



Further Consultation on the Client Agreement Requirements

Submissions

The Securities and Futures Commission (SFC) issued a further consultation paper in September 2014 to seek views on their proposed amendments to the Client Agreement Requirements. The proposed amendments are said to be the response of SFC to some of the views canvassed in their previous consultation carried out in May 2013.

In the proposed amendments, the SFC suggests not to import the Suitability Requirement into client agreements and instead to incorporate a new clause to client agreements (“New Clause”).

The Law Society has reviewed the above proposal and has the following comments.

1. We are concerned about a lack of clarity in relation to the concepts of “solicitation” and “recommendation” in the New Clause, and in particular about what marketing activities the Commission believes should be caught. We think that ‘suitability’ should only apply when recommending a particular client to purchase a ‘financial product’ (which presumably is intended to be as defined in the Securities and Futures Ordinance), taking into account what the firm knows about that client. Indeed we expect that it will often be impracticable to conduct a suitability assessment outside the context of a personally advised sale. The ‘soliciting’ element in the Commission’s suitability rules has, we understand, been problematic in practice: does it cover general marketing in the press or over the internet? Or does it only apply to one-on-one conversations? Contractual uncertainty is undesirable – not only for firms but also for the clients who need to know what rights they have.
2. Please clarify that the Commission’s intention was that the New Clause only applies in the context of a bank’s/firm’s brokerage/private banking/retail business

advising its clients to buy certain products, but not otherwise (e.g. corporate finance).

3. We were surprised to see that the New Clause was not qualified by reference to what a firm knows about its client's financial situation, etc. The New Clause should be based on an intermediary's actual knowledge of a client's financial situation, investment experience and investment objectives.
4. We note that the Commission appears to believe that its further internal study on suitability will not be relevant to the New Clause. We ask that the Commission reconsider this. Both the New Clause and the Commission's suitability rules are intended to ensure firms' advice, etc. to clients to buy investments is 'proper'. Although we support the Commission's decision to break any drafting link between the two, that does not mean that the principles should be or indeed can be de-linked.

**The Law Society of Hong Kong
23 December 2014**