SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會
SFC
證監會

# Hong Kong Investment Fund Association 3rd Annual Conference "One year after the global financial turmoil - review and outlook of asset management regulation"

**Martin Wheatley**
**Chief Executive Officer**

**29 September 2009**

## Opening

This is the third annual conference of the Hong Kong Investment Fund Association (HKIFA) and my third appearance at the same event. I would like to thank the HKIFA for inviting me to speak again at this prestigious event.

I can still freshly recall that the last time I was here – we were right at the centre of the financial crisis. Or, perhaps it was just the beginning. Lehman Brothers had just collapsed and hundreds of investors had just taken to the street over the alleged mis-selling of Minibonds by banks. At the time, I said to the audience of the annual conference that our job is to put things right which means finding out what went wrong and making sure that we can design a better system going forward.

Now that a year has passed, I would like to take today's opportunity to update you on our regulatory work in the funds space. While much changes and new developments have taken place, the fundamental fact remains that the Securities and Futures Commission (SFC) has to maintain a regulatory regime that promotes market development while protecting investors' interest. On this note, I would like to thank all of you here for the support and advice that you have given us over the past year, as they have helped us in moving forward in a pragmatic but nevertheless effective manner as we develop our regulatory regime.

## Dangerous regulation: Draft EU Hedge Fund Directive

Before I move on to our Unit Trust (UT) proposals, I would like to share a lesson I have learnt about regulation and seen it live in action right in front of my eyes.

As we have seen, this crisis has exposed most major economies in the world to financial downspin. Fortunately for us, there has not been any systemic failure in Hong Kong and so naturally our primary focus has been reforming and strengthening our regulatory structure and investigating mis-selling complaints for products which had failed from the crisis. On the other hand, the regulators in the US and Europe have been busy ensuring stability of their own markets and their systemically important institutions in the past months.

Precisely due to the relative stability of our markets, we have not found it necessary to make knee-jerk reactions when it comes to regulation. One recent example where this becomes an issue is the EU's draft proposal which was released back in April for new regulation to be introduced for alternative investment fund managers.

The proposal would force private equity and hedge funds, whether based in Europe or targeting European investors, to register with EU authorities. The proposal would also eventually close off Europe to managers or funds outside the EU that aren't subjected to equivalent regulation. The rules would also clamp down on how much capital such funds can borrow, force them to disclose where they're investing, and make them hold larger cash reserves.

Tighter rules, especially concerning how much leverage firms could take on might have stopped some of the abuses that prevailed two years ago. Increased transparency might also have helped investors make more informed decisions about where to park their money.

aim of modernising the regulatory framework for SFC-authorised funds and broadening the scope for product development.

I will now go through the key proposals of the UT Code review in more details.

**Key proposals of the UT Code review**

Enhancing investment flexibility

*(a) Structured funds*

We see the emergence of structured funds which are funds that propose to invest substantially all of their assets in financial derivative instruments (FDIs), such as swaps or repurchase agreements, in order to achieve their investment objectives. This type of funds has become increasingly common due to the proliferation of investments in FDIs. We have already authorised a number of these funds. For transparency reason and to facilitate further market development however, we have given these structures official acknowledgement by codifying the authorisation requirements in respect of these structured funds in the revised UT Code.

*(b) Investment in FDIs*

The revised UT Code also introduces provisions for regulating investments in FDIs by non-UCITS schemes which are generally managed by SFC-licensed asset managers, in order to provide a broadly level playing field between non-UCITS schemes and UCITS schemes. The approach of regulation is largely similar to UCITS such that non-UCITS schemes may invest in a wide range of financial derivative instruments, as their UCITS counterparts do. Of course, we expect the SFC-licensed managers to ensure that their risk management systems and controls are commensurate with the nature and scale of FDI investments that they engage in. We believe that Hong Kong has the ability to develop into the asset management hub of Asia and the wealth management platform for Mainland. To this end, it is important that we enhance our regulatory regime so that non-UCITS schemes are given space to innovate.

Promoting investor protection

respect to key information document. They are intended to be user friendly, standardised to the extent possible (to facilitate comparison between products), and be kept concise. In principle, this Key Facts Statement will comprise part of the offering documents of the product and have equal force and standing as the prospectus – yet it will be limited to only a