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Securities and Futures Commission

CIS Internet Guidance Note

[Guidance Note for Persons Advertising or Offering Collective Investment Schemes on the Internet]

1. Introduction

- 1.1 The Securities and Futures Commission (“SFC”) has from time to time received enquiries about the acceptability of certain practices in relation to advertising and offering of collective investment schemes (“CIS”) on the Internet. CIS in this context include unit trusts and mutual fund corporations as defined in the Securities Ordinance (“SO”), and investment arrangements as defined in the Protection of Investors Ordinance (“PIO”). In this Guidance Note, the SFC sets out its views on certain specific issues upon which enquiries have been made.
- 1.2 The SFC’s objective of protecting the interests of the investing public can be better served by reducing regulatory uncertainties and making the regulatory process more transparent to practitioners.

2. Scope of CIS Internet Guidance Note

- 2.1 This CIS Internet Guidance Note clarifies the regulatory requirements concerning CIS activities on the Internet. It does not seek to impose any new rules or requirements. The requirements in the Guidance Note reflect the relevant provisions under the existing regulatory framework.
- 2.2 This Guidance Note does not have the force of law and should not be interpreted in any manner that would override any applicable law, codes or other regulatory requirements. The Guidance Note reflects the SFC’s general views on specific issues. These are not, and are not intended to be, definitive.
- 2.3 This Note provides guidance to fund management companies and other financial intermediaries (referred hereafter as “**relevant persons**”) who advertise or offer¹ CIS through the Internet to the public in Hong Kong. Relevant persons should consider, having regard to their own circumstances, which of the Note’s requirements might apply to them.

¹ Please see Paragraph 5.2 and footnote 8 for the meaning of “offer” within this Note.



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- 2.4 This Note is not intended to deal with commercial or detailed operational matters such as electronic payment; system integrity (e.g. security and reliability); other online services (e.g. access to client account information); or dealing and confirmation procedures (e.g. issuance of electronic contracts).
- 2.5 This Note should be read in conjunction with the **Guidance Note on Internet Regulation**², as amended from time to time, and other circulars and guidance notes on issues relating to the Internet and other electronic media published by the SFC from time to time.

3. General Regulatory Approach

- 3.1 It is important to reiterate the SFC's regulatory approach and principles concerning Internet activities.
- 3.2 People residing in Hong Kong are free to seek out and to take advantage of financial services and products made available over the Internet. However, the provision of such services and products may fall within the SFC's purview and hence trigger regulatory concern. The SFC will not seek to regulate activities that are conducted from outside Hong Kong and over the Internet, provided that such activities are not targeted at persons residing in Hong Kong and are not detrimental to the interests of the Hong Kong investing public or to the market integrity of Hong Kong³.
- 3.3 The fundamental principles of regulation for the advertisement, offering and dealing of CIS, as for other regulated activities, are not premised on the use of a particular medium of communication or delivery. Regulated activities should be uniformly regulated irrespective of whether such activities are conducted via paper-based or electronic media.
- 3.4 Any person who carries out an activity in Hong Kong that triggers a registration requirement must be properly registered with or licensed by the SFC irrespective of the communication or delivery media used in the conduct of such business.

4. Advertisements on the Internet

General

² The Guidance Note on Internet Regulation was issued by the SFC in March 1999

³ Reference: Section 7.4 of Guidance Note on Internet Regulation



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- 4.1 As a general principle, every **advertisement**⁴ for a CIS targeting the Hong Kong public must be submitted for authorisation by the SFC prior to its issue or publication in Hong Kong unless this is exempted under the PIO. The issue of an unauthorized advertisement may be an offence under Section 4 of the PIO.
- 4.2 For approval of CIS advertisements on the Internet, a hard copy of the relevant webpages should be submitted to the SFC⁵. In approving advertisements of CIS, the SFC will follow the general principles as set out in the advertising guidelines under the respective CIS product codes⁶.

Multimedia Presentation

- 4.3 The technology environment of web-based advertising is able to support the use of audio and/or visual aid for the presentation of materials. The SFC generally does not seek to limit the use of multimedia aids.
- 4.4 As in CIS advertisements on radio or television, the script and a description of the presentation should be submitted, where applicable, for the SFC's prior approval together with a printed copy of the relevant webpages.

Banner Advertisements and Hyperlinks

- 4.5 Very often, advertisements promoting brand names may appear in the form of "banners" on websites. Such "banners" may only show the name of a company or refer to services offered by a company without any direct reference to CIS products. Such "banners" may also contain an embedded hyperlink to another website where CIS products are advertised. Under normal circumstances, such "banners" would not require SFC authorisation⁷, unless they can be construed as product advertisements.
- 4.6 Where hyperlinks are provided, reasonable efforts should be made to ascertain that such links do not lead to websites containing CIS advertisements targeting the public in Hong Kong and which have not been authorised by the SFC. The provision of a

⁴ "Advertisement" as defined in the Protection of Investors Ordinance

⁵ The SFC is prepared to accept the submission of the relevant graphics, wordings, scripts and text fonts etc that may be used in personalised webpages for approval, instead of requiring the submission of each and every personalised webpage. Each case will be considered on its own merits and relevant persons are encouraged to discuss the issue with the Commission.

⁶ Reference: Code on Unit Trusts and Mutual Funds, December 1997
Code on Investment-Linked Assurance Schemes, January 1998
Code on Pooled Retirement Funds, January 1998
SFC Code on MPF Products, June 1999

⁷ It should be noted that the advertising of certain financial activities or services may trigger SFC licensing requirements –
References: Guidance Note on Internet Regulation

Circular on Provision of Financial Information on the Internet –
Licensing Requirements, issued by the SFC on 30 June 2000



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hyperlink to an unauthorised CIS advertisement could constitute an offence under Section 4 of the PIO.

Update of Website Information

- 4.7 Advertisements must not be false, misleading, disparaging or deceptive. Relevant persons should ensure that information on their websites is updated and current, and that outdated information is appropriately removed or archived in order to avoid confusion. Reference should be made to the advertising guidelines in various SFC product codes.

5. Offering of CIS on the Internet

Electronic Prospectus

- 5.1 As a general requirement, authorised CIS must issue an up-to-date prospectus, which should contain the information necessary for investors to be able to make an informed judgement of the investment proposed to them. A **prospectus** refers to any form of document that contains an offer or invitation to the public to purchase an interest in a CIS and has been authorised by the SFC as an offering document.

- 5.2 Where a CIS is **offered online**⁸, the relevant person should provide adequate information to investors, including an electronic prospectus⁹. An electronic prospectus refers to a prospectus that is distributed via the Internet, a computer network, or other electronic media, or a prospectus recorded on an electronic storage medium such as a CD-ROM. An electronic prospectus can be made available by using one or more of the following methods:

- (a) A full version of the prospectus is made available on the website, and which can be effectively read, printed, and downloaded; or
- (b) A full version of the prospectus is made available via hyperlink to another website (for example, from the website of an intermediary to a fund management company's website), and which can be effectively read, printed, and downloaded. Hyperlink direction only to the home page or other pages of a website which do not directly contain the prospectus will generally not be

⁸ In this context, offering a CIS online means making the CIS available for subscription online or providing for online switching into a new investment vehicle, such as switching from one CIS to another. Normally it involves the provision of dealing facilities or transaction capabilities such as an application form or a webpage for giving instructions for the execution of an order. For the avoidance of doubt, placing CIS advertisements on a website without the provision of transaction capability is generally not regarded as offering a CIS online for the purpose of the Note. The provision of an address box on the website where an investor may ask for an application form to be sent to him or her by post is also not regarded as online offering for the purpose of the Note.

⁹ For CIS that are subject to the requirements of the Code on Unit Trusts and Mutual Funds, please also note the requirement of Chapter 6.3 of the code.



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considered acceptable. The hyperlink should not be connected to the electronic prospectus in a way that only certain parts of it are presented selectively. In this connection, investors should be brought to the cover page of the prospectus or a contents page, from where investors can navigate to other parts of the document.

The distribution of an electronic prospectus using other methods e.g. via e-mail, is acceptable provided that the distribution method is in compliance with the spirit and principles of this Guidance Note, including the requirement to make an electronic prospectus available “up front” (see Paragraph 5.6 below) for online offering of CIS.

- 5.3 In general, an electronic prospectus should be made available in an online offering of a CIS and in the same way the electronic application form is made available to investors¹⁰.
- 5.4 An electronic prospectus should be presented in such a format that access is reasonably easy for investors. If special software is required for the viewing of the prospectus, the software should be provided for downloading before investors can gain access to any webpages for order execution¹¹. For the purpose of this paragraph, the software may also be provided through a hyperlink to a website where the software can be downloaded free of charge.
- 5.5 There should be a prominent statement on the website, which is capable of being seen or read with reasonable ease by investors accessing an electronic prospectus, that printed copies of the prospectus are also available, as well as where and how they can be obtained¹². The required prominence must have regard to the font sizes used in the relevant webpage and the presentation of the information therein. This statement should if possible be presented in type of the same size as the rest or the majority of the text in the page.

Access to Prospectus

- 5.6 A prospectus must be available to investors prior to their gaining access to an application form or the webpages for the execution of an order to purchase an interest in a CIS, i.e. a prospectus must be available “up front”. A prominent statement should

¹⁰ Without prejudice to the generality of this provision, the Commission is prepared to consider, on a case by case basis, alternative proposals that may achieve the fundamental objective of the prospectus requirement.

¹¹ The requirement to provide the software for downloading is waived if the software required to read the prospectus is also required to read the application form or webpages for order execution.

¹² Copies of the prospectus should be made available at an address in Hong Kong and access is reasonably convenient. Subject to the above, it is acceptable to make the prospectus available at the offices of the fund management company or a distributor (including banks, independent financial advisers and other intermediaries). Please also see footnote 16.



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be placed on the website to advise investors to read the prospectus prior to executing an order. In this connection, a relevant person should:

- (a) Implement measures to ensure that investors can access a webpage for executing an order only if they have been given sufficient opportunity to read or access the electronic prospectus. For example, the webpage for executing an order should be preceded by webpages containing the prospectus or a webpage containing a hyperlink to the prospectus; and
 - (b) Implement measures to ensure that investors can access a webpage for executing an order only if they have confirmed that sufficient opportunity has been given to them to read or access the electronic prospectus. For example, a confirmation facility is provided on the webpage containing the prospectus or the hyperlink to allow investors to declare, for instance by clicking on the facility, that they have been provided with sufficient opportunity to access or read the relevant prospectus and the information disclosed therein¹³.
- 5.7 Unless and until investors have made a positive declaration referred to above, they should not be given access to the webpage for executing an order to purchase an interest in a CIS.
- Content of Electronic Prospectus
- 5.8 All reasonable steps should be taken to ensure that electronic prospectuses are identical to the most up-to-date paper versions as authorised by the SFC.
- 5.9 An electronic prospectus should contain the same entire content in the same sequence in all material aspects as in the paper version, without having to refer investors to other websites, for example by hyperlinks, for parts of the prospectus.
- 5.10 A prospectus may be amended from time to time and the amendments are sometimes incorporated into the paper version of the prospectus in the form of an addendum, before the prospectus is reprinted. Notwithstanding Paragraph 5.9, the SFC generally would have no objection to the full incorporation of such amendments into the electronic version of the prospectus and the availability of such updated electronic version on the website, although its appearance may be different from the printed version.
- 5.11 The incorporation of a search facility or prompts to assist investors to navigate to or find different parts of the electronic prospectus is encouraged if this would enhance the comprehensibility, readability and legibility of the document.

¹³ The SFC is prepared to consider and accept if appropriate, on a case by case basis, proposed alternative arrangements.



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Demarcation

- 5.12 A website should clearly specify the areas that contain the electronic prospectus.
- 5.13 Hyperlinks from an electronic prospectus on a website to other documents or webpages are not acceptable unless the other documents and information on the other webpages are required to be made available for inspection and/or directly referred to in or form part of the prospectus. A hyperlink providing exit from the electronic prospectus to the previous start point is acceptable.

Language

- 5.14 It is the responsibility of a relevant person to implement proper procedures to ensure that when a prospectus is required to be provided to an investor, the investor is provided with a prospectus in a language that he or she is conversant with.
- 5.15 The SFC accepts that in general, it would be reasonable to expect that an investor who may browse through webpages at his or her pace in either the English or Chinese language, is conversant with that language, and therefore a prospectus in that language would be sufficient for the purpose of this Note, provided that the application form is also only in the language of the website. A relevant person should, however, make reasonable efforts to ascertain whether an investor is in fact conversant with the language of the prospectus before accepting an application if there is reason to believe that the investor may not be so conversant.

Dealings

- 5.16 With regard to dealings in CIS on the Internet, relevant persons should ensure that all the proper operational procedures, including client identity authentication, are followed and all applicable regulations are complied with.¹⁴

6. Provision of Analytical Tools

- 6.1 It is noted that analytical tools to facilitate the making of investment decisions are sometimes provided to clients. The provision of these analytical tools may trigger licensing requirements with the SFC¹⁵.

¹⁴ Please also see Section 8.10 of Guidance Note on Internet Regulation

¹⁵ Reference : Circular on Provision of Financial Information on the Internet – Licensing Requirements



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- 6.2 Analytical tools are sometimes available on websites of relevant persons. Very often, these would generate recommendations on specific CIS, with a hyperlink provided to the websites where information of the CIS is available. Regard should be had to all the parts of this Guidance Note in relation to the advertising and offering of CIS.

7. Communication with CIS Investors via Electronic Means

- 7.1 Certain information and documents are required under CIS product codes to be delivered to holders of interests in a CIS, such as notices to holders and scheme financial reports. The SFC does not seek to prescribe the delivery media to be used by the relevant persons provided that the media permit effective communication and the investors concerned have consented to the use of the specified media for the delivery of specified communications.
- 7.2 Some investors may still wish to rely on paper-based information and therefore it cannot be dispensed with at this time.¹⁶ Where information or documents are distributed by electronic means to investors in accordance with their consent, the SFC would expect that paper copies would also be prepared and made available to these investors if they revoke their consent and ask to obtain paper copies.
- 7.3 Documents on a website should remain available for as long as it is necessary for investors to have a reasonable opportunity to access or read them.¹⁷ As in the case of paper documents, investors should have the opportunity to retain the information by printing or downloading the documents or have ongoing access equivalent to personal retention.
- 7.4 Consent to receive information through electronic means should be obtained from investors in a manner that assures its authenticity and a record should be retained. Consent should be revocable by investors at any time. Where consent is given by an investor that a communication (such as a notice to scheme holders) can be posted on the website to satisfy delivery to the investor, there should be effective means to ensure that the investor is notified or made aware on a timely basis that new information exists.

8. Regulatory Development

- 8.1 The rapid advancement of technology will continue to create new challenges to regulators worldwide. The SFC may in the future issue new guidance notes in relation

¹⁶ Notwithstanding this, the SFC has no objection in principle to pure electronic offering and communication which may emerge as the market and technology continues to develop, provided that investors have been made fully aware of the implications when investing.

¹⁷ For example, an electronic annual or semi-annual report, if posted on the website, should remain available at least until superseded by a later similar report.



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to CIS and the use of other electronic media for the advertising and offering of CIS as and when necessary. Market practitioners are encouraged to consult the SFC when in doubt whether a particular practice may trigger regulatory concerns or requirements. The SFC will implement this Guidance Note in a pragmatic manner, taking into account market developments and practices.

- 8.2 All references to SFC codes, guidance notes, guidelines and circulars referred to in this Guidance Note can be found on the SFC's website: <http://www.hksfc.org.hk>.

**Investment Products Department
Securities and Futures Commission**

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