

30 October 2009

Further changes proposed to regulation of structured products

As a further initiative to enhance protection for the investing public, the Securities and Futures Commission (SFC) has begun a two-month consultation to solicit public comments on proposals to rationalise the regulatory requirements for public offers of structured products.

Under the current law, public offers of structured products in the form of debentures fall under the prospectus regime of the Companies Ordinance (CO) whereas public offers of structured products other than debentures are dealt with under the investment offers regime detailed in Part IV of the Securities and Futures Ordinance (SFO).

The proposals will align the two regimes so that public offers of structured products, irrespective of their legal form, will be regulated under the SFO. This will be complemented by a new Code on Unlisted Structured Products that is the subject of a separate and ongoing SFC consultation (Note 1).

The alignment will be achieved by transferring the regulation of public offers of structured products in the form of debentures from the CO prospectus regime to the regulatory regime under the SFO. As a result, unless an exemption applies, unlisted structured products, their offering documents and marketing materials will have to be authorised under the SFO before being offered to the public. This will allow the SFC greater flexibility to regulate public offers of unlisted structured products by setting out appropriate standards in the new Code on Unlisted Structured Products. The existing practice for listed structured products and bank-issued money market and currency-linked instruments will remain unchanged.

Until 31 December 2009, comments may be submitted to the SFC at lawreform@sfc.hk, by post or by fax 2810 5385.

End

Notes to Editor:

1. The "Consultation Paper on Proposals to Enhance Protection for the Investing Public" launched on 25 September 2009 prescribes a coordinated set of regulations to cover the various stages of the investment life cycle – from the pre-sale stage to the sale process and post-sale follow-up .
2. For enquiries, please contact Betty Mark at 2283 6807 or Ernest Kong at 2840 9335.

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