

Legislative Council Panel on Financial Affairs
Meeting on 3 May 2010

**Legislative Proposals to Transfer the Regulation of
 Public Offers of Structured Products
 from the Companies Ordinance (“CO”) (Cap. 32) to the
 Securities and Futures Ordinance (“SFO”) (Cap. 571)**

Request for Information

To provide information, in tabular form, on how the proposed transfer of the authorization of offering documentation in relation to structured products from the CO to the SFO would strengthen protection for investors -

| Change | Explanation |
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| Alignment of regulation | Currently, two regulatory regimes apply (i.e. the CO prospectus regime and offers of investment regime in Part IV of the SFO) to offer documents and marketing materials of products sold to the public. The public offer of structured products, depending on their legal form, may be subject to different regimes even where two structured products have similar economic risk and return profiles. Under the proposed transfer, the regulation of public offers of structured products will be aligned so that one regime (i.e. Part IV of the SFO) will apply, regardless of the legal form of the product. |
| Enhanced transparency and flexibility to regulate under codes and guidelines | The CO prospectus regime is less flexible than Part IV of the SFO in that under the SFO, the Securities and Futures Commission (“SFC”) may issue codes and guidelines to set out its regulatory policy on relevant products. The SFC launched separately a public consultation in late 2009 on, amongst others, a proposed Code for Unlisted Structured Investment Products. The proposals under the Code include (a) eligibility requirements for an issuer or a guarantor; (b) eligibility |

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| | <p>requirements for collateral (where applicable); (c) continuous disclosure requirements; and (d) the requirement for key fact statements.</p> <p>Many of these had in the past been applied in practice by way of administrative measures. The SFC considers it helpful to codify in the Code certain existing administrative practices and requirements.</p> <p>The SFC plans to publish in Q2 2010 conclusions of the consultation on the Code and other matters.</p> |
| Including certain structured products as “securities” | <p>Under the proposals, all structured products marketed publicly (including those which are currently not classified as “securities”) will be subject to the existing regulatory requirements on “securities” as stipulated in the SFO.</p> |

To explain in detail the changes to the safe harbour arrangements upon the transfer of the authorization regime from the CO to the SFO, and under what circumstances the exemptions under the SFO would be applicable after the transfer -

Under the transfer proposals, regulation of public offers of structured products that are in the form of shares or debentures will be transferred from the CO to Part IV of the SFO. The safe harbours in the Seventeenth Schedule of the CO (including the “not more than 50 persons” safe harbour and the “minimum denomination \$500,000” safe harbour) will not be replicated in Part IV of the SFO and will not be applicable to offers of structured products. The authorisation requirements under Part IV of the SFO apply only where a product is offered to the public. Part IV of the SFO has its own set of exemptions, as set out under section 103(2) and 103(3) of the SFO.

The following are the more commonly relied upon exemptions in Part IV of the SFO that will be applicable to structured products -

- (a) the issue of any advertisement, invitation or document made in respect of structured products which are intended to be disposed of only to professional investors; and

- (b) the issue of any advertisement, invitation or document by an authorised financial institution in respect of traditional banking products, e.g., bank issued leveraged foreign exchange contracts, certificates of deposits, currency linked instruments and interest rate linked instruments.

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