

“Actively markets” under section 115

of the SFO

What does "actively markets" mean under section 115 of the SFO?

Posted on 17.03.2003

9.1 This may include, for example, those who frequently call on Hong Kong investors and market their services (including offering products); running a mass media programme targeting at the investing public in Hong Kong; and Internet activities that target Hong Kong investors.

Generally speaking, no person may actively market, whether in Hong Kong or from a place outside Hong Kong, to the public here any services which would constitute a regulated activity if provided in Hong Kong, unless that person is registered or licensed by the SFC. In determining whether or not a person “actively markets” its services to the public, the SFC will consider the nature of the business activities as a whole and have regard to a number of factors, including (without limitation) the following:

- whether there is a detailed marketing plan to promote the services;
- whether the services are extensively advertised *via* marketing means such as direct mailing, advertisements in local newspapers, broadcasting or other “push” technology over the Internet (as opposed to where the services are passively available e.g. on a “take it or leave it” basis);
- whether the related marketing is conducted in a concerted manner and executed in accordance with a plan or a schedule which indicates a continuing service rather than an one-off exercise;
- whether the services are packaged to target the public of Hong Kong, e.g. written in Chinese and denominated in Hong Kong dollars; and
- whether the services are sought out by the customers on their own initiative.