



## Frequently Asked Questions on Post Authorisation Compliance Issues of SFC-Authorised Unit Trusts and Mutual Funds

This FAQ is prepared by the Investment Products Department and aims to provide basic information to market practitioners concerning the post authorisation compliance issues of SFC-authorisation-unit trusts and mutual funds. Applicants are encouraged to contact the Investment Products Department if in doubt on any specific issues arising from the application/interpretation of the Code on Unit Trusts and Mutual Funds (“UT Code”). Please note that each application for authorisation is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time.

*Note: For ease of reference, collective investment schemes that are generally known as unit trusts or mutual funds are referred to as “funds” in the following FAQ.*

	Question	Answer
1.	Once a fund is authorised by the SFC, is it required to comply with any on-going requirements?	<p>Yes. An SFC-authorised fund has to comply with the post-authorisation requirements as set out in Chapters 10 and 11 of the UT Code. To facilitate better compliance by SFC-authorised funds, the following forms are provided on the SFC website:</p> <ul style="list-style-type: none"><li>▪ <i>Pricing Error Form</i> – information to be supplied to the SFC on discovery of pricing errors</li><li>▪ <i>Merger / Restructuring / Termination Form</i> – information to be supplied to the SFC for proposed mergers / restructuring / termination of funds</li><li>▪ <i>Money Market Funds Form</i> – information to be supplied to the SFC by money market funds</li></ul>

	Question	Answer
2.	<p>What documents should I submit when I am seeking SFC authorisation to amend the Offering Document of an authorised fund?</p>	<p>For revision of a fund's Offering Document, you are expected to provide, at least, the following documents to us:</p> <ul style="list-style-type: none"> <li>▪ a covering letter identifying the changes that are to be made in the current Offering Document, the authorisation date of the current version and other references (where applicable)</li> <li>▪ a marked-up version of the draft revised Offering Document</li> <li>▪ proper annotation for revised sections</li> <li>▪ confirmation of compliance signed by a senior executive or officer of the fund or of the fund manager, or their respective legal advisers for the revised sections</li> <li>▪ no fee is required for authorisation of changes if they do not involve the authorisation of a new fund</li> </ul> <p>For funds that have made substantial amendments or a series of changes on various occasions to its Offering Document, you are advised to consolidate these amendments in one single Offering Document and seek authorisation for the consolidated version. It would be much easier for your investors to understand the changes made in one self-contained version of the disclosure document, rather than a document that has been amended by various addenda in a piecemeal fashion.</p> <p>Our requirements for processing amendments to Constitutive Documents of a fund are substantially the same as above.</p>
3.	<p>Under what circumstances can dealings in an SFC-authorized fund be suspended?</p>	<p>Suspension of dealings may be provided for only in exceptional circumstances, having regard to the interests of holders. Notification to the SFC and holders has to be made pursuant to Chapter 10.6 and 10.7 of the UT Code.</p> <p>In addition, we have issued a circular to give further guidelines on dealing suspension, including the circumstances that justify suspension in dealings, the means of notification of such suspension and resumption of dealings. Please refer to the <u>Guidance Note</u> dated 26 November 2001, which is available from the "IP Related Publications" section of the "Intermediaries, Licensing &amp; Investment Products - Investment Products Related Matters" page at the SFC website.</p>

	Question	Answer
4.	<p>If a pricing error has occurred in relation to a UCITS fund authorised by the SFC for public offering in Hong Kong, what steps does the manager of the UCITS fund have to take to comply with the relevant provisions in 10.2 of the UT Code?</p>	<p>All SFC-authorized schemes are required to comply with 10.2 of the UT Code. However, in view of UCITS funds being subject to home regulators' supervision and with a view to streamlining the processing of pricing errors of UCITS funds, set out below are the process and required documents adopted with immediate effect.</p> <p>Where a pricing error has occurred and the manager of the relevant UCITS fund has dealt with the rectification of the pricing error (including the calculation of compensation to be made to investors, if any), the manager of the UCITS is in general only required to file with the SFC the following information:</p> <ul style="list-style-type: none"> <li>▪ summary of the nature of the pricing error and the remedial measures (e.g. whether compensation needs to be made to investors, and if so, a statement as to whether payments have been made);</li> <li>▪ whether Hong Kong investors have been affected, and if so, how many;</li> <li>▪ confirmation that 10.2 of the Code on Unit Trusts and Mutual Funds, is complied with;</li> <li>▪ confirmation that the home regulator has no comment on the pricing error and the rectification measures (including compensation to be made to investors); and</li> <li>▪ bilingual notice (if any) sent to affected Hong Kong investors.</li> </ul> <p>For the avoidance of doubt, there is no need to file details of the calculation of compensation made to investors and, as always is the case, the SFC reserves the right and power to require the submission of further information and documents as it deems appropriate on a case-by-case basis.</p>
5.	<p>The offering document of an existing scheme has disclosed that the scheme may extensively use FDI for investment purposes, i.e. investing in FDI other than for hedging purposes.</p> <p>Does the Commission expect one month's prior written notice to be provided to holders if such offering document and/or the product key fact statement (KFS) of such scheme is revised to</p>	<p>For any changes to a scheme regarding the use of FDI, whether the Commission expects at least one month's prior written notice to be provided to holders depending on the nature of the changes.</p> <p>If the offering document of a scheme already discloses that the scheme may extensively use FDI for investment purposes and the offering document and/or KFS of such scheme is changed so that the use of FDI is restricted to hedging purposes only or is not used at all, the Commission would not require one month's prior written notice</p>

	Question	Answer
	state that the scheme may only use FDI for hedging purposes or will not use FDI for any purposes at all, notwithstanding the offering document already discloses that the scheme may invest in FDI for investment purposes?	<p>to be provided to holders. However, the Commission would expect the management company to inform existing holders of the scheme as soon as reasonably practicable (whether by a specific notice or in its monthly factsheet or next financial report) in order to enable existing investors to appraise the position of the scheme.</p> <p>On the other hand, for changes to a scheme to allow the use of FDI for investment purposes, the Commission's prior approval pursuant to 11.1 of the UT Code is required and the Commission would normally expect one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) to be provided to holders in respect of such changes pursuant to 11.1A of the UT Code.</p>
6.	Under 11.5 of the UT Code, notices for mergers should be submitted to the Commission for prior approval. Do I need to send notice to investors of the "receiving fund" (i.e. the absorbing fund in a merger) informing them of the merger and submit such notice for the Commission's prior approval?	<p>For the purpose of 11.5 of the UT Code, notices are not required to be given to investors of the "receiving fund" (i.e. the absorbing fund) in a merger and you are not required to submit such notices to the Commission for prior approval.</p> <p>For the avoidance of doubt, the Commission requires notices to be sent to investors of the "merging fund" (i.e. the absorbed fund in a merger) in a merger and such notices should be submitted to the Commission for prior approval.</p>

*Last updated: 10 June 2011*