

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

**Statement regarding the Risks of
being treated as a “Professional Investor”**

Purpose

At the 16 December 2010 Bills Committee meeting, Members requested the Securities and Futures Commission (“SFC”) to consider the suggestion of including a standard statement to explain the risks of being treated as a “professional investor” in the relevant declaration form to be signed by the investors, and provide the Bills Committee with a sample of the statement. This paper responds to Members’ request.

Treatment as a “Professional Investors”

2. Under paragraph 15.4(b) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”), a licensed or registered person (“intermediary”), prior to treating a client as a professional investor under the Code of Conduct (“Professional Investor”), should obtain a written and signed declaration from that client that the consequences of consenting to being treated as a Professional Investor and the right to withdraw from being treated as such have been explained to him and that he wishes to be treated as Professional Investor.

3. In addition to the written declaration, prior to treating a client as a Professional Investor, intermediaries are also required to provide the client with a written explanation in relation to the risks and consequences of being treated as a Professional Investor. Paragraph 15.5 sets out the regulatory requirements under the Code of Conduct that may be waived from compliance by intermediaries for Professional Investors. Accordingly, the “risks and consequences” for a person being treated as a Professional Investor, as referred to in paragraph 15.4, are that the intermediary serving him is not required to comply with those regulatory requirements set out in paragraph 15.5 of the Code of Conduct. The following written explanations in relation to the risks and consequences of being treated as a Professional Investor should be provided to a

Professional Investor-

- (a) the intermediary does not need to establish a client's financial situation, investment experience and investment objectives (as required under paragraph 5.1 and paragraphs 2(d) and 2(e) of Schedule 6 to the Code of Conduct), except where the intermediary is providing advice on corporate finance work;
- (b) the intermediary does not need to ensure the suitability of a recommendation or solicitation (as required under paragraph 5.2 and paragraph 49 of Schedule 6 to the Code of Conduct);
- (c) the intermediary does not need to enter into a written agreement and the provision of relevant risk disclosure statements (as required under paragraph 6.1, paragraph 2 of Schedule 3, paragraph 2 of Schedule 4 and paragraph 1 of Schedule 6 to the Code of Conduct);
- (d) for discretionary accounts, the intermediary does not need to (i) obtain from the client an authority in a written form prior to effecting transactions for the client without his specific authority (as required under paragraph 7.1 (a)(ii) of the Code of Conduct); and (ii) explain the authority described under paragraph 7.1(a)(ii) of the Code of Conduct, nor confirm it on an annual basis (as required under paragraph 7.1(b) of the Code of Conduct);
- (e) the intermediary does not need to inform the client about the intermediary and the identity and status of its employees and others acting on its behalf (as required under paragraph 8.1 of the Code of Conduct);
- (f) the intermediary does not need to confirm promptly with the client the essential features of a transaction after effecting a transaction for a client (as required under paragraph 8.2, paragraph 4 of Schedule 3 and paragraph 18 of Schedule 6 to the Code of Conduct);

- (g) the intermediary does not need to provide the client with documentation on the Nasdaq-Amex Pilot Program (as required under paragraph 1 of Schedule 3 to the Code of Conduct); and

4. The SFC understands that licensed intermediaries are well aware of the above-mentioned requirement and will give written explanation to Professional Investors of the risks and consequences of being treated as a Professional Investor that are relevant to the licensed intermediaries' operations.

Securities and Futures Commission
January 2011