



Hong Kong

July 2017

## SFC CLARIFIES REQUIREMENTS FOR ASSET MANAGEMENT ACTIVITY

### Introduction

On 23 June 2017, Hong Kong's Securities and Futures Commission (**SFC**) issued a circular<sup>1</sup> which provides guidance for existing licensed corporations and individuals that seek to be licensed for Type 9 regulated activity (asset management) under the Securities and Futures Ordinance. Licensed corporations and individuals are required to apply for an additional Type 9 licence if the asset management services they propose to conduct are not wholly incidental to the regulated activities for which they are already licensed.

### Competence requirements for corporations

Each corporation licensed for Type 9 regulated activity is required to have at least two competent responsible officers (**ROs**) to supervise its business. One of the ROs must be an executive director.<sup>2</sup>

To determine the corporation's competence for a Type 9 licence, the SFC will consider its business and governance structure, compliance and internal control systems, and how qualified its personnel is for the proper management of risks when conducting its business.<sup>3</sup> The SFC may impose certain conditions on the licences after considering the competence of a corporation and its ROs. The SFC may also limit the scope of their business activities.

<sup>1</sup> SFC Circular on competence requirements for existing licensed persons seeking to be licensed for Type 9 regulated activity <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=17EC37>

<sup>2</sup> SFO Section 113(1)

<sup>3</sup> SFC's Guidelines on Competence, Paragraph 4 and Appendix A

### Competence requirements for ROs

#### *Relevant industry experience*

When considering whether an RO applicant meets the experience requirement, the SFC will take into account the person's accumulated career history in the financial industry. For example, if a Type 1 licensed person conducts asset management activity which is wholly incidental to his or her dealing activity, this experience will be deemed to be relevant by the SFC when considering an application for a Type 9 licence. One example of such activity is discretionary account management.

The SFC will also recognise other industry experience<sup>4</sup> such as research, private equity and proprietary trading as relevant.

#### *Local regulatory framework paper (LRP) requirements*

In general, an RO for Type 9 regulated activity is required to have passed certain local regulatory framework papers. Those papers include Hong Kong Securities and Investment Institute's Licensing Examination Papers 1 and 6. The SFC nevertheless has the discretion to exempt an RO applicant from passing the LRP.

The SFC may exempt an RO applicant if:

- a) *The RO applicant intends to manage discretionary accounts only*<sup>5</sup>

<sup>4</sup> SFC Circular on Pragmatic Approach to Licensing Fund Managers

<sup>5</sup> SFC's Guidelines on Competence Appendix E.9

**Minimum experience:** The applicant is an existing RO for Type 1 regulated activity. The applicant should have five or more years of related experience in managing discretionary accounts over the past eight years.

**Restriction on permitted activities:** The applicant will only be allowed to engage in discretionary account management. If the applicant also serves as a Manager-in-Charge of the Overall Management Oversight function<sup>6</sup> of a licensed corporation, the corporation will be subject to the same restriction.

**Regulatory knowledge:** As a one-off requirement, the applicant must complete an additional five continuous professional training (CPT) hours on local regulatory knowledge of Type 9 regulated activity within 12 months after approval. This requirement does not apply if he or she has already completed the same within the six months preceding the application. The SFC is unlikely to accept the CPT hours on general market or regulatory knowledge as meeting this requirement.

- b) *The RO applicant intends to manage private investment funds<sup>7</sup>*

**Minimum experience:** The applicant has over eight years of industry experience in recognised local or overseas markets.<sup>8</sup> Alternatively, the applicant is already registered or licensed in the United Kingdom or the United States for investment management or advisory business.

**Restriction on permitted activities:** The applicant will only be allowed to be accredited to a licensed corporation which only serves professional investors<sup>9</sup> in respect of its Type 9 business.<sup>10</sup>

**Regulatory knowledge:** As a one-off requirement, the applicant must complete an additional five CPT hours on local regulatory knowledge of Type 9 regulated activity within 12 months after approval.

<sup>6</sup> SFC's Circular to Licensed Corporations Regarding Measures for Augmenting the Accountability of Senior Management

<sup>7</sup> Collective investment schemes not authorised under Part IV of the SFO

<sup>8</sup> As referred to in Schedule 1 to the SFO Parts 2 and 3

<sup>9</sup> SFO and subsidiary legislation

<sup>10</sup> With appropriate measures in place (including a Chinese Wall), the sponsoring principal may be allowed to serve non-professional investors for other types of regulated activities

This requirement does not apply if he or she has already completed the same within the six months preceding the application. CPT hours on general market or regulatory knowledge are unlikely to be accepted by the SFC as meeting this requirement.

The SFC reminds applicants that the above scenarios are for illustration purposes only. The SFC will consider every licensing application or application for exemption based on the specific circumstances of each case. Please refer to the Licensing Handbook<sup>11</sup> or relevant webpages for more information on relevant approval criteria and application procedures. Question 5<sup>12</sup> of the licensing-related frequently asked questions under the topic of "Licensing examinations" has been revised to include the clarifications above.

<sup>11</sup> SFC's Licensing Handbook

<sup>12</sup> SFC's Licensing examinations FAQ

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