

# UKFP (Asia) HK Limited (formerly called Towry Law (Asia) HK Limited) Offers Settlement to Investors in PGF and Geared Products - SFC Settles Disciplinary Proceedings with a Severe Reprimand

2 May 2006

The SFC instituted disciplinary proceedings against UKFP (Asia) HK Limited (UKFPAHK), formerly called Towry Law (Asia) HK Limited (Note 1), for mis-selling of Circus Capital Protected Growth Fund Series 1 (PGF 1). The SFC also had concerns about the sale of geared products (Geared Products) (Note 2).

## PGF 1

The SFC investigated complaints from numerous clients of UKFPAHK who invested in PGF 1 and was concerned that UKFPAHK:

- did not perform adequate due diligence into the Fund;
- failed to have adequate regard to whether PGF 1 was suitable for its clients and sold PGF 1 to clients whose investment objectives and risk tolerance did not always match the risk profiles of the Fund;
- failed to make adequate disclosure of relevant material and information to clients; and
- failed to monitor the Fund's progress properly, in particular the valuation and unit pricing of the Fund, and to communicate to clients an accurate picture concerning the Fund as events unfolded.

Without admission of liability to investors, UKFPAHK has agreed to settle claims made by eligible investors in PGF 1 who invested through UKFPAHK (PGF 1 Investors) on the following basis:

Claims by PGF 1 Investors who remain invested in the Fund as at the date of this press release will be settled by the payment of an amount which will allow those investors the potential to recover 80% of the amount they originally invested in PGF 1. Investors may recover more if they remain in the Fund until the terms of certain underlying guarantees take effect. The payment offered will take account of the projected value of the Fund, and any PGF 1 Investors whose investment has a projected return equal to or greater than 80% of the amount originally invested will not be entitled to any payment under this scheme. For the avoidance of doubt, any redemption by PGF 1 Investors of their investment on or after the date of this press release will not alter the amount of the payment offered to those investors.

Claims by PGF 1 Investors who have redeemed their investment before the date of this press release will be settled by the payment of an amount which, when added to the redemption proceeds received by those investors, equals 80% of their original investment. Any PGF 1 Investors who, on redemption of their investment before today, received back an amount equal to or greater than 80% of the amount they originally invested will not be entitled to any payment under this scheme.

## PGF 2

In addition to PGF 1, UKFPAHK was also involved in the sale of investments in Circus Capital Protected Growth Fund Series 2 and certain other Circus Capital funds as set out in Note 3 (collectively referred to as PGF 2). UKFPAHK has agreed to settle claims made by eligible investors in PGF 2 who invested through UKFPAHK (PGF 2 Investors) on the same basis as it will settle the claims of PGF 1 Investors. That is to say, claims by eligible PGF 2 Investors will be settled by the payment of an amount (if any) which will allow those investors the potential to recover 80% of the amount they originally invested in PGF 2.

## Geared Products

As part of the settlement of the disciplinary proceedings with the SFC and also without admission of liability, UKFPAHK has agreed to settle claims made by eligible investors who invested through UKFPAHK in geared with profits products (Geared Products Investors) on the following basis:

Claims by Geared Products Investors who still hold their investment as at the date of this press release will be settled by the payment of an amount which will allow those investors the potential to recover 60% of the amount they originally invested in the relevant geared product. Investors may recover more if they retain their investment until maturity when the terms of certain underlying guarantees take effect. The payment offered will take account of the projected value of the geared product, and any Geared Products Investors whose investment has a projected return equal to or greater than 60% of the amount originally invested will not be entitled to any payment under this scheme. For the avoidance of doubt, any redemption by Geared Products Investors of their investment on or after the date of this press release will not alter the amount of the payment offered to those investors.

Claims by Geared Products Investors who have redeemed their investment before the date of this press release will be settled by the payment of an amount which, when added to the redemption proceeds received by those investors, equals 60% of their original investment. Any Geared Products Investors who, on redemption of their investment before today, received back an amount equal to or greater than 60% of the amount they originally invested will not be entitled to any payment under this scheme.

Claims by Geared Products Investors who, in addition to their original investment, have paid out money in order to satisfy a margin call will be settled by the payment of an amount calculated in accordance with the above principles which will allow those investors to recover 60% of their total investment, their total investment being their original investment plus the amount paid to satisfy the margin call.

The difference in the amounts of the payments to be offered to PGF Investors and Geared Products Investors reflects the different circumstances regarding PGF and Geared Products and the different nature of the products. The concerns of widespread mis-selling of PGF 1 which caused significant damage to investors in PGF 1 who invested via UKFPAHK is compared to the sale of Geared Products, where the products themselves may have been suitable were it not for the gearing. Geared Investors may not have suffered any damage had they not acted upon the gearing advice and as such, not all investors geared their investment following UKFPAHK's advice. The SFC has received relatively few complaints from UKFPAHK investors in Geared Products, particularly considering the overall number of clients who invested in Geared Products.

UKFPAHK will establish schemes to administer the above payments which will be administered in Hong Kong and supervised by the SFC.

Eligible PGF Investors and Geared Products Investors will receive a letter from UKFPAHK informing them of the above schemes and asking them to confirm within 60 days of the date of that letter whether they wish to make a claim against UKFPAHK. Letters will be sent to PGF Investors during May, and to Geared Products Investors during June.

Investors are advised to consider their circumstances in relation to PGF and Geared Products and to take independent legal and financial advice in relation to UKFPAHK's offer.

The SFC welcomes the extensive co-operation it has received from the current management of UKFPAHK who were not involved in the sale of PGF or Geared Products, and acknowledges the responsible approach taken by current management to this issue. As a result of that responsible approach and UKFPAHK's agreement to offer the above payments, the SFC has limited its disciplinary action against UKFPAHK to the issue of a severe reprimand.

UKFPAHK will keep its Hong Kong office open until 31 December 2006 or until all payments have been made, if earlier. Subject to UKFPAHK having used its reasonable endeavours to complete the schemes by 31 December 2006 then, after that date, UKFPAHK may administer the schemes from the United Kingdom subject to the SFC's approval and any reasonable conditions that the SFC may impose.

The SFC considers the above settlement to be in the interests of the investing public and in the public interest. In settling, the SFC has taken into account that:

- the UKFPAHK schemes amount to substantial mitigation;
- the senior management of UKFPAHK who were responsible for PGF and Geared Products are no longer with UKFPAHK; and
- UKFPAHK's current management (who were not involved in the failings) have co-operated extensively with the SFC.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "Mis-selling continues to be a

problem in the industry. It is vital that investment advisers assess risk profiles of investors and properly advise them about suitable products. It is a primary duty of advisers that the investment recommendations they make are reasonable. We will punish investment advisers who fail to have regard to the suitability of products for their customers.”

“The SFC considers that this settlement is in the public interest in light of UKFPAHK’s co-operation and the promise of continuing co-operation during the life of the PGF and Geared Products schemes,” he said.

Mr Martin Wheatley, Chairman of the SFC, said: “We wish to remind investors that they also have a duty to consider whether what they are buying is within their risk tolerance and suits their investment objectives. No investment is guaranteed and the regulatory system is not designed to underwrite all investor losses. Even in the event that proper advice has been given, investors must accept the risk of poor performance of a product due to unfavourable market movements or other adverse economic conditions. The SFC cannot order compensation and investors may have to turn to the civil courts for recourse.”

Mrs. Alexa Lam, SFC’s Executive Director of Intermediaries and Investment Products, said: “With a view to further enhancing investor protection and facilitating the development of the investment advisory market in Hong Kong, the SFC works closely with the industry. Where necessary, the SFC will issue further guidance to help market practitioners fulfill the requirements set out in our codes and guidelines, particularly in the area concerning suitability of product recommendations given to investors.”

Ends

Notes:

1. UKFP (Asia) HK Limited is deemed licensed under the Securities and Futures Ordinance to carry on business in Type 1 (dealing in securities) regulated activity.

2. The Geared Products subject to the scheme are:

(a) All with profits investments arranged by UKFPAHK with Clerical Medical International where, on the advice of UKFPAHK, the amount invested was geared by a loan secured on the with profits investment.

(b) All with profits investments arranged by UKFPAHK with Scottish Mutual International where, on the advice of UKFPAHK, the amount invested was geared by a loan secured on the with profits investment.

3. The Circus Capital funds subject to the scheme and collectively referred to as PGF 2 are:

- Circus Capital Protected Growth Fund USD Series 2
- Circus Capital Protected Growth Fund Euro Series
- Circus Capital Smoothed Growth Plus Fund – AUD
- Circus Capital Smoothed Growth Plus Fund – GBP
- Circus Capital Smoothed Growth Plus Fund - YEN

4. Investors may find the set of [Questions and Answers](#) attached to this press release useful.

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