

## Frequently Asked Questions

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The Answers to Frequently Asked Questions contained in this section of our website are designed to assist you to understand the policy of Commission staff on the implementation of certain provisions of the Securities and Futures Ordinance and related subsidiary legislation. The Answers tend to be framed as general statements and do not consider your particular circumstances. Some provisions have important exceptions or qualifications which may not be referred to in the Answers but which may apply in your circumstances. The Answers should not be regarded as a substitute for obtaining professional legal advice. You should seek independent legal or other professional advice before taking action on matters to which the Answers may be relevant or if you have any doubt about how the law applies to you. You are encouraged to read the information contained in the section of our website entitled "Important Legal Information" before reading the Answers.

### **Part IV of the Securities and Futures Ordinance on Offers of Investments:**

#### *What is a collective investment scheme?*

"Collective investment scheme" is a new term introduced under, and defined in Schedule 1 to, the Securities and Futures Ordinance (SFO) to apply to investment products of a collective nature. It embraces and modernizes the concepts of "unit trust", "mutual fund corporation" and "investment arrangements", as defined in the now repealed Securities Ordinance and the Protection of Investors Ordinance (PIO).

To provide flexibility to address changing market conditions and the development of new products, the Financial Secretary is empowered under section 393 of the SFO to prescribe by notice in the Gazette that certain products are, or are not, to be regarded as collective investment schemes. For instance, in exercise of this power the Financial Secretary has made the Securities and Futures (Collective Investment Schemes) Notice to prescribe certain "paper gold schemes" as collective investment schemes. This replaces the "Gold Purchase Order" issued under the PIO.

For the avoidance of doubt, it is the SFC's policy intention that the public offering of both open-ended and closed-end funds are subject to SFC authorization under the SFO, unless specifically exempted under section 103.

#### *Is it an offence under the SFO for a person to distribute to the public in Hong Kong advertisements, invitations or documents for a collective investment scheme which has not been authorized by the SFC?*

Yes. It is an offence under section 103(1) of the SFO for a person to distribute to the public in Hong Kong unauthorized advertisements, invitations or documents in respect of an unauthorized collective investment scheme, except where an exemption under that section applies.

### ***What is the new exemption for "professional investors"?***

The new exemption for "professional investors" is provided in section 103(3)(k) of the SFO. In short, it provides that the general prohibition of financial promotion under section 103(1) does not apply to the issue of advertisements, invitations or documents made in respect of collective investment schemes that are offered only to professional investors.

The term "professional investor" is defined in Schedule 1 to the SFO and that definition is enlarged for certain purposes only by the Securities and Futures (Professional Investor) Rules (the Rules).

For example, under the Rules an individual having a portfolio of not less than HK\$8 million or a corporation or partnership having a portfolio of not less than HK\$8 million or total assets of not less than HK\$40 million is regarded for the purposes of the section 103(3)(k) exemption as a "professional investor".

The term "portfolio" is defined in the Rules to mean a portfolio comprising of securities, money held by a custodian or a certificate of deposit issued by an authorized financial institution or a bank which is regulated under the law of a place outside Hong Kong.

### ***Does Part IV of the SFO impose any new condition of authorization?***

Yes. It is now a requirement that an applicant for authorization of a collective investment scheme under section 104 of the SFO must nominate an individual to be approved by the SFC as an "approved person". The approved person will then be the SFC's point of contact for the purpose of being served notices and decisions in respect of the scheme. There is a similar requirement in relation to applications for the authorization of any advertisements, invitations or documents under section 105 of the SFO. Generally speaking, a person approved in relation to a collective investment scheme authorized under section 104 will also be approved in relation to the issuance of advertisements, etc., authorized under section 105.

This new requirement became effective on 1 April 2003, and authorizations will not be granted under sections 104 and 105 of the SFO unless the SFC has approved such an individual as an approved person. This new authorization requirement has been highlighted in the relevant product codes.

In relation to funds and advertisements, etc., authorized before 1 April 2003, sections 18 and 19 of Part 1 of Schedule 10 to the SFO provide a grace period of 6 months within which the individual must be nominated for approval by the SFC. Please note that the grace period does not apply in the case of the authorization of new advertisements in respect of funds authorized before April 2003, so applicants are advised to submit their nomination without delay.

The individual nominated should have his/ her ordinary residence in Hong Kong. The SFC should be provided with the individual's particulars, including his/her name, employer, position held, address, telephone and facsimile numbers and

electronic mail address, if any, to facilitate contact by the SFC. In addition, the SFC should be informed of any change in his/her contact details within 14 days after the change takes place.

***Does the approved person play any role in respect of the withdrawal of authorization under section 106 of the SFO?***

Yes, a request for withdrawal of authorization under section 106 should be made in writing to the Commission by the approved person.

***What may happen if the conditions imposed by the SFC in respect of the authorization for a collective investment scheme are not being complied with?***

The SFC may withdraw the authorization of the collective investment scheme pursuant to section 106(1) of the SFO. According to section 106(5), the SFC will not withdraw an authorization without first giving the approved person for the scheme a reasonable opportunity of being heard. Where the SFC withdraws the authorization, it will by notice in writing notify the approved person of the decision and the reasons for which it is made.

***Besides non-compliance with the corresponding authorization conditions, what are the circumstances under which the SFC may withdraw an authorization?***

According to section 106(1) of the SFO, the SFC may also withdraw an authorization if it decides that:

- (a) any information provided to the SFC was at the time when it was provided false or misleading in a material particular; or
- (b) it is desirable to withdraw the authorization in order to protect the interest of the investing public.

***What are the fees payable to the SFC for authorization of a collective investment scheme?***

The fees payable to the SFC for authorization of a collective investment scheme are set out in the Schedule 1 to the Securities and Futures (Fees) Rules. A sponsor would generally be required to pay an application fee, authorization fee and annual fee in order for the scheme to be authorized by the SFC.

***It is not uncommon for scheme distributors to issue advertisements that contain information on collective investment schemes of different fund houses. Under***

*such circumstances, which party – the management company or the distributor – should be responsible for submitting scheme advertisements for SFC authorization?*

In cases where the distributors have merely put together existing SFC authorized materials to produce a combined version of the scheme advertisements, no further authorization by the SFC is required. While the current practice is for distributors to submit scheme advertisements for SFC authorization through the relevant fund houses, the SFC may permit fund houses to authorize their distributors to act on their behalf and submit advertisements to the SFC for authorization, if the parties concerned consider it convenient to do so. In any event, no scheme advertisements should be issued without the agreement of the relevant fund houses.