

Legislative Council Panel on Financial Affairs

Proposed Establishment of an Investor Education Council and a Financial Dispute Resolution Centre

Purpose

The Administration commenced on 9 February 2010 a three-month public consultation on the proposed establishment of an Investor Education Council (“IEC”) and a Financial Dispute Resolution Centre (“FDRC”). The consultation document was issued to Members through the Legislative Council Secretariat on the same day. This paper briefly introduces the proposals.

Background

2. In the past year, the Administration, the Hong Kong Monetary Authority (“HKMA”) and the Securities and Futures Commission (“SFC”) have taken series of actions to strengthen investor protection. Our focus is to provide a continuum of protection to investors at various stages of investment.

3. Targeting at the stage before an investor enters into the market, we propose the establishment of an IEC. We believe that those who better understand the market and products are more likely to make investment decisions that best suit their needs. Targeting at the course of investment, SFC’s September 2009 consultation covered proposals on regulation of sales practice and conduct of intermediaries, such as introduction of a cooling-off period and disclosure of commissions or other benefits arising from investment sales. In addition, HKMA has issued circulars to banks requiring them to attach “health warnings” to retail derivative products, to implement internal mystery shopper programme, to audio-record the sales process of investment products, and

to have clear segregation between the general banking business and securities-related activities, etc. Targeting at the stage where things possibly went wrong, we propose the establishment of an FDRC.

Proposals

Investor Education Council

4. We propose setting up an IEC to holistically oversee the needs of investor education and delivery of related initiatives. It will aim to improve the financial literacy and capability of the general public by influencing their fundamental financial attitude and behaviour, with a view to assisting them to make more informed financial decisions and manage their money wisely.

5. The IEC will implement its strategy primarily through –

- (a) reaching large audiences through regular, mass media campaigns;
- (b) building sustainable and tailored outreach programmes for different sectors of the community; and
- (c) a website for the public to get access to comprehensive and impartial investor education information.

6. We propose to set up the IEC as a company wholly owned by SFC. SFC will fully fund the operation of the IEC. No extra levies and charges will be imposed on investors for the establishment of the IEC.

7. There will be an SFC-appointed Board of Directors to govern the IEC. Relevant financial regulators and the Administration will be represented on the IEC Board. The SFC Board will recommend to the Financial Secretary an SFC Non-Executive Director as the Chairman of the IEC Board.

Financial Dispute Resolution Centre

8. We propose setting up an FDRC to administer a financial dispute resolution scheme by way of primarily mediation and, failing which and if the claimant so wishes, arbitration. The FDRC is meant to be a platform that helps resolve monetary disputes between an individual consumer and a financial institution in a speedy, affordable, independent and impartial way.

9. To start with, financial institutions regulated or licensed by HKMA or SFC would be required to join the scheme as members. Under the scheme, the FDRC may require scheme members (i.e. banks, brokers, fund houses, etc.) to enter into mediation and arbitration at times of a monetary dispute if (a) the claimant so wishes, and (b) the dispute cannot be resolved directly between the parties.

10. Where mediation is unsuccessful, the FDRC may assist the claimant to bring the case further to arbitration if the claimant so wishes. An arbitrator agreed by both the claimant and the financial institution should decide the claim. An arbitration award is final and binding on both parties. Neither the claimant nor the financial institution can bring the case further to the court on ground of merits of the case.

11. The FDRC would not have any investigation or disciplinary powers as the regulators. The regulators deal with regulatory breaches while FDRC deals with monetary disputes. That said, in the exceptional event that the regulators suspect that a systemic case has occurred, the FDRC will direct all relevant complaints to the regulators for investigation as prescribed in their respective legislation.

12. We propose that HK\$500,000 be set as the maximum claimable amount under the financial dispute resolution scheme. This is expected to cover more than 80% of the monetary disputes handled by HKMA.

13. We propose that the FDRC service be offered at a charge to both the claimants and financial institutions, under a “pay-as-you-use” principle. We suggest a higher fee for financial institutions to incentivise them to resolve the disputes at an early stage.

14. Acknowledging that the FDRC is contributing to an important function of investor protection, the Administration, together with HKMA and SFC, are prepared to provide the set-up costs and operation costs of the FDRC in the first three years. The FDRC should be funded by the financial industry, and to a lesser extent the claimants, thereafter.

15. The FDRC will be governed by a Board of Directors to be appointed by the Administration. The Board is responsible for overseeing the operations of FDRC, and ensuring the independence and impartiality of its dispute resolution procedures.

Way Forward

16. To take forward the IEC proposal, we need to amend the Securities and Futures Ordinance (“SFO”) to broaden SFC’s investor education remit to cover financial services and products other than those in the securities and futures sector, as well as empower SFC to form the IEC as a wholly owned company with delegated investor education responsibilities from SFC.

17. For obligating the authorised institutions (“AIs”) regulated by HKMA to join the financial dispute resolution scheme, the licensing condition applied to AIs will have to be amended but it would be subject to the statutory consultation requirements under the Banking Ordinance. The Banking Ordinance itself would not need to be amended. For SFC’s licensed institutions, the SFO will have to be amended to obligate them to join the scheme.

18. We look forward to receiving the public’s feedback by 8 May 2010. Should the proposals receive public support, we would introduce the above-mentioned legislative amendments to pave the way for establishing the IEC and the FDRC.