



## **URGENT**

29 November 2011

Hon Jasper Tsang Yok-Sing  
President  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear President Tsang:

### **RE: Securities and Futures (Professional Investor) (Amendment) Rules 2011**

The members of the Asia Securities Industry & Financial Markets Association (“ASIFMA”)<sup>1</sup> request the opportunity to highlight some issues of concern raised by the above captioned proposed amendment. We hope you will consider these concerns and that you will share them with your esteemed colleagues in the Legislative Council (“LegCo”) in advance of voting on this matter.

It has come to our attention that a motion may be put forward for consideration by LegCo at the meeting to be held on 30 November 2011 in respect of certain further amendments to the Securities and Futures (Professional Investor) Rules (Cap 571D) (“Rules”). We are given to understand that the proposed changes may encompass the inclusion of the qualitative accreditation requirements currently set out in the Code of Conduct for Persons Licensed by or Registered with the SFC (“Code of Conduct”) and/or further qualitative requirements to the Rules.

Our members are concerned about the proposed changes and wanted to take this opportunity to reiterate a number of points for your consideration.

The professional investor exemption (“Exemption”) to the public offering restrictions as currently set out in the Rules has been a longstanding feature of the regulatory framework governing the investment products market in Hong Kong. The Exemption plays a vital role in bringing a wide variety of investment products to the market and its importance continues to be reflected in the recent reforms to the restrictions relating to the offer of these products under the Securities and Futures Ordinance (Cap 571). The potential impact of such an amendment will also extend to (a) the equities market, as many international tranches of initial public offerings in Hong Kong are sold to professional investors only (as they cannot be sold to the Hong Kong public); (b) the distribution of unauthorised funds; and (c) the sale of structured products by private banks.

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<sup>1</sup> The Asia Securities Industry & Financial Markets Association (ASIFMA) is an independent association that promotes the development of liquid, efficient and transparent capital markets in Asia and facilitates their orderly integration into the global financial system. ASIFMA priorities are driven by over 40 member companies involved in Asian capital markets, including global and regional banks, securities dealers, brokers, asset managers, credit rating agencies, law firms, trading and analytic platforms, and clearance and settlement providers. ASIFMA is located in Hong Kong and works closely with global alliance partners: the Global Financial Markets Association (GFMA), the Securities Industry and Financial Markets Association (SIFMA) and the Association for Financial Markets in Europe (AFME). More information about ASIFMA can be found at: [www.asifma.org](http://www.asifma.org).

The current Exemption has enabled many sophisticated and active professional investors to access an array of products that may not otherwise be available to the general public. The Code of Conduct has been recently amended to reinforce investor protection in the selling process, which already sets out the requirements that the relevant individual must have certain knowledge and expertise in respect of certain types of products. Mirroring the requirements set out in the Code of Conduct into the Rules would make the Exemption extremely difficult to rely upon.

As such, we are of the view that any additional qualitative and other requirements set out in the Code of Conduct may not necessarily be an accurate, practical or effective means of assessing whether a client is suitable for any given product. Further, categorisation of clients based on a list of pre-set criteria may potentially and unnecessarily alienate many investors (who may in fact be experienced, well-informed and sophisticated) from accessing products via private placements. This will lead to a number of obviously undesirable consequences, such as:

- i. severely restricting an investor's freedom to choose as to the type and range of products available to the market; and
- ii. reducing Hong Kong's level of competitiveness as compared to other markets, many of which have viable private placement exemptions.

Further, the change would not necessarily increase the degree of investor protection. It is critical to note that financial institutions conduct know-their-customers checks and assess the suitability of an investment product for their customer on a transaction-by-transaction basis. The qualitative accreditation requirements apply even when products are offered to professional investors under the Rules and financial institutions would generally not rely on exemptions to avoid these requirements. Waivers, if any, would in any case be in compliance with the Code of Conduct. In other words, classification of whether an investor as a "professional investor" under the Rules only opens the gateway to access those products via private placements, and investors are not deprived of the safeguards already put in place which are designed to ensure suitability.

We are a strong proponent of and have at all times advocated for the protection of investors and the promotion of a fair, efficient, competitive and transparent securities market. That said, we must also balance that position with the market's desire for the wide range of products that investors expect from an international financial centre such as Hong Kong.

**We respectfully urge LegCo to consider the potentially damaging consequences of codifying and including the additional qualitative accreditation requirements in the Rules and would welcome an opportunity to discuss this subject with you further.**

Yours sincerely,



**Nicholas de Boursac**  
**CEO**  
**Asia Securities Industry & Financial Markets Association**

cc. Hon. CHAN Kam-Lam, SBS, JP, Chairman of Financial Affairs Panel, Legislative Council