Section 106(3)(a) is amended by adding “or structured product” after “investment scheme”.
- (8) Section 106(3)(a) is amended by adding “or product” after “the scheme”.
- (9) Section 106(5) is amended by adding “or structured product” after “investment scheme” wherever it appears.
- (10) Section 106(5) is amended by adding “, the product” after “the scheme”.
- (11) Section 106(6) is amended by adding “or structured product” after “investment scheme” wherever it appears.
- (12) Section 106(6) is amended by adding “, the product” after “the scheme”.

7. Section 107 amended (Offence to fraudulently or recklessly induce others to invest money)

Section 107(1)(a)(ii) is repealed and the following substituted –

- “(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or”.

8. Section 108 amended (Civil liability for inducing others to invest money in certain cases)

Section 108(1)(a)(ii) is repealed and the following substituted –

- “(ii) a regulated investment agreement or an agreement to acquire, dispose of, subscribe for or underwrite any other structured product; or”.

9. Section 111 amended (Service of notices, etc. on approved persons)

Section 111(1)(b) is amended by adding “, 104A(2)(b)” after “section 104(2)(b)”.

10. Section 182 amended (Investigations)

(1) Section 182(1)(b)(iii) is amended by adding “structured product,” after “any”.

(2) Section 182(1)(b)(iv) is amended by adding “, structured product” after “any securities” where it twice appears.

(3) Section 182(1)(f) is amended by adding “, 104A” after “section 104”.

11. Section 213 amended (Injunctions and other orders)

Section 213(2)(e) is amended by adding “, structured product” after “securities” where it twice appears.

12. Section 379 amended (Avoidance of conflict of interests)

(1) Section 379(1) is amended by adding “, structured product” after “securities” where it twice appears.

(2) Section 379(2) is amended by adding “or a structured product” after “holder of securities”.

(3) Section 379(2)(a) is repealed and the following substituted –

“(a) to exchange the securities or structured product or to convert the securities or structured product to another form of securities or structured product;”.

(4) Section 379(2)(c) is amended by adding “or another structured product” after “securities” where it twice appears.

(5) Section 379(2)(d), (e) and (f) is amended by adding “or structured product” after “securities”.

(6) Section 379(3)(a) is amended by repealing “regulated investment agreement” where it twice appears and substituting “structured product”.

(7) Section 379(3)(a)(iii)(A) is amended by repealing “or” at the end.

(8) Section 379(3)(a)(iii) is amended by adding –

“(C) in the case of a structured product, is interests, rights or property based on a structured product of or issued by the same issuer, and of the same class, as that in which he has an interest; or”.

13. Section 392 substituted

Section 392 is repealed and the following substituted –

“392. Financial Secretary to prescribe interests, etc. as securities, etc.

(1) For the purposes of this Ordinance, the Financial Secretary may, by notice published in the Gazette, prescribe, either generally or in a particular case, that –

(a) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are to be regarded as –

(i) currency-linked instruments;

(ii) currency and interest rate-linked instruments;

- (iii) futures contracts;
 - (iv) interest rate-linked instruments;
 - (v) securities; or
 - (vi) structured products; or
- (b) any interests, rights or property, whether in the form of an instrument or otherwise, or any class or description of any such interests, rights or property, are not to be regarded as –
- (i) currency-linked instruments;
 - (ii) currency and interest rate-linked instruments;
 - (iii) futures contracts;
 - (iv) interest rate-linked instruments;
 - (v) securities; or
 - (vi) structured products.

(2) Without limiting subsection (1), a notice under that subsection may prescribe the circumstances under which or the purposes for which any interests, rights or property, or any class or description of any interests, rights or property, referred to in the notice are to be regarded, or not to be regarded, as –

- (a) currency-linked instruments;
- (b) currency and interest rate-linked instruments;
- (c) futures contracts;
- (d) interest rate-linked instruments;
- (e) securities; or
- (f) structured products.”.

14. Section 407 amended (Savings, transitional, consequential and related provisions, etc.)

Section 407 is amended by adding –

“(3) Part 3 of Schedule 10 provides for the savings and transitional arrangements that apply on, or relate to, the commencement of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 (of 2010).”.

15. Schedule 1 amended (Interpretation and general provisions)

(1) Schedule 1 is amended by repealing “[ss. 2, 19, 66, 164, 171, 174, 175, 202 & 406 & Sch. 9]” and substituting “[ss. 2, 19, 66, 102, 164, 171, 174, 175, 202 & 406 & Schs. 9 & 10]”.

(2) Schedule 1 is amended, in section 1 of Part 1, in the definition of “debenture”, by repealing “securities” and substituting “debt securities”.

(3) Schedule 1 is amended, in section 1 of Part 1, in the definition of “financial product”, by adding –

“(e) any structured product;”.

(4) Schedule 1 is amended, in section 1 of Part 1, in the definition of “securities”, in paragraph (f), by repealing “notice,” and substituting “notice;”.

(5) Schedule 1 is amended, in section 1 of Part 1, in the definition of “securities”, by adding –

“(g) a structured product that does not come within any of paragraphs (a) to (f) but in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance.”.

(6) Schedule 1 is amended, in section 1 of Part 1, in the definition of “securities”, in paragraph (vi), by adding “(excluding a debenture that is a structured product in respect of which the issue of any advertisement, invitation or document that is or contains an invitation to the public to do any act referred

to in section 103(1)(a) of this Ordinance is authorized, or required to be authorized, under section 105(1) of this Ordinance)” after “transferable”.

- (7) Schedule 1 is amended, in section 1 of Part 1, by adding –
““currency and interest rate-linked instrument” (貨幣及利率掛鈎票

據) means –

(a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to a combination of –

- (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices; and
- (ii) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices or the occurrence or non-occurrence of any specified event or events relating to any one or more

interest rates or interest rate indices; or

- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency and interest rate-linked instruments in accordance with the notice, but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency and interest rate-linked instruments in accordance with the notice;

“currency-linked instrument” (貨幣掛鈎票據) means –

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of –
- (i) changes in the value or level (or a range within the value or level) of any one or more currency exchange rates or currency exchange rate indices; or
 - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more currency exchange rates or currency exchange rate indices;

or

- (b) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as currency-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as currency-linked instruments in accordance with the notice;

“interest rate-linked instrument” (利率掛鈎票據) means –

- (a) an instrument that is a structured product only because some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of –
- (i) changes in the value or level (or a range within the value or level) of any one or more interest rates or interest rate indices; or
 - (ii) the occurrence or non-occurrence of any specified event or events relating to any one or more interest rates or interest rate indices; or
- (b) any interests, rights or property prescribed, or of a class or description

prescribed, by notice under section 392 of this Ordinance as being regarded as interest rate-linked instruments in accordance with the notice,

but does not include any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as interest rate-linked instruments in accordance with the notice;

“structured product” (結構性產品) has the meaning given by section 1A of this Part;”.

(8) Schedule 1 is amended, in Part 1, by adding –

“1A. **Meaning of “structured product”**

(1) In this Ordinance, subject to subsection (2),

“structured product” (結構性產品) means –

- (a) an instrument under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to one or more of –
 - (i) changes in the price, value or level (or a range within the price, value or level) of any type or combination of types of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;

- (ii) changes in the price, value or level (or a range within the price, value or level) of any basket of more than one type, or any combination of types, of securities, commodity, index, property, interest rate, currency exchange rate or futures contract;
or
 - (iii) the occurrence or non-occurrence of any specified event or events (excluding an event or events relating only to the issuer or guarantor of the instrument or to both the issuer and the guarantor);
- (b) a regulated investment agreement; or
 - (c) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as being regarded as structured products in accordance with the notice.
- (2) A “structured product” does not include –
- (a) a debenture issued for capital fund raising purposes that is convertible into or exchangeable for shares (whether issued or unissued) of the issuer of the debenture or of a related corporation of the issuer;

- (b) a subscription warrant issued for capital fund raising purposes that entitles the holder to subscribe for shares (whether issued or unissued) of the issuer of the warrant or of a related corporation of the issuer;
- (c) a collective investment scheme;
- (d) a depositary receipt;
- (e) a debenture that would come within subsection (1)(a) only because it has a variable interest rate that is reset periodically to equate to a money market or interbank reference interest rate that is widely quoted (whether or not subject to a predetermined maximum or minimum rate) plus or minus a specified rate (if any);
- (f) a product ~~that is offered by a corporation~~ under which some or all of the return or amount due (or both the return and the amount due) or the method of settlement is determined by reference to securities of a corporation, or of a related corporation of the corporation, and that is issued by the corporation only to a person who is –
 - (i) a bona fide employee or former employee of the corporation or of a related corporation of the corporation ~~another corporation~~

~~in the same group of companies;~~

or

- (ii) a spouse, widow, widower, minor child (natural or adopted) or minor step-child of a person referred to in subparagraph (i);
- (g) a product that may be possessed, promoted, offered, sold, printed or published only –
 - (i) under a licence, permission or other authorization under the Betting Duty Ordinance (Cap. 108) or the Gambling Ordinance (Cap. 148); or
 - (ii) under the Government Lotteries Ordinance (Cap. 334);
- (h) an instrument issued in relation to –
 - (i) a contest authorized by section 37 of the Broadcasting Ordinance (Cap. 562); or
 - (ii) a contest included in a service licensed under Part IIIA of the Telecommunications Ordinance (Cap. 106);
- (i) a contract of insurance in relation to any class of insurance business specified in the First Schedule to the Insurance Companies Ordinance (Cap. 41); or

- (j) any interests, rights or property prescribed, or of a class or description prescribed, by notice under section 392 of this Ordinance as not being regarded as structured products in accordance with the notice.”.

16. Schedule 8 amended (Securities and Futures Appeals Tribunal)

Schedule 8 is amended, in Division 1 of Part 2, by adding –

- | | |
|--|---|
| “8A. Section 104A(1) of this Ordinance | Refusal to authorize a structured product, or imposition of any conditions. |
| 8B. Section 104A(3) of this Ordinance | Refusal to approve an individual nominated in respect of a structured product. |
| 8C. Section 104A(4)(a) of this Ordinance | Amendment or revocation of any condition, or imposition of any new condition. |
| 8D. Section 104A(4)(b) of this Ordinance | Withdrawal of approval of an individual nominated in respect of a structured product.”. |

17. Schedule 10 amended (Savings, transitional, consequential and related provisions, etc.)

Schedule 10 is amended by adding –

“PART 3

SAVINGS AND TRANSITIONAL PROVISIONS
RELATING TO SECURITIES AND FUTURES AND
COMPANIES LEGISLATION (STRUCTURED
PRODUCTS AMENDMENT) ORDINANCE 2010

1. Section 103(1) of this Ordinance does not apply in relation to a structured product that is the subject of –

(a) a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement of section ~~19~~18 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 (of 2010), were authorized and registered under section 38D of the Companies Ordinance (Cap. 32); or

(b) in the case of a company incorporated outside Hong Kong, a programme prospectus and its addenda, if any, and an issue prospectus and its addenda, if any, that, before the date of commencement of section ~~20~~19 of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 (of 2010), were authorized and registered under section 342C of the Companies Ordinance (Cap. 32).

2. Section 1(a) ceases to have effect in relation to a structured product on the earlier of –

- (a) the earliest of the dates specified in section 8 of Part 1 of the Twenty-first Schedule to the Companies Ordinance (Cap. 32); or
- (b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.

3. Section 1(b) ceases to have effect in relation to a structured product on the earlier of –

- (a) the earliest of the dates specified in section 8 of Part 2 of the Twenty-first Schedule to the Companies Ordinance (Cap. 32); or
- (b) the day after the last date of the period specified in the issue prospectus as being the period during which the structured product is offered to the public.

4. For the period of 6 months beginning on the date of commencement of section ~~4514~~(5) of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2010 (of 2010), Part V of this Ordinance does not apply in relation to the carrying on of a business in a regulated activity if –

- (a) the business was carried on immediately before that date; and
- (b) the activity is a regulated activity only because of paragraph (g) of the definition of “securities” in section 1 of Part 1 of Schedule 1 to this Ordinance (as added by section ~~4514~~(5) of the Securities and Futures and Companies Legislation (Structured

Products Amendment) Ordinance 2010 (of
2010)).”.

PART 3

AMENDMENTS TO COMPANIES ORDINANCE

18. Section 2 amended (Interpretation)

(1) Section 2(1) of the Companies Ordinance (Cap. 32) is amended, in the definition of “debenture”, by repealing “securities” and substituting “debt securities”.

(2) Section 2(1) is amended by adding –

““structured product” (結構性產品) has the meaning given by section 1A of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);”.

19. Section 38AA added

The following is added –

“38AA. Exemption for structured products

If it is proposed to offer any shares in or debentures of a company that are structured products, the following provisions do not apply in relation to the offer –

- (a) sections 37, 38, 38A, 38B, 38BA, 38C, 38D, 39A, 39B, 39C, 40, 40A, 40B, 41, 41A, 42, 43, 44, 44A, 44B and 48A;
- (b) the Third Schedule; and
- (c) the Seventeenth to the Twenty-second Schedules.”.

20. Section 342AA added

The following is added –

“342AA. Exemption for structured products

If it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong that are structured products, the following provisions do not apply in relation to the offer –

- (a) this Part (other than this section);
- (b) the Third Schedule; and
- (c) the Seventeenth to the Twenty-second Schedules.”.

21. Third Schedule amended (Matters to be Specified in Prospectus and Reports to be set out therein)

The Third Schedule is amended by repealing “[ss. 2B, 38, 38A, 38D, 42, 342, 342A, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]” and substituting “[ss. 2B, 38, 38A, 38AA, 38D, 42, 342, 342A, 342AA, 342C & 360 & 2nd, 4th, 20th & 21st Schs.]”.

22. Seventeenth Schedule amended (Offers specified for the purposes of paragraph (b)(ii) of the definition of “prospectus” in section 2(1) of this Ordinance)

The Seventeenth Schedule is amended by repealing “[ss. 2, 38, 43, 48A, 342 & 360 & 18th Sch.]” and substituting “[ss. 2, 38, 38AA, 43, 48A, 342, 342AA & 360 & 18th Sch.]”.

23. Eighteenth Schedule amended (Warning, etc. Statements to be contained in certain documents)

The Eighteenth Schedule is amended by repealing “[ss. 38, 342 & 360 & 17th & 21st Schs.]” and substituting “[ss. 38, 38AA, 342, 342AA & 360 & 17th & 21st Schs.]”.

24. Nineteenth Schedule amended (Contents and publication requirements of advertisements mentioned in section 38B(2)(e) of this Ordinance)

The Nineteenth Schedule is amended by repealing “[ss. 38B & 360]” and substituting “[ss. 38AA, 38B, 342AA & 360]”.

25. Twentieth Schedule amended (Amendment of prospectus consisting of one document)

The Twentieth Schedule is amended by repealing “[ss. 38A, 39A, 342A, 342CA & 360 & 12th Sch.]” and substituting “[ss. 38A, 38AA, 39A, 342A, 342AA, 342CA & 360 & 12th Sch.]”.

26. Twenty-first Schedule amended (Provisions in accordance with which a prospectus may consist of more than one document)

The Twenty-first Schedule is amended by repealing “[ss. 38A, 39B, 342A, 342CB & 360 & 12th & 18th Schs.]” and substituting “[ss. 38A, 38AA, 39B, 342A, 342AA, 342CB & 360 & 12th & 18th Schs.]”.

27. Twenty-second Schedule amended (Persons specified for the purposes of section 40 of this Ordinance)

The Twenty-second Schedule is amended by repealing “[ss. 40 & 360]” and substituting “[ss. 38AA, 40, 342AA & 360]”.

PART 4

CONSEQUENTIAL AMENDMENTS

Inland Revenue Ordinance

28. Schedule 16 amended (Specified transactions)

Schedule 16 to the Inland Revenue Ordinance (Cap. 112) is amended, in the definition of “debenture”, by repealing “securities” and substituting “debt securities”.

**Securities and Futures (Short Selling and Securities Borrowing
and Lending (Miscellaneous)) Rules**

29. Section 2 amended (Interpretation)

Section 2 of the Securities and Futures (Short Selling and Securities Borrowing and Lending (Miscellaneous)) Rules (Cap. 571 sub. leg. R) is amended, in the Chinese text, in the definition of “證券莊家”, by repealing “結構式產品” and substituting “結構性產品”.

Securities and Futures (Fees) Rules

30. Schedule 1 amended (Fees)

(1) Schedule 1 to the Securities and Futures (Fees) Rules (Cap. 571 sub. leg. AF) is amended, after item 5, by adding –

“5A. Fee payable on an application under section 104A(1) \$2000 of the Ordinance for authorization of a structured product

5B. Fee payable in respect of authorization of a \$1000”. structured product under section 104A of the Ordinance

(2) Schedule 1 is amended, in item 8, by adding –

“(d) any structured product \$3000”.