

Guidelines on Online Distribution and Advisory Platforms (the Guidelines)

	Question	Answer
F. Sale of complex products on online platforms on an unsolicited basis		
33.	In determining whether an SFC-authorized fund is a complex or non-complex product, are Platform Operators required to consider the detailed underlying investments of the fund?	<p>For the purpose of determining whether an SFC-authorized fund is a complex or non-complex product, Platform Operators are only expected to ascertain whether the fund is a derivative fund or a non-derivative fund.</p> <p>The SFC has already specified that non-derivative funds authorized by the SFC under the UT Code are considered to be non-complex products in its list of non-complex products. A non-derivative fund is defined as one with a net derivative exposure of up to 50% of its NAV under the UT Code¹ effective on 1 January 2019 (subject to transition arrangements ending on 31 December 2019)².</p>
34.	For funds not authorized by the SFC, could the SFC provide more guidance on when they are considered to be complex products and when they are not?	The determination of whether a product is a complex product or a non-complex product is required when a client purchases a product without a solicitation or recommendation. As unauthorized funds should not be publicly offered, a solicitation or recommendation is likely involved (for example, during interactive communications as part of the offline sales process). In such case, the suitability requirement under paragraph 5.2 of the Code of Conduct ³ would have to be

¹ For guidance on the calculation methodology of the net derivative exposure of a fund, please refer to the Guide on the Use of Financial Derivative Instruments for Unit Trusts and Mutual Funds, as updated from time to time.

² Platform Operators can continue to classify SFC-authorized funds as a non-derivative fund or a derivative fund based on existing requirements until 31 December 2019.

³ As supplemented by the FAQs on Triggering of Suitability Obligations and Compliance with Suitability Obligations issued by the SFC in December 2016.

	Question	Answer
		<p>complied with regardless of whether the unauthorized fund is a complex product or a non-complex product.</p> <p>As explained in Question 28 of these FAQs, Platform Operators should have regard to the factors set out in paragraph 6.1 and comply with paragraph 6.2 of the Guidelines in determining whether an unauthorized fund to be sold on its platform is a complex product or not. The categorisation of products as complex or non-complex focuses on whether the terms, features and risks of a product are too complex for a retail investor to understand. In general, for a product to be treated as “non-complex”, it should be adequately transparent, liquid and capable of being easily understood by retail investors.</p> <p>One of the assessment criteria for complex products is whether the product is a derivative product. An unauthorised fund would be considered to be a complex product if it is a derivative fund. In determining whether an unauthorised fund which may invest in derivatives is a derivative fund, Platform Operators should consider whether the purpose and use of derivatives by the unauthorised fund is comparable to the SFC’s regime under the UT Code effective on 1 January 2019 (subject to transition arrangements ending on 31 December 2019)⁴.</p> <p>If an unauthorized fund is considered to be a non-derivative fund, Platform Operators should further ascertain whether the unauthorized fund is authorized or approved for offering to retail investors by an overseas regulator (overseas public fund) and, if so, whether the overseas public fund (listed or unlisted) is regulated in or traded on an exchange in a specified jurisdiction.</p>

⁴ Platform Operators can continue to classify unauthorized funds as a non-derivative fund or a derivative fund based on existing requirements until 31 December 2019.

	Question	Answer
		<p>In general, a Platform Operator may treat a non-derivative overseas public fund as non-complex if it is regulated in or traded on an exchange in a specified jurisdiction. However, Platform Operators should exercise extra caution where the overseas public fund is regulated in or traded on an exchange in a jurisdiction which is not a specified jurisdiction.</p> <p>It would be less likely for non-public funds⁵ (even non-derivative ones) to be considered non-complex, having regard to the factors set out in paragraph 6.1 of the Guidelines, which include availability of information about the fund, liquidity in the secondary market etc.</p> <p>In determining whether an unauthorised fund is a complex or non-complex product, Platform Operators are expected to consider, among others, the structure and strategy of the fund and the nature of underlying investments with reference to the product disclosure documents. However, they are not expected to perform detailed calculation of the fund’s allocation in each underlying investment.</p> <p>For reference, a flowchart illustrating the determination of whether an unauthorized fund is a complex product or not can be found on the SFC website at www.sfc.hk under the section “Rules & standards – The Suitability Requirement – Non-complex and complex products”.</p>

⁵ A public fund is a fund which has been authorized or approved for offering to retail investors by a regulator. A non-public fund is thus a fund which has not been authorized or approved for offering to retail investors by a regulator (also known as a private fund).