



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

## Industry briefing

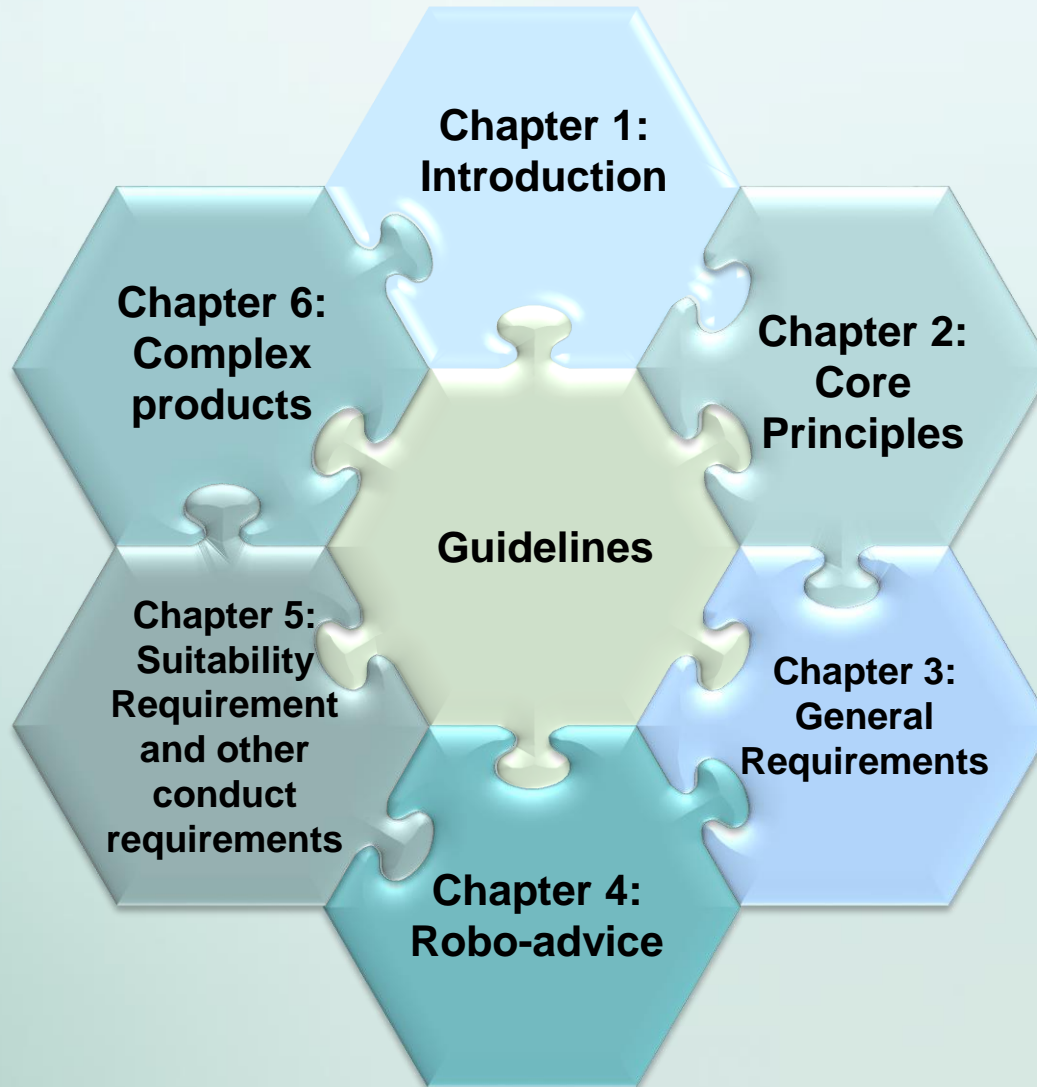
# Guidelines on Online Distribution and Advisory Platforms

# Introduction

- Consultation conclusions on the Guidelines released on 28 Mar 2018
  - Tailored guidance on the design and operation of online platforms
  - Guidance on the provision of automated or robo-advice
  - Clarify how the Suitability Requirement would operate in an online environment
- Facilitate distribution of simple products on online platforms
  - Clarify that the posting of factual, fair and balanced materials will not trigger the Suitability Requirement
- Additional protective measures for the sale of complex products on online platforms:
  - Ensure the suitability of complex products sold
  - Sufficient information on the key nature, features and risks of a complex product
  - Prominent and clear warning statements
- The Guidelines will become effective on 6 April 2019
- Suitability Requirement webpage



# Overview of the Guidelines



# Guidelines – Introduction (Ch.1)

- Scope of application of the Guidelines
  - Applicable to all licensed or registered persons when conducting regulated activities in providing order execution, distribution and/or advisory services in respect of investment products via online platforms
  - It is possible that some websites operated by intermediaries may not amount to conducting regulated activities, for example:
    - merely showcasing investment products
    - providing advice on asset allocation among general asset classes without providing advice concerning specific investment products
- Take into account activities targeting Hong Kong investors conducted by the intermediary via all channels in their totality



# Guidelines – Core Principles (Ch.2)

## 6 core principles identified:

- **CP1. Proper design** – A Platform Operator should ensure that the Online Platform is properly designed and operated in compliance with all applicable laws and regulations
  - act with due skill, care and diligence when posting any information and materials
  - appropriate access rights and controls for compliance with C(WUMP)O or Part IV of the SFO

# Guidelines – Core Principles (Ch.2)

## Overseas ETFs

- **Part IV of SFO** – The offering of unauthorized CIS remain subject to the offers of investments restrictions under Part IV of the SFO – eg, they may only be offered to professional investors.
  - Proper design and appropriate access rights and controls
- **Making available overseas ETFs on Online Platforms** – the following examples are unlikely to be prohibited under Part IV of the SFO:
  - The platform makes a recommendation to a client with whom it has a one-to-one advisory relationship to invest in particular overseas ETFs after taking into account that client's personal circumstances
  - A Platform Operator provides execution services for overseas ETFs, and the platform does not set out any information about these ETFs (save for information on the exchanges for which it provides execution services) and clients are only able to access factual information about such ETFs after keying in the relevant stock code themselves
  - Platform Operators are encouraged to seek professional advice.



## Guidelines – Core Principles (Ch.2)

- **CP2. Information for clients** – A Platform Operator should make clear and adequate disclosure of relevant material information on its Online Platform
  - where selected lists of investment products are posted, setting out or making available the objective criteria by reference to which such investment products are selected
  - informing clients of the scope and limitations of services and investment products
  - disclosing to clients any remuneration to be paid by the client or other persons to the Platform Operator
- **CP3. Risk management** – A Platform Operator should ensure the reliability and security (including data protection and cybersecurity) of its Online Platform

## Guidelines – Core Principles (Ch.2)

- **CP4. Governance, capabilities and resources** – A Platform Operator should ensure that there are robust governance arrangements in place for overseeing the operation of its Online Platform as well as adequate human, technology and financial resources available to ensure that the operations of its Online Platform are carried out properly
- **CP5. Review and monitoring** – Appropriate reviews of all activities conducted on the Online Platform should be performed by a Platform Operator as part of its ongoing supervision and monitoring obligation
- **CP6. Record keeping** – A Platform Operator should maintain proper records in respect of its Online Platform



# Guidelines – General requirements (Ch.3)

- **Chapter 3: General Requirements**
  - Existing requirements platform operators should note, for example:
    - Conduct requirements
    - Restrictions on the offer of investments
    - Requirements in relation to the materials posted on an Online Platform such as relevant advertising guidelines

# Guidelines – Robo-advice (Ch.4)

- Provision of investment advice (including robo-advice) on an Online Platform will trigger the Suitability Requirement
- The Guidelines generally intend to apply to robo-advice services which involve client-facing tools
- Where client-facing tools are not involved, intermediaries are reminded to comply with other applicable requirements (eg, the Code of Conduct, FAQs)
- Auto-rebalancing would generally be regarded as a recommendation and trigger the Suitability Requirement



# Guidelines – Robo-advice (Ch.4)

## General requirements

- Information for clients
- Client profiling
- System design and development
- Supervision and testing of algorithms
- Adequate resources



# Guidelines – Robo-advice (Ch.4)

- Rebalancing
  - Ensure effective practices for automatic rebalancing
  - Where flexibility to opt-out of automatic portfolio rebalancing is offered:
    - inform clients of the potential risks and consequences
    - warn clients that the original portfolio could, as a result of the opt-out, become unsuitable for them and that they require a different service to be provided
  - If a client insists on opting out:
    - ensure the client has acknowledged and confirmed agreement to the change in the scope and terms of services going forward



# Guidelines – the Suitability Requirement (Ch.5)

- Determinants of whether the Suitability Requirement is triggered:
  - Context, such as the manner of presentation
  - Content of product-specific materials posted on an Online Platform
  - Design and overall impression created by the platform content
- The posting of factual, fair and balanced materials should not in itself amount to a solicitation or recommendation in the absence of other facts and circumstances which may reasonably be expected to influence investors
  - Additional factors which would induce a client to enter into a transaction or that would put pressure on a client to proceed with a transaction
- Clarifications and examples provided in relevant FAQs on SFC's website
- Holistic assessment based on all facts and circumstances – where there is interactive communications, analysis of the content and context in each case



# Guidelines – Examples of triggers

- Examples of when the Suitability Requirement is NOT triggered:
  - Posting of model portfolios that are constructed using objective criteria (eg, research data, performance data, asset allocation strategies/models) which are not linked to or generated based on information provided by the client.
  - Posting statistics or trends in customer activities involving a particular product that are factual and based on objective criteria and do not put pressure on a client to proceed with a transaction (for example, setting out a list of investment products with a description that “Other clients who bought product A also looked at these products”).
- Examples of when the Suitability Requirement IS triggered:
  - Persistent pop-ups or flashing in connection with a specific investment product
  - Presenting a model portfolio that allocates a percentage of the portfolio to a class of products (eg, bonds) but there is only one product in that class of product offered by the platform.
  - Showing the performance of a model portfolio offered by the platform against the performance of the client’s current portfolio held with the platform without the client requesting such a comparison.



# Guidelines – Complex products (Ch.6)

- **What is a complex product?**

- **IOSCO definition:** Product whose terms, features and risks are not reasonably likely to be understood by a retail investor because of its complex structure
- **Factors** set out in the Guidelines to determine whether an investment product is complex or not:
  - i. whether the investment product is a derivative product;
  - ii. whether a secondary market is available for the investment product at publicly available prices;
  - iii. whether there is adequate and transparent information about the investment product available to retail investors;
  - iv. whether there is a risk of losing more than the amount invested;
  - v. whether any features or terms of the investment product could fundamentally alter the nature or risk of the investment or pay-out profile or include multiple variables or complicated formulas to determine the return; and

*Note: This would include, for example, investments that incorporate a right for the investment product issuer to convert the instrument into a different investment.*

- vi. whether any features or terms of the investment product might render the investment illiquid and/or difficult to value.



# Guidelines – Complex products (Ch.6)

- **What is a complex product?**

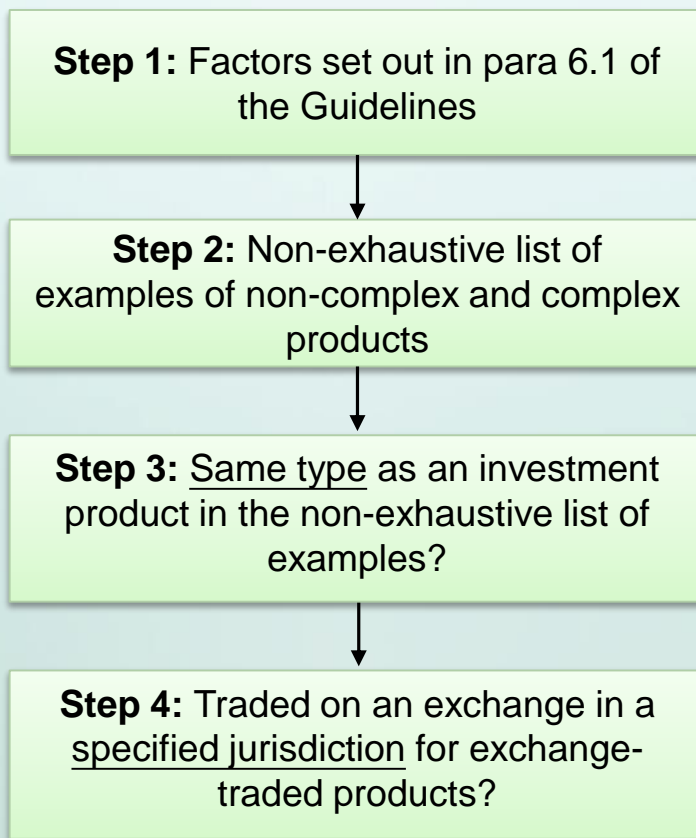
- Platform Operators should determine whether a product may be treated as non-complex or complex with due skill, care and diligence
- It is the Platform Operator's responsibility to determine whether the product is complex having regard to the relevant considerations set out in the Guidelines and relevant FAQs
- For overseas products including overseas exchange-traded products (eg, shares, ETFs and REITs) and unauthorized funds, Platform Operators should exercise extra caution where the product is traded on an exchange or authorized or approved in a jurisdiction which is not a specified jurisdiction





# Guidelines – Complex products (Ch.6)

Steps to determine whether a product is complex – for example, overseas exchange-traded products



For example, a Platform Operator may generally treat shares or physical ETFs traded on an exchange in the US\* as non-complex

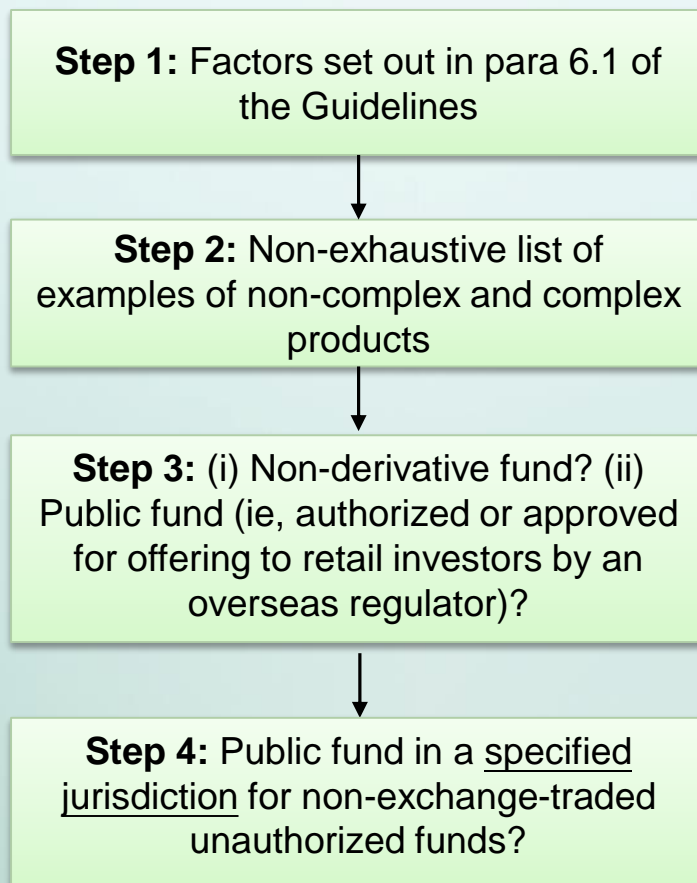
\* Offer of these unauthorized ETFs is still subject to Part IV of the SFO.



This flowchart is provided for illustrative purpose and reference only. Intermediaries should refer to the Guidelines and relevant FAQs for the specific requirements.

# Guidelines – Complex products (Ch.6)

Steps to determine whether a product is complex – for example, unauthorized funds (unlisted)



For example, a Platform Operator may generally treat the following products as non-complex:

- plain vanilla Undertakings for Collective Investment in Transferable Securities (**UCITS**) that is not SFC-authorized but is authorized or approved for offering to retail investors in Luxembourg\*
- a non-derivative equity fund authorized or approved for offering to retail investors in Ireland\*

\* Offer of these unauthorized funds is still subject to Part IV of the SFO.



This flowchart is provided for illustrative purpose and reference only. Intermediaries should refer to the Guidelines and relevant FAQs for the specific requirements.

# Guidelines – Complex products (Ch.6)

## ■ Specified jurisdictions

### (a) Non-exchange-traded unauthorized funds

- Recognized Jurisdictions Schemes (RJS) and jurisdictions where there is a Mutual Recognition of Funds (MRF) arrangement in place, namely:
  - Asia Pacific – Australia, Mainland China, Malaysia, Taiwan
  - Europe – France, Germany, Guernsey, Isle of Man, Ireland, Jersey, Luxembourg, Switzerland, the UK
  - America – the US

### (b) Exchange-traded products

- Includes jurisdictions in which the specified exchanges set out in the SFO and the Securities and Futures (Financial Resources) Rules are located:
  - Asia Pacific – Australia, India, Japan, Korea, Mainland China, Malaysia, New Zealand, the Philippines, Singapore, Taiwan, Thailand
  - Europe – Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland, the UK
  - America – Brazil, Canada, the US



# Guidelines – Complex products (Ch.6)

## ■ **Derivative products traded on an exchange**

In Hong Kong or in a specified jurisdiction for exchange-traded products

- Must comply with paragraphs 5.1A and 5.3 of the Code of Conduct
- Suitability assessment is not required (where there has been no solicitation or recommendation)

In a non-specified jurisdiction

- Ensure suitability unless such products could reasonably be treated on the same basis as derivative products traded on an exchange in Hong Kong or in a specified jurisdiction
- 5.1A(a) of the Code of Conduct: required to assess client's knowledge of derivatives
- 5.1A(b)(i) of the Code of Conduct: required to explain the risks associated with the product to client

## ■ **Derivative products not traded on an exchange**

- Ensure suitability
- 5.1A(a) of the Code of Conduct: required to assess client's knowledge of derivatives
- 5.1A(b)(ii) of the Code of Conduct: required to warn client about transaction if client is without knowledge



# Suitability Requirement webpage

The screenshot shows the website of the Securities and Futures Commission of Hong Kong. The browser address bar displays <http://www.sfc.hk/web/EN/index.html>. The page features a navigation menu with the following items: About the SFC, Regulatory functions, Rules and standards (highlighted with a red circle), Published resources, News & announcements, and Career. A search bar is located at the top right, with a 'GO' button and options for 'all contents', 'codes & guidelines', and 'Advanced search'. Below the navigation menu, there are several content blocks. On the left, there is a 'Corporate video' section with a video player titled 'Inside the SFC'. Below this is a 'Latest news' section with three news items dated 13 Apr 2018. In the center, there is a 'Regulatory update' section with a list of updates, including 'Securities and Futures Ordinance Part XV - Disclosure of Interests', 'Short position reporting rules', 'OTC derivatives regulatory regime', 'Anti-money laundering & counter terrorist financing', 'The Suitability Requirement' (highlighted with a red circle), 'Circulars', 'Codes & guidelines', 'Archives', and 'Principles of responsible ownership'. To the right of the 'Regulatory update' section, there is a 'Regulatory requirements' dropdown menu with options for 'Circulars', 'FAQs', 'Non-complex and complex products', and 'Other publications and information sources'. Further right, there is an 'SFC Online Portal' section with links for 'ERR returns submission', 'How to apply for a licence', 'Short position reporting', 'Licensee search', 'Investment product list', and 'Investor corner'. At the bottom of the page, there is a 'Quick access' section with links for 'Consultations', 'Enforcement actions', 'Organisational chart', 'Performance pledges', and 'Openings'. There is also a 'Regulatory information' section with links for 'Securities and Futures Ordinance', 'Codes', 'Guidelines', and 'Circulars'. A 'Related sites' section includes links for 'The Chin Family', 'HKEX', 'IOSCO', 'Investor Compensation Co', and 'Other financial regulators'. An 'Others' section includes links for 'Legal information and policies', 'Invitations to tender', 'Alumni', and 'A Guide on Directors' Duties'. The footer contains a '10th Anniversary' logo, a maintenance schedule link, and a copyright notice: 'Copyright © 2016 Securities and Futures Commission. All rights reserved.' The browser status bar at the bottom shows the URL <http://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/> and a zoom level of 95%.



# Suitability Requirement webpage

The Suitability Requirement | Securities & Futures Commission of Hong Kong - Internet Explorer

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## The Suitability Requirement

The Suitability Requirement is set out in Paragraph 5.2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (SFC). It requires a licensed or registered person to, when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for the client is reasonable in all the circumstances, having regard to information about the client of which the licensed or registered person is or should be aware through the exercise of due diligence.

The Suitability Requirement is the cornerstone of investor protection and is integral to selling practices, which encompass the distribution and provision of advice on investment products by licensed and registered persons. Given its importance, the SFC has provided guidance to the industry on our expected standards in relation to the Suitability Requirement as well as on other aspects of selling practices more generally, including product due diligence and disclosure of monetary benefits.

For easy reference, guidance related to the Suitability Requirement and on other aspects of selling practices is available through this webpage. The relevant circulars are posted [here](#) and the FAQs [here](#). Additional publications and information sources can be accessed [here](#).

As the Suitability Requirement applies to any channel through which licensed or registered persons distribute or provide advice on investment products, the SFC has also provided tailored guidance to the industry for complying with the Suitability Requirement and other conduct and regulatory requirements applicable to online distribution and advisory platforms. The Guidelines on Online Distribution and Advisory Platforms are available [here](#).

Last update: 29 Mar 2018

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Openings		Other financial regulators	

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# Suitability Requirement webpage

## Non-exhaustive list of examples of non-complex and complex products

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### Non-complex and complex products

Set out below is a non-exhaustive list of examples of investment products that are considered to be "non-complex". The SFC is in a better position to provide examples of investment products that are subject to the SFC's remit as non-complex in this list of examples. For overseas products, a Platform Operator should determine whether an overseas product to be sold on its platform is non-complex or complex having regard to the factors set out in paragraph 6.1 of the [Guidelines on Online Distribution and Advisory Platforms](#) (Guidelines) and this list of examples. It may be possible for a Platform Operator to treat an overseas product as non-complex after carrying out the above assessment with due skill, care and diligence, for example, where the product is of the same type as a non-complex product in this list of examples and is regulated in or traded on an exchange in a specified jurisdiction. The SFC may revise the list of non-complex products from time to time where appropriate:

#### Non-complex products

1. Shares traded on the SEHK<sup>1</sup>;
2. Non-complex bonds (including callable bonds without other special features) (please refer to the definition for "complex" bonds below);
3. Non-derivative<sup>2</sup> funds authorized by the SFC under the UT Code<sup>3</sup>;
4. SFC-authorized non-derivative<sup>2</sup> ETFs traded on the SEHK;
5. SFC-authorized REITs traded on the SEHK; and
6. Any other investment product the SFC may specify from time to time.

Set out below is a non-exhaustive list of examples of investment products that are considered to be complex products:

#### Complex products - Derivatives traded on an exchange (where paragraph 6.5 of the Guidelines is applicable)

1. Futures contracts traded on the HKFE<sup>4</sup>;
2. Equity derivatives traded on the SEHK (eg, DWs, CBBcs and listed share options);
3. Synthetic ETFs and futures-based ETFs authorized by the SFC and traded on the SEHK;
4. L&I products authorized by the SFC and traded on the SEHK; and
5. Any other investment product the SFC may specify from time to time.

#### Other complex products

1. Complex bonds. Complex bonds are bonds with special features (including, but not limited to, perpetual or subordinated bonds, or those with variable or deferred interest payment terms, extendable maturity dates, or those which are convertible or exchangeable or have contingent write down or loss absorption features, or those with multiple credit support providers and structures) and/or bonds comprising one or more special features;
2. Funds authorized by the SFC under the UT Code which are derivative<sup>2</sup> funds;
3. Funds authorized by the SFC under 8.7 of the UT Code (ie, SFC-authorized hedge funds);
4. SFC-authorized unlisted structured investment products (including SFC-authorized equity-linked deposits, equity-linked instruments/investments, etc.);
5. Other non-exchange-traded structured investment products; and



# Suitability Requirement webpage

## List of specified jurisdictions

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- » Switzerland
- » Taiwan
- » Thailand
- » The Philippines
- » United Kingdom
- » United States of America

Non-exchange-traded unauthorized funds

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- » Germany
- » Guernsey
- » Ireland
- » Isle of Man
- » Jersey
- » Luxembourg
- » Mainland China
- » Malaysia
- » Switzerland
- » Taiwan



# Suitability Requirement webpage

## Minimum information and warning statements for complex products

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### Minimum information to be provided and warning statements

Set out below is a non-exhaustive list of examples of the minimum information on a complex product that should be provided in an easily comprehensible manner on an online platform:

1. Product nature eg, convertible stock, option, bond, fund, structured product;
2. Key terms and features of the complex product, eg, for bonds: (i) bond category; (ii) credit information; (iii) coupon and coupon frequency; (iv) maturity date; (v) special features; and for structured products: (i) product category, eg, equity-linked investment, equity-linked note, credit-linked note; (ii) maturity date; (iii) any possible adjustments to the terms and conditions of the product; (iv) investor's rights over collateral, if any;
3. Whether the complex product is available to professional investors only;
4. Key risks of the complex product eg, whether there is a risk of losing more than the amount invested;
5. Worst case scenario analysis for structured products;
6. Whether potential gain may be capped or limited;
7. Whether the complex product is principal protected or not;
8. Whether there is an early termination feature;
9. Any penalty for early exit; and
10. Whether a secondary market is available for the complex product.

Set out below is a list of the types of warning statements which should be made on an online platform, where applicable:

1. A warning statement to the effect that the product is a complex product and investors should exercise caution in relation to the product.
2. A warning statement to the effect that investors may lose more than the invested amount (if applicable).
3. For complex products for which the offering documents or information provided by the issuer have not been reviewed by the SFC, a warning statement to the effect that the relevant offering documents have not been reviewed by the SFC and investors are advised to exercise caution in relation to the offer.
4. For complex products described as having been authorized by the SFC, a warning statement to the effect that authorization does not imply official recommendation or that SFC authorization is not a recommendation or endorsement of a product nor does it guarantee the commercial merits of a product or its performance.
5. Where past performance information is provided, a warning statement to the effect that past performance is not indicative of future performance.
6. For complex products only available to professional investors, a warning statement to the effect that the product is only available to professional investors.

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# Further Consultation on Offline Requirements Applicable to Complex Products

- **For ensuring a level playing field, we launched a 2-month consultation and proposed to apply the following “additional measures” to offline sale of complex products, i.e.:**
  - Ensuring suitability of the product
  - Disclosing product information
  - Providing warnings (where appropriate)
- **The “additional measures” will be introduced by way of a new paragraph 5.5 to the Code of Conduct**
- **Proposed transitional period: 6 months**

You are invited to submit your comments to the SFC on the further consultation on or before **28 May 2018** via the SFC website ([www.sfc.hk](http://www.sfc.hk)), by email to [ComplexProducts\\_Offline@sfc.hk](mailto:ComplexProducts_Offline@sfc.hk), by post or by fax to 2284 4660

**Thank you**

