

Guidelines on Online Distribution and Advisory Platforms (the Guidelines) and Paragraph 5.5 of the Code of Conduct

	Question	Answer
F. Sale of complex products on an unsolicited basis		
35.	If an intermediary (a) solicits the sale of or recommends a complex product; or (b) provides discretionary account services (which involves the making as well as execution of recommendation on a complex product) to a client, does it need to comply with the requirements applicable to complex products under paragraph 5.5 of the Code of Conduct?	<p>If an intermediary solicits the sale of or recommends a financial product or provides discretionary account services to a client, it should comply with paragraph 5.2 of the Code of Conduct and ensure that the product is suitable for the client regardless of whether it is complex or non-complex. In this case, there is no further need for the intermediary to comply with paragraph 5.5 of the Code of Conduct. For the avoidance of doubt, intermediaries should comply with all applicable regulatory requirements, including the FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons¹, and provide all relevant material information to clients when discharging their suitability obligations.</p> <p>If an intermediary executes a transaction in a complex product for a client without making any solicitation or recommendation in respect of the transaction (i.e. the client purchases the complex product on an unsolicited basis), then the intermediary is required to comply with paragraph 5.5 of the Code of Conduct.</p>
36.	If an intermediary provides a loan to its clients to buy a non-complex product (e.g. shares listed and traded on the Stock Exchange of Hong Kong Limited (SEHK)), should the intermediary treat	Intermediaries should have regard to the factors set out in paragraph 6.1 of the Guidelines (and paragraph 5.5 of the Code of Conduct) and comply with paragraph 6.2 of the Guidelines in determining whether a product is a complex product or non-complex product. This would include having regard to the non-exhaustive list of

¹ FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons issued by the SFC in December 2016

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	<p>the product as a complex product and comply with Chapter 6 of the Guidelines and paragraph 5.5 of the Code of Conduct (the Requirements) when providing the service to its clients?</p>	<p>examples of “non-complex” and “complex” products posted on the SFC’s website.</p> <p>As the provision of a loan to a client to facilitate him or her to buy a non-complex product or a leveraged transaction on a non-complex product (e.g. shares listed and traded on the SEHK) does not alter the terms, features and risks of the underlying investment product, the provision of such services would not convert a non-complex product into a complex product. Hence, intermediaries are not expected to comply with the Requirements when providing such services to their clients in respect of non-complex products.</p> <p>For the avoidance of doubt, intermediaries should comply with all applicable legal and regulatory requirements. For example, as required under paragraph 5.3 of the Code of Conduct, an intermediary, when providing services to a client in any leveraged transactions, should assure itself that the client understands the nature and risks of the products and has sufficient net worth to be able to assume the risks and bear the potential losses of trading in the products. Licensed corporations are also required to observe the requirements governing securities margin financing activities under Schedule 5 to the Code of Conduct and the Guidelines for Securities Margin Financing Activities.</p>
37.	<p>A client may have contractual relationships with two different regulated entities which provide the following services:</p> <p>(a) one acting as:</p> <p>(i) an investment adviser (IA) and provides investment advice to the client; or</p> <p>(ii) an asset manager (AM) and manages a discretionary portfolio for the client; and</p>	<p>In respect of these specific scenarios, the SFC considers that the execution broker is not required to comply with the Requirements, provided the following requirements are met:</p> <p>(a) the IA or AM* is licensed by or registered with the SFC or is regulated by the banking or securities regulator in the overseas jurisdiction where the investment advisory or discretionary portfolio management services are provided;</p> <p>(b) the execution broker merely provides order execution and custody services to the client and has no day-to-day contact or direct communication with the client (e.g. the execution broker does not do any of the following: advises on the</p>

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	<p>(b) another acting as an execution broker and provides execution services to the client by executing the orders placed by the IA or AM on behalf of the client.</p> <p>These contractual relationships, commonly known as external asset manager model and shared relationship structure, may operate under different forms. For example,</p> <p>Scenario 1: The IA or AM and the execution broker may represent two different branches of a financial institution or two different legal entities within a financial group, and they are based in different jurisdictions. For instance, the IA or AM may be based in Singapore and the execution broker is based in Hong Kong.</p> <p>Scenario 2: The IA or AM and the execution broker may be different legal entities and without any group relationship. The IA, AM and execution broker may all be based in Hong Kong or that only the execution broker is based in Hong Kong.</p> <p>If the IA or AM places an order in a complex product (irrespective of whether the order arises from solicitation or not) on behalf of the client with an execution broker, is the execution broker required to comply with the requirements</p>	<p>client's trades, manages the client's investment portfolio, handles the client's enquiries on complex products or the client's requests to trade complex products);</p> <p>(c) the execution broker has agreed in writing with the IA or AM* that:</p> <p>(i) in respect of the IA or AM* which is a regulated entity in the overseas jurisdiction, the IA or AM* is responsible for complying with the applicable requirements of the overseas jurisdiction before transmitting the client's order to be executed; or</p> <p>(ii) in respect of the IA or AM* which is licensed by or registered with the SFC, the IA or AM* is responsible for ensuring the suitability of a transaction in a complex product for the client and providing sufficient product information and warning statements in respect of the complex product to the client before transmitting the client's order to be executed; and</p> <p>(iii) the execution broker is not responsible for ensuring suitability of the order transmitted by the IA or AM* or providing product information and warning statements to the client; and</p> <p>(d) the execution broker has ensured that the client has been informed in writing of the arrangement referred to in paragraphs (b) and (c) above.</p> <p>Once the client has been informed of the arrangement pursuant to (d) above, the arrangement and the notification do not need to be repeated for each applicable transaction executed for the same client. Where there is any change to the arrangement (e.g. termination of the arrangement among the parties), the execution broker should ensure that an update is provided to the client in writing as soon as possible.</p>

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	<p>applicable to complex products under Chapter 6 of the Guidelines and paragraph 5.5 of the Code of Conduct (the Requirements) when executing the relevant transaction?</p>	<p>The above clarification applies to the specific scenarios set out in the answer. It does not apply to the scenario where the client requests to purchase a complex product directly with the execution broker on an unsolicited basis. When a client wishes to purchase a complex product on an unsolicited basis, the execution broker which executes the relevant transaction is required to comply with the Requirements.</p> <p>Whether an intermediary acting as an execution broker is required to observe the Requirements is a question of fact which should be assessed against the circumstances of each case.</p> <p>However, in no circumstances should the above-mentioned arrangement be used to circumvent the Requirements. The SFC will not hesitate to take regulatory actions against any licensed or registered person who fails to act with honesty and integrity in the best interests of its clients.</p> <p>* As the case may be</p>
<p>G. Others</p>		
<p>38.</p>	<p>Is an intermediary allowed to adopt a risk-based approach in (a) disclosing product information (including the provision of proper explanations of an investment product and the nature and extent of risks of the investment product) for solicited or recommended repeat purchases of the same investment product or investment product of the same product category; or (b) disclosing product information and providing warning statements for a transaction made by a client in complying with</p>	<p>When making a solicitation or recommendation of an investment product, an intermediary is required to, among others, give the client proper explanations of the investment product and the nature and extent of risks that particular investment product bears.</p> <p>For complying with paragraph 5.5 of the Code of Conduct, when distributing a complex product, an intermediary is also required to, among others, disclose product information and provide warning statements to a client so as to draw the client's attention to the key nature, features and risks of that particular complex product.</p>

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	<p>paragraph 5.5 of the Code of Conduct if it is a repeat purchase of the same complex product or complex product of the same product category?</p>	<p>Hence, the above-mentioned disclosure should be made on a transaction-by-transaction basis. The objective of the disclosure is to ensure the client understands the product before entering into a transaction. In this regard, an intermediary may adopt a risk-based approach having regard to the circumstances, such as the client's trading pattern, level of sophistication and investment experience, and product complexity and risk in providing the disclosure to clients.</p> <p>An intermediary could design its own risk disclosure procedures for repeat transactions provided that it can be reasonably satisfied that a client has sufficient understanding of the product having regard to the aforementioned circumstances, adequacy and validity of previous disclosure made by the intermediary to the client. It is therefore important that the intermediary maintains proper record of relevant disclosure and is able to demonstrate that proper disclosure has been given to the client in previous transactions.</p> <p>Intermediaries should exercise caution when designing their risk disclosure procedures for clients purchasing products which they consider to be of the same product category. This is because products of the same product category may be quite different in structure, risks, terms and conditions, etc.</p>