

13 June 2019

Circular to Intermediaries

Implementation of regulatory requirements for online and offline sale of complex products

This circular is to inform intermediaries that the SFC has provided further guidance by way of the Frequently Asked Questions (FAQs) on the regulatory requirements for online¹ and offline² sale of complex products (the Requirements).

The newly added FAQs seek to:

- Clarify that paragraph 5.5 of the Code of Conduct is applicable only when a client purchases a complex product on an unsolicited basis (i.e. no solicitation or recommendation has been made by an intermediary);
- Clarify that the provision of a loan to facilitate a client to purchase a non-complex product would not convert the product into a complex product given that the loan does not alter the terms, features and risks of the product itself;
- Provide guidance on the implementation of the Requirements in the case where an execution broker executes orders placed by an investment adviser or asset manager on behalf of a client³; and
- Clarify our expectation on the disclosure of product information for solicited or recommended repeat purchases generally and for compliance with paragraph 5.5 of the Code of Conduct for repeat purchases of the same complex product or complex products of the same product category.

A copy of the newly added FAQs is attached to this circular for your information. The full set of FAQs on the Guidelines is also available on the SFC website at www.sfc.hk under the section “Regulatory functions – Intermediaries – Supervision – FAQs – Guidelines on Online Distribution and Advisory Platforms and Paragraph 5.5 of the Code of Conduct”.

In addition, the SFC has added the Netherlands as one of the specified jurisdictions for non-exchange-traded unauthorized funds⁴ and security tokens⁵ as a type of complex product to the non-exhaustive list of examples of investment products that are considered to be complex products, as set out on the Suitability web page of the SFC’s website.

¹ Chapter 6 of the Guidelines on Online Distribution and Advisory Platforms (the Guidelines).

² Paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the Code of Conduct).

³ This may be operated under different models. For example, the investment adviser or asset manager and the execution broker may be within the same group or they may be different entities and without any group relationship.

⁴ The list of specified jurisdictions for non-exchange-traded unauthorized funds includes jurisdictions in which Recognized Jurisdictions Schemes are regulated and jurisdictions where there is a Mutual Recognition of Funds arrangement in place. The SFC and the Dutch Authority for the Financial Markets signed a Memorandum of Understanding on Mutual Recognition of Funds on 15 May 2019. For details, please refer to the press release issued on 15 May 2019.

⁵ The SFC issued a Statement on Security Token Offerings on 28 March 2019 in which the SFC specified that security tokens would be regarded as complex products. For details, please refer to the relevant statement.



The FAQs and the Suitability web page will be updated from time to time. You are advised to check our website for the latest information.

Should you have any queries regarding the contents of this circular, please contact Ms Pauline Chan at 2231 1952 or the case officer in charge.

Intermediaries Supervision Department
Intermediaries Division
Securities and Futures Commission

Enclosure

End

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