



Hong Kong

April 2020

SFC CIRCULAR REMINDS INTERMEDIARIES OF THEIR OBLIGATIONS TO ENSURE SUITABILITY AND TIMELY DISSEMINATION OF INFORMATION TO CLIENTS

On 27 March 2020, Hong Kong's Securities and Futures Commission (**SFC**) issued a circular to Hong Kong licensed intermediaries¹ reminding them of their suitability obligations and the need to disseminate information to clients on a timely basis where they hold an investment product on a client's behalf² (the **Circular**).

In the Circular, the SFC reminds persons licensed or registered with the SFC (**SFC Licensed Persons**) of their obligations under the SFC Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission³ (**Code of Conduct**) when distributing investment products, such as funds and bonds, to their clients. These include:

- a) suitability obligations when they make a solicitation or recommendation; and
- b) an obligation to disseminate information in a timely manner where they hold an investment product directly or indirectly on behalf of their clients.

Given the potential impact of the COVID-19 outbreak on market volatility and liquidity as well as credit quality, the SFC reminds SFC Licensed Persons to act in the best interests of their

clients⁴ and exercise extra care when making a solicitation or recommendation or managing investment portfolios for their clients.

To fulfil their suitability obligations under the SFC Code of Conduct,⁵ the SFC reminds SFC Licensed Persons that, among other things:

- a) they should ensure that due diligence is conducted on investment products on the current approved product lists on a continuous basis at appropriate intervals having regard to the nature, features and risks of the investment products, including any deterioration in credit quality or liquidity, market and industry risks related to the COVID-19 outbreak, and other factors which may have an impact on the risk return profiles and growth prospects of the investments;

1 <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=20EC25>

2 <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=20EC25>

3 <https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission.pdf>

4 See General Principle 2 of the Code of Conduct: <https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/codes/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission/code-of-conduct-for-persons-licensed-by-or-registered-with-the-securities-and-futures-commission.pdf>

5 The suitability obligations are set out in paragraph 5.2 of the Code of Conduct and supplemented by FAQs on Triggering of Suitability Obligations: <https://www.sfc.hk/web/EN/faqs/intermediaries/supervision/triggering-of-suitability-obligations/triggering-of-suitability-obligations.html> and FAQs on Compliance with Suitability Obligations issued in December 2016: <https://www.sfc.hk/web/EN/faqs/intermediaries/supervision/suitability-obligations-of-investment-advisers/compliance-with-suitability-obligations.html>

- b) they should give due consideration to all relevant circumstances specific to a client when assessing the suitability of an investment product for the client, including the client's current financial situation, investment objectives, risk tolerance, investment horizon and liquidity needs, as well as the risk profile and concentration risk of the existing investment portfolio;
- c) they should explain to the client the risks and features of the investment product, including its credit quality, liquidity, termination conditions and transaction costs; and
- d) when recommending an investment product to a client, they should present balanced views at all times, not focus solely on advantageous terms such as high coupon rates or yields, and explain the disadvantages and downside risks, such as credit deterioration and illiquidity.

Where SFC Licensed Persons hold investment products directly or indirectly on behalf of their clients, the SFC also reminds them to disseminate to their clients notices and other communications prepared or issued by the investment products' issuers, product arrangers or management companies on a timely basis upon receipt.⁶

The SFC indicates that these notices or communications may include material information or updates crucial for investment decisions, e.g., untoward circumstances relating to a fund which may include use of liquidity risk management tools by a fund manager,⁷ such as a fund manager's intention to increase or apply any swing factor (or anti-dilution levy) exceeding the one that is disclosed in the fund's offering documents, a decision to defer redemption, suspend creation and conduct redemption in the primary market or secondary market trading, and the potential impact on the fund.

The SFC also indicates that it will continue to assess compliance with the regulatory requirements during its on-going monitoring of licensed corporations.

⁶ Please refer to the Circular on Obligations Relating to Selling/ Distribution of Investment Products dated 28 May 2010: <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=H578>

⁷ Please refer to the Circular to management companies and trustees and custodians of SFC-authorized funds dated 27 March 2020: <https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=20EC22>

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Hong Kong Office

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

Tel: + (852) 2905 7888

Fax: + (852) 2854 9596

www.charltonslaw.com