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

Guidelines for Market Soundings

May 2025

Contents

1. Introduction

1.1. These Guidelines are published by the Securities and Futures Commission (SFC) under section 399 of the Securities and Futures Ordinance (SFO) to set out the principles and requirements applicable to licensed or registered persons when they conduct market soundings[1].

1.2. These Guidelines should be read in conjunction with, among other provisions, General Principles 1, 2 and 6 and paragraph 9.3 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) and paragraph 1.3 of the Fund Manager Code of Conduct (FMCC).

1.3. "Market sounding" in these Guidelines refers to the communication of information with potential investors, prior to the announcement (if any) of a transaction, to gauge their interest in a possible transaction and assist in determining the terms and specifications related to it, such as its potential timing, size, pricing, structure and trading method[2].

1.4. These Guidelines apply to:

(a) market soundings conducted in connection with a possible transaction in (i) shares that are listed on an exchange and (ii) any other securities[3] which is likely to materially affect the price of shares that are listed on an exchange; and

(b) a licensed or registered person who:

(i) discloses confidential information that is entrusted to it by a client, an issuer or an existing shareholder selling or buying in the secondary market (Market Sounding Beneficiary) during the course of a market sounding (Market Sounding Information) (Disclosing Person); or

Note 1: A Disclosing Person is generally a sell-side broker that is sounding out potential investors, on behalf of a Market Sounding Beneficiary, about a possible transaction.

Note 2: Whether an information is being entrusted to a Disclosing Person would depend on whether the Disclosing Person has a duty of confidentiality to the Market Sounding Beneficiary. The following are some non-exhaustive examples of Market Sounding Information (where a duty of confidentiality is established): (i) the name of the subject security (or specific information that would allow the name of the subject security to be deduced[4]), (ii) the identity of the Market Sounding Beneficiary, (iii) the Market Sounding Beneficiary's intent to pursue a possible transaction, (iv) the terms of or specifications related to the possible transaction such as its potential timing, size, pricing, structure and trading method.

[1] Further practical guidance and examples are also provided by way of frequently asked questions.
[2] Market soundings are typically conducted in connection with capital market transactions, such as private placements and "block trades".
[3] As defined in Part 1 of Schedule 1 to the SFO.
[4] See Note 2 of paragraph 3.3(b) below.

(ii) receives Market Sounding Information during the course of a market sounding (Recipient Person),

Note: A Recipient Person is generally a buy-side firm that is sounded out by a Disclosing Person as a potential investor in a possible transaction.

(collectively referred to as a “Market Sounding Intermediary”).

1.5. Unless specified otherwise, terms used in these Guidelines bear the same meaning as defined in the SFO.

1.6. These Guidelines do not have the force of law and shall not be interpreted in a way which would override the provision of any law.

1.7. Failure by any person to comply with any applicable provision of these Guidelines:

(a) shall not by itself render it liable to any judicial or other proceedings, but in any proceedings under the SFO before any court, these Guidelines may be admissible in evidence, and if any provision set out in these Guidelines appears to the court to be relevant to any question arising in the proceedings, it may be taken into account in determining the question; and

(b) may cause the SFC to consider whether such failure adversely reflects on the person’s fitness and properness[5] to remain licensed or registered.

1.8. When considering a person’s failure to comply with these Guidelines, the SFC will adopt a pragmatic approach taking into account all relevant circumstances, including the size of the Market Sounding Intermediary and any compensatory measures implemented by its senior management.

1.9. Compliance with the Guidelines is no substitution or defence to one's obligation to comply with the relevant laws and regulations concerning insider dealing. Any person involved in market soundings remains subject to the relevant laws and regulations concerning insider dealing.

2. Core principles for both Disclosing Persons and Recipient Persons

CP1. Handling of information

A Market Sounding Intermediary should protect Market Sounding Information and safeguard its confidentiality. It should ensure there is an effective system of functional barriers to prevent inappropriate disclosure, misuse and leakage of Market Sounding Information. In this connection, a Market Sounding Intermediary should implement and maintain, among other things:

[5] Under section 129 of the SFO, in considering whether a person is a fit and proper person, the SFC shall have regard to the person’s (i) ability to carry on the regulated activity competently, honestly, and fairly; and (ii) reputation, character, reliability and financial integrity; amongst others.

(a) appropriate standards of conduct expected of its staff in handling Market Sounding Information, taking into account the requirements under the Code of Conduct and FMCC[6];

(b) clear and robust information sharing principles and processes to be adhered to by its staff (eg, Market Sounding Information should be restricted to authorised personnel on a “need-to-know” basis and disclosed only through authorised processes and communication channels); and

(c) physical and functional segregation of incompatible duties (eg, between staff on the public and private sides) and associated system user access controls (eg, segregation of access rights) in compliance with the “need-to-know” principle.

CP2. Governance

A Market Sounding Intermediary should have robust governance and oversight arrangements in place to ensure effective management supervision over its market sounding activities. These include, but are not limited to:

(a) senior management assuming overall responsibility for the oversight of market soundings and their related risks and outcomes;

(b) establishing appropriate governance arrangements for market soundings, which are commensurate with the size and complexity of the Market Sounding Intermediary’s business;

(c) designating a committee or person(s), with roles, responsibilities and reporting lines clearly defined, to monitor market soundings in support of senior management’s oversight. Such a committee or person(s) should have adequate knowledge of its internal policies and procedures governing market soundings; and

(d) developing and implementing appropriate managerial and supervisory processes, procedures and control measures to ensure that matters related to market soundings are promptly brought to the attention of senior management and designated committee or person(s) for review and follow-up actions to be taken, where necessary.

CP3. Policies and procedures

A Market Sounding Intermediary should establish and maintain effective policies and procedures specifying the manner and expectations in which its market soundings should be conducted. These should be documented in writing, reviewed periodically and updated where necessary to ensure they remain robust and effective, and address, among other things, the following:

(a) market sounding policies, specifying circumstances when they become applicable as well as the timing and prescribed procedures of market soundings;

[6] Including General Principles 1 (Honesty and fairness), 2 (Diligence), 6 (Conflicts of interest) and paragraph 9.3 (Front-running) of the Code of Conduct and paragraph 1.3 of FMCC (Functional barriers).

(b) allocation of roles and responsibilities among staff involved in market soundings, including senior management, in the context of its “three lines of defence”, and ensuring they are properly trained for this purpose;

(c) firm and staff personal dealing policies and procedures and restrictions to prevent the firm and its staff from inappropriate disclosure, misuse and leakage of Market Sounding Information for their own or other’s benefit or financial advantage;

(d) circumstances and protocols for escalation of matters regarding market soundings to senior management or independent functions, such as Legal and Compliance;

(e) consequence management framework, with appropriate sanctions or disciplinary measures imposed for non-compliance with market sounding requirements;

(f) identification and handling of Market Sounding Information; and

(g) record keeping requirements governing market soundings.

CP4. Review and monitoring controls

A Market Sounding Intermediary should establish effective procedures and controls to monitor and detect suspicious behaviours, suspected misconduct, inappropriate or unauthorised disclosure, misuse or leakage of Market Sounding Information and non-compliance with internal guidelines related to market soundings. These include, but are not limited to, periodic reviews of:

(a) firm and staff personal trading activities and other trade surveillance controls;

(b) voice and electronic communications; and

(c) unauthorised access to Market Sounding Information.

3. Specific requirements for Disclosing Persons

3.1. Procedures before conducting market soundings

Before initial contact with Recipient Persons or other potential investors to conduct market sounding, a Disclosing Person should:

(a) obtain agreement or consent from the corresponding Market Sounding Beneficiary to engage in market soundings regarding their possible transaction; and

(b) determine in advance, on a case-by-case basis:

(i) a standard set of information to be disclosed to Recipient Persons or other potential investors in each market sounding and disclose the same standard set of information with all Recipient Persons or other potential investors throughout that market sounding;

(ii) an appropriate timing to conduct market soundings (eg, as close as reasonably practicable to the time of launch of the possible transaction, and outside of the trading hours during which the securities associated with the market sounding may be traded); and

(iii) a suitable number of Recipient Persons or other potential investors to contact, such that its market soundings are limited to as few Recipient Persons or other potential investors as it deems reasonably necessary for the purpose of gauging their interests and specifications on the possible transaction.

3.2. Use of authorised communication channels

A Disclosing Person should only use communication channels that are authorised by senior management or independent functions, such as Legal and Compliance, to conduct market soundings.

Where market soundings are conducted by telephone, a Disclosing Person should use a telephone recording system to record the conversation and maintain the telephone recordings as part of its records[7]. Where market soundings are conducted through other recorded communication channels (eg, audio, video, or text), a Disclosing Person should record the conversation and maintain them as part of its records.

The use of other formats (eg, written minutes) to record market soundings conducted should only be allowed if a Disclosing Person's telephone recording system or other recorded communication channels cannot be accessed.

3.3. Standardised script

A Disclosing Person should adopt the use of a standardised script pre-approved and regularly reviewed by senior management or independent functions, such as Legal and Compliance, during market sounding communications. Where the standardised script is modified to tailor for a specific transaction, an appropriate approval of the modifications should be obtained.

At a minimum, the script should include and follow the sequence of information set out below:

(a) an opening statement that the communication is for the purpose of a market sounding and a confirmation that the individual is the person authorised to receive market soundings (if applicable[8]); and

(b) a request for consent from the Recipient Person or other potential investor to:

(i) record the conversation if it is being recorded; and

[7] See paragraph 3.4 below for the associated record keeping requirements.
[8] Recipient Persons that are licensed persons in Hong Kong are expected to have authorised a person to receive market soundings in accordance with paragraph 4.1(a) below.

(ii) receive the Market Sounding Information, safeguard its confidentiality and prevent inappropriate disclosure, misuse or leakage of such information.

Note 1: A Disclosing Person should not proceed with the market sounding if relevant consent at any such point in time is not obtained.

Note 2: A Disclosing Person should ensure any preliminary information provided prior to receiving the said consent from the Recipient Person or other potential investor (eg, preliminary information to allow them to assess and determine if they wish to provide such a consent) is:

- *on a "no-name" basis so as not to reveal the name of the subject security; and*
- *sufficiently broad, limited, vague and anonymised to ensure that a reasonable Recipient Person or other potential investor would not be able to deduce the name of the subject security.*

Care should be taken in determining the amount of information to be provided where the subject security may be identified even with the provision of only limited information (eg, for narrow industry sectors).

In general, a Disclosing Person should only provide specific Market Sounding Information regarding the subject security (eg, market capitalisation, market volumes, market prices) after receiving the said consent from the Recipient Person or other potential investor.

After obtaining all relevant consent, a Disclosing Person should provide a written confirmation to the Recipient Person or other potential investor as soon as possible, summarising the contents covered in its market sounding communications.

3.4. Record keeping

A Disclosing Person should keep the following records in relation to its market soundings for a period of not less than two years in such manner as will enable them to be readily accessible:

(a) agreement or consent obtained from the corresponding Market Sounding Beneficiary to engage in market soundings regarding the possible transaction;

(b) a list of Recipient Persons or other potential investors who have informed the Disclosing Person that they do not wish to receive any market soundings;

(c) audio, video or text records of market soundings conducted through recorded communication channels;

(d) written minutes of market soundings conducted through unrecorded communication channels; and

(e) a list of all internal and external persons (including legal and natural persons) who possess Market Sounding Information, including details on the date and time of sounding, name and contact details of persons sounded, information and materials disclosed and all relevant consents obtained.

4. Specific requirements for Recipient Persons

4.1. Handling of market sounding requests

A Recipient Person should:

(a) authorise a person who has adequate knowledge of its internal policies on the receipt and handling of market soundings, and inform Disclosing Persons of such arrangement upon being contacted by Disclosing Persons for the purpose of market soundings;

(b) inform Disclosing Persons whether it wishes to, or not to, receive market soundings in relation to either all possible transactions or particular types of possible transactions from the Disclosing Persons; and

(c) in circumstances when a Disclosing Person does not specify whether the communication is a market sounding, use its reasonable effort to verify whether it is in possession of Market Sounding Information.