



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

By email < PIRules@sfc.hk > and by post

23 November 2010

Our Ref.: C/CFC, M73902

Securities and Futures Commission
8th Floor, Chater House,
8 Connaught Road Central,
Hong Kong.

Dear Sirs,

**[Consultation Paper on the Evidential Requirements under
the Securities and Futures \(Professional Investor\) Rules](#)**

The Hong Kong Institute of Certified Public Accountants has considered the above consultation paper, which seeks comments on amendments to the requirements for establishing whether a person qualifies as a high-net-worth professional investor.

The Institute's views on the proposals are set out in the Appendix to this letter.

If you have any questions on our submission, please contact me at the Institute on 2287 7084.

Yours faithfully,

A handwritten signature in black ink that reads 'Peter Tisman'. The signature is written in a cursive, flowing style.

Peter Tisman
Director, Specialist Practices

PMT/ML/ay
Encl.

Comments from Hong Kong Institute of CPAs in response to the Consultation Paper on Evidential Requirements under the Securities and Futures (Professional Investor) Rules

Question 1

Do you agree that the proposed approach is the best way to serve the purpose of providing flexibility? Please explain your view.

Do you have any other suggestions?

We agree that the proposed principles-based approach will allow greater flexibility for firms to take steps that they consider appropriate and necessary to satisfy themselves that their clients have the requisite assets or portfolio levels to be treated as professional investors. However, we have some reservations on how this will work in practice. We also have some concerns that this will result in significant disparity between the procedures adopted by different firms.

Under the proposal, firms will be allowed to use any method to establish the different types of high-net-worth professional investors. It will be up to the firms to exercise their professional judgement to determine whether it is appropriate/sufficient to rely on certain piece of information/evidence to satisfy themselves that the client has the required assets or portfolio level at the relevant date, taking into account all the relevant circumstances.

It is important that firms should have a clear understanding of what methods or supporting documents/evidence the SFC would normally expect to see to prove the status of a high-net-worth professional investor. Without clearer guidance from the SFC, uncertainty could well arise in the market, amidst a diversity in practices. This might also lead to less rigorous methods of verification being adopted in the competition for business.

We understand that the scope of this consultation is not to review the professional investor regime, other than the methods to establish the asset or portfolio thresholds to prove the status of a professional investor. Nevertheless, we should like to take this opportunity to suggest that consideration be given to developing a more structured system and criteria to determine whether a person, particularly an individual investor, should be classified as a "professional investor". High-net-worth may be one of the relevant criteria but it should not be the sole factor, as it is under the existing regime. Another relevant factor, for example, may be the previous history and pattern of investing by an investor.

Question 2

Do you agree that the existing methods set out in sections 3(a) to 3(c) of the Professional Investor Rules (as outlined in paragraph 7 above) should be preserved? Please explain your view.

Do you have any other suggestions?

We are of the view that the existing methods set out in sections 3(a) to 3(c) of the Professional Investor Rules should be preserved to enable firms that so wish to continue with the existing practices. While this can form a part of any guidance, we note that the existing methods are not regarded by market practitioners as being sufficiently practical for most purposes.

In addition, the SFC should be in a position to provide further indicative guidance, without being overly prescriptive, as to what general methods or supporting documents/evidence should be acceptable for firms to prove the status of a high-net-worth professional investor. We consider that, for example, it should be possible to indicate whether self-certification may be an acceptable method and, if so, in what circumstances. This would enable firms to have a clearer understanding of their responsibilities, and it would help towards ensuring an orderly market.

See also our comments on Question 1 above.

Question 3

Do you agree that the “relevant date” should be used as the time reference for ascertaining whether a high net worth professional investor meets the relevant assets or portfolio threshold? Please explain your view.

Do you have any other suggestions?

In principle, it seems to be logical and reasonable that the “relevant date”, as defined in section 2 of the Professional Investor Rules, should be used as the appropriate time reference. However, the practicalities of implementing this are not entirely clear where, for example, an unsolicited call described in section 174(2)(a) of the Securities and Futures Ordinance, is made to the investor, and the relevant date for establishing whether a person is a professional investor must be the same day as the call.

Question 4

Do you agree that section 3(d) of the existing Professional Investor Rules should be extended so that any corporation which is wholly owned by one or more individuals or corporations/ partnerships where each of those individuals or corporations/partnerships would qualify as a professional investor under section 3(b) or section 3(c) (as the case may be) of the Professional Investor Rules, will qualify as a professional investor? Please explain your view.

Do you have any other suggestions?

We would agree to section 3(d) of the existing Professional Investor Rules being extended to cover any corporation which is wholly owned by corporations/partnerships qualified as a professional investor under section 3(c) of the Professional Investor Rules. This would facilitate the qualified persons to hold investments by separate entities for business/commercial reasons.

Question 5

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

Do you have any suggestions on alternative wordings for the proposed amendments? If so, please give your suggestions and explain your view.

We do not find the indicative draft proposed amendments to be easy to interpret. In relation to individuals, for example, it is not clear from the wording that subclauses (b)(i) and (ii) of the rules are intended to be simply two possible ways of ascertaining that the individual has the requisite portfolio, and that firms may use any other methods to satisfy themselves that the investor meets the portfolio test. We would suggest, therefore, that this proposed change be reflected in the rules more explicitly and unambiguously.

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