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Clerk to Panel on Financial Affairs
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

12 July 2013

Dear Sir or Madam,

Securities and Futures Commission's Consultation Paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements

SinoPac Securities (Asia) Limited (SPSAL) is a Hong Kong incorporated and Securities and Futures Commission (SFC) licensed corporation for Type 1, 2, 4, 5, 6 and 9 regulatory activities. SPSAL provides a comprehensive range of services, primarily investment banking, securities and futures brokerage, asset management and other securities investment related service to both institutional and individual clients in the Greater China region and internationally.

SPSAL appreciates the opportunity to comment on the SFC's Consultation Paper on the Proposed Amendments to the Professional Investor Regime and the Client Agreement Requirements (the 'Consultation Paper') and the Indicative draft of the relevant paragraphs of the Code contained in Appendix A to the Consultation Paper (the 'Draft Code').

Hong Kong is historically a laissez-faire jurisdiction in its approach to economic regulation, and this flexible attitude is of great important for the continue development of the financial markets in Hong Kong into one of the world's leading financial centres. SPSAL is supportive of all the governmental policy for the maintenance of Hong Kong's status as an international financial centre in accordance with Article 109 of the Basic Law, and in line with the need to continue to foster market innovation and development of Hong Kong as a truly international financial centre, SPSAL is of the view that a flexible attitude towards financial market regulation is needed. SPSAL advocates for the proper development of a functional wholesale market relatively lightly regulated and accessible by anyone who wants to participate in such market. At the same time, SPSAL recognizes the need to strengthen the supervision and regulation of retail market so as to provide further protection to the investing public in view of the recent misselling fiasco.

Over the past few years, it is largely acknowledged by the investing public in Hong Kong that the two pillars of the regulatory structure for the sale of investment products is not working effectively to stand the test of the financial crisis. SPSAL is of the view that apart from strengthening the second pillar as suggested, i.e. the conduct regulation and the suitability requirement of intermediaries in selling investment products, SFC should enlarge the scope of the second pillar to cover those intermediaries originating and/or structuring the investment products to be offered to the market in Hong Kong. Those originating and/or structuring investment products should assume more responsibilities to ensure that the products are suitable for the investing public just like any other producer whatsoever offering other goods or services to the market. Take for instance, if a car maker is selling a car to the market, the car maker has to ensure a basic standard of that kind of product. The originator of investment products should take on similar responsibility.

SPSAL's responses to the questions of the Consultation Paper as below:

1) SPSAL is supportive of Corporate and Individual Professional Investors to have the right to participate in private placement activities. It is of fundamentals of our society that are liberal and open everyone should have the right to make their own informed decision in investing on whatever they want. Government should only make rules for the proper working of such market activities and ensure all relevant information is made available to a investor, rather than to impose overly stringent restriction to the participation of such market as investor.

2) We do not think that the minimum monetary thresholds for Corporate and Individual Professional Investors should be increased. To a certain extent, an increase will undermine our competitiveness as an international financial centre.

3) We do not agree that intermediaries should observe all the Code requirements when dealing with individuals. We are supportive that intermediaries have to ensure that the transaction to be recommended meets the client's investment objectives and risk exposure. However, certain professional such as accountant, lawyer etc. may still be allowed to opt out of the Code requirements upon their own initiative so as to reduce the cost of their investments i.e. the fee to be charged by the intermediaries. We urge the regulator to be flexible as far as possible.

4) We do not agree that investment vehicles wholly owned by individuals and by family trusts should be treated on the same basis as individuals under the Code. The reason is that those investors who can set up their own investment vehicles and/or family trusts are sophisticated per se. No such further protection as suggested by SFC is actually needed.

5) SPSAL agree that a principles-based Knowledge and Experience Assessment should dispense with bright line tests concerning dealing experience.

6) We are supportive of the Suitability Requirement for the retail market, however, for wholesale market and professional investors, it is far better to allow the clients to opt out of such Suitability Requirements so as to reduce the transaction cost (fee and/or commission to be charged) in general.

7) SPSAL is supportive of the proposal to include the Suitability Requirements in client agreements and disallow the inclusion of clauses which are inconsistent with the Code or which mis-describe the actual services provided to clients, but only to the extent that such requirements are applicable to retail clients only. For truly professional investor clients (both individual and corporate), they should be allowed to opt out of such requirements freely for reduction of transaction cost where applicable.

Finally, we would like to take this occasion to urge the government and the regulator to conduct a fundamental review/research of the regulation of the sale of investment products.

Some basic questions need to be asked and be answered. The reason for different of treatment of the sale of investment products with other products such as marketing and selling of real property, car or food in the market? Are the different of treatments and regulations achieving the goal in offering basic than excessive protection? The viability of organize and regulate the investment product market in line with other non-financial product market and the potential implication for Hong Kong as an international financial centre?

We hope the Panel on Financial Affairs find our comments useful and would be happy to answer further questions the Panel may have in relation to this submission.

Yours faithfully,

Gary Cheung
Head of Legal and Compliance
SinoPac Securities (Asia) Limited