

Trustee companies

Is a trustee company required to apply for a licence for Type 4 (advising on securities) and/or Type 5 (advising on futures contracts) regulated activities if it gives investment advice to clients?

Posted on 17.03.2003

12.1 If a trustee company, in the course of carrying out its trustee services, gives investment advice on securities or futures contracts which is subordinate to the range of trustee services that it provides to the client, the provision of such advice would normally be considered as a wholly incidental part of the trustee services. The trustee company would not be required to be licensed.

An example is where in the course of providing estate administration services, the trustee advises its client to buy or sell certain securities which constitute part of the estate. In the circumstances, the giving of investment advice is ancillary to the carrying on of its trustee functions. Accordingly, the wholly incidental exemption would apply.

However, if the advisory activities form a discrete part of the business of a trustee company, it would have to obtain a licence.

Does a trustee company need a licence for Type 9 regulated activity (asset management) in order to manage discretionary trusts or undertake portfolio management?

Posted on 17.03.2003

12.2 Management of discretionary trusts falls within the ambit of Type 9 regulated activity because investment discretion is vested with the trustee company. Apart from trustee functions such as executorship and estate administration services, if the trustee company also provides discretionary trust management service to the same client, it is possible that the trustee company could rely on the wholly incidental exemption.

Moreover, if a trustee company acting as trustee of a discretionary trust has appointed an appropriate person to manage the portfolio or in practice acts on professional advice in carrying out its duties as trustee, it would not be required to be licensed.

However, if the provision of portfolio management services becomes a separate or distinct business of the trustee company, it is unlikely that the trustee company could rely on the wholly incidental exemption and it

would have to apply for a licence for Type 9 regulated activity.

Is a trustee company required to be licensed for Type 1 regulated activity (dealing in securities)?

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12.3 Our current policy view is that trustee companies may be regarded as acting as principal and so benefit from the relevant exception in the definition of “dealing in securities” in Part 1 of Schedule 5 to the SFO. In addition, a trustee company in its position as principal managing a portfolio of securities and/or futures contracts would not be regarded as carrying out Type 9 regulated activity (asset management). The SFC will keep this policy under review.