

3rd April 2017

Sent by Email and by Post

Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Sirs/Madams,

Re: Consultation Paper on the Proposed Amendments to the Securities and Futures (Professional Investor) Rules

The Hong Kong Society of Financial Analysts (HKSFA), being one of the largest investment professional bodies in Hong Kong, has the pleasure to submit its views on the Securities and Futures Commission's Consultation Paper on Proposed Amendments to the Securities and Futures (Professional Investor) Rules.

HKSFA has over 6,000 members, many of whom are industry practitioners in the assets and wealth management industry.

HKSFA is in general supportive of the Proposed Amendments to the Securities and Futures (Professional Investor) Rules. The general feedback we gathered from our members is that the proposed amendments take into account practical situations financial intermediaries are facing and provide the industry consistency in standards and a more level playing field. The proposal is very practical and helpful for the intermediaries to classify its clients as Professional Investors. Our specific response to the questions is set out in the appendix. You can also find our reply to the SFC consultation paper on similar subject matters back in August 2013 for your reference at http://www.hksfa.org/upload/menu_content_detail/original/929895230424.pdf.

We are grateful to have the opportunity to express our views on the consultation paper. Thank you for your attention.

Yours sincerely,
For and on behalf of
The Hong Kong Society of Financial Analysts

Frederick Tsang, CFA
Co-chair, Advocacy Committee

Claudius Tsang, CFA
Co-chair, Advocacy Committee

Appendix: HKSA Specific Response to the Questions

Q.1

Do you agree that the proposed amendments to the Professional Investor Rules would introduce appropriate levels of consistency and flexibility, and better serve the interests of both intermediaries and their clients? Please explain your view. Do you have any other suggestions?

Answer to Q.1:

Agree. The proposed amendments are consistent with the existing Professional Investors Rules as most of them have already been granted by the SFC in its subsisting modifications. If these existing modifications, being standardized and generalized, can be incorporated into the SFO, it should provide both market practitioners and their clients with a transparent set of rules to follow. This should help reduce ambiguity and increase efficiency for the market participants.

Q.2

Do you agree that section 3(b) of the existing Professional Investor Rules in relation to individuals should be extended so that:

- a) **an individual's share of a portfolio that is held in a joint account with a non-associate can be counted towards meeting the prescribed threshold to qualify as a professional investor (as outlined in paragraph 14(b) above and provided for in Rule 6(1)(c) in Appendix A)? Please explain your view.**

In determining the share of an individual's portfolio held in a joint account with a non-associate for the purpose of meeting the prescribed threshold, we propose that the individual's share is either based on the share specified in the written agreement between the account holders or an equal share of the portfolio in the absence of a written agreement (as provided for in Rule 6(2) in Appendix A). Do you agree with our approach? Please explain your view.

- b) **an individual's portfolio or share of a portfolio held by a corporation, the principal business of which is to hold investments and which is wholly or partially owned by the individual, can be counted towards meeting the prescribed threshold to qualify as a professional investor (as outlined in paragraph 14(a) above and Rule 6(1)(d) and Rule 6(1)(e) in Appendix A)? Please explain your view.**

Do you have any other suggestions?

Answer to Q.2:

- a) Agree, this makes sense as it is a common practice in accounting to count the equity stake of joint-account owners. Similarly, it is the calculation basis for holding a property in joint names: equity interests of joint owners are calculated in accordance with their respective share in the property.
- b) Investment holding corporations are common vehicles for high net worth individuals to hold their investment portfolios. This should be counted towards the threshold of Professional Investors according to their respective stake in the corporation concerned. But the SFC should consider restricting the number of layers of a corporation that could be counted as PI for clarity.

It is further proposed to remove the words "relevant date" so that intermediaries can take into account an individual's portfolio (or share of portfolio) based on information which is valid as of the assessment date instead of the relevant date.

Q.3

Do you agree that the scope of the existing Professional Investor Rules should be extended so that:

- a) **any corporation, the principal business of which at the relevant date is to hold investments and which is wholly owned by one or more of the persons where each of them is qualified as a professional investor, will qualify as a professional investor (as outlined in paragraph 14(c) above and provided for in Rule 7(b) in Appendix A)? Please explain your view.**

- b) **any corporation, which wholly owns another corporation which has been qualified as a professional investor under the Professional Investor Rules by meeting the asset or portfolio threshold, will qualify as a professional investor (as outlined in paragraph 14(c) above and provided for in Rule 7(c) in Appendix A)? Please explain your view.**

Do you have any other suggestions?

Answer to Q.3:

- a) Agree. The corporation concerned is an investment vehicle of the PI's who are also the ultimate beneficiaries of the corporation. As such, it is logical to count the corporation as a PI as this is actually owned and controlled by the PI. The proposed extension looks through the organizational structure and focuses on the substantive nature of the economic ownership, which is a reasonable approach.
- b) Currently, a corporation that wholly owns another corporation with assets of \$40 million or more would already be qualified as a professional investor under Rule 7(a)(ii) by meeting the asset threshold. Accordingly, it seems like this is a rule relaxation in cases where the wholly-owned corporation qualified under the \$8 million threshold in Rule 7(a)(i). Please clarify.

Q.4

Do you agree that the evidential requirements set out in section 3(a) to (c) of the existing Professional Investor Rules (as outlined in paragraph 11(b) above) should be extended to include public filings and certificates issued by auditors, certified public accountants or custodians (as outlined in paragraph 14(d) above and provided for in Rule 9 in Appendix A)? Are these alternative forms of evidence used commonly by intermediaries as proof of clients meeting the stipulated monetary thresholds? Please explain your view.

Answer to Q.4:

We agree the evidential requirements should be extended. However, conditions should be imposed as to the validity of such documents, e.g. limiting to filings / certificates signed off within the last 12 months. Public filings and certificates by auditors and CPAs and banks / custodians are used commonly among private banks in Hong Kong.

If so, do you also agree that the Professional Investor Rules should prescribe the types or categories of documents that could be regarded as “public filings” and the extent of details to be included in the content of “certificates” issued by auditors, certified public accountants or custodians? Please explain your view.

In particular, which documents are used in practice as “public filings” and “certificates” issued by auditors, certified public accountants or custodians? Please provide examples.

Do you consider that the Professional Investor Rules should impose conditions for the use of these alternative forms of evidence? Please explain your view.

Do you have any other suggestions?

Answer to Q.4:

Public filings could be defined, for example, as any records filed by government or regulatory bodies in Hong Kong e.g. IRD, Rates & Valuation Department, Company Registry, etc.

But a definite list of categories of documents may not be practical as the situations and the combination of possibilities are too vast to be included.

Certificates issued by auditors / CPAs, such as a confirmation statement of the net worth of an individual, could be used, provided that the auditors are registered within a pre-defined pool of countries.

Conditions should be imposed as to the validity of such documents such as filings / certificates signed off within the last 12 months. Regulatory bodies could be defined as those within G10 countries, for example.

Question 5

Do you have any other comments on the indicative draft of the proposed Professional Investor Rules in Appendix A? Please explain your view.

Do you suggest any alternative wording for the proposed rules? If so, please give your suggestions and explain your view.

Answer to Q.5:

We suggest the inclusion of parents in the definition of 'associate'.

End