

SFC updates guidance on streamlined measures for SFC-authorised funds

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Background

On 22 December 2023 (and with effect from the same date), the Securities and Futures Commission of Hong Kong ('SFC') issued a circular to management companies of SFC-authorised funds ('Circular') updating its guidance on streamlined measures for SFC-authorised funds ('Updated Guidance'). This update came about as a result of the SFC's recent review of its operational processes and engagement with market participants. The Updated Guidance clarifies and further relaxes certain streamlined measures with the aim of enhancing the operational efficiency and approval processes of SFC-authorised funds when implementing changes and complying with the related obligations on disclosure and reporting.

Updates on measures in relation to SFC-authorised funds

Under the Updated Guidance, the SFC streamlined a number of requirements and procedures in relation to SFC-authorised funds in the following areas:

(1) Appointment of investment delegates¹

(A) Existing SFC-authorised funds

When appointing new investment delegates, existing SFC-authorised funds can now make a 'simple application', which will be processed by the SFC within a shorter targeted approval time compared to 'standard applications' made by new funds seeking the SFC's authorisation.

(B) Investment delegates currently managing other SFC-authorised funds

When appointing investment delegates which are currently managing other SFC-authorised funds, funds are no longer required to obtain the SFC's prior approval.

(2) UCITS2 funds³

(A) Pricing errors reporting

UCITS funds which have no Hong Kong investors during the affected period are no longer required to report pricing errors to the SFC.

¹ Q11A of Frequently Asked Questions on Post Authorisation Compliance Issues of SFC-authorised Unit Trusts and Mutual Funds ('FAQs on Post Authorisation Compliance').

² 1 Undertakings for the Collective Investment in Transferable Securities.

³ Q1, 4, 4A-4G of FAQs on Post Authorisation Compliance.

News Flash

(B) Streamlined reporting for UCITS funds' breaches

The SFC now adopts a streamlined filing and reporting requirement for UCITS fund managers to file and/or report material breaches of multiple funds in a single form if the nature of the breaches⁴ and other key facts and circumstances⁵ are largely the same. Depending on the nature of the breaches, managers of UCITS fund should report such breaches to the SFC by submitting either or both of the following forms:

- (i) Ongoing Compliance Form for Filing of Material Breach(es)⁶; and/or
- (ii) Ongoing Compliance Form for Reporting of Material Breach(es)⁷.

(3) Post-authorisation notifications⁸

The SFC has streamlined the notification requirements for some post-authorisation changes and matters of SFC-authorized funds, including the following:

(i) Suspension of a fund's dealings

For prolonged suspension, managers of SFC-authorized funds are now allowed to inform investors of the suspension of a fund's dealings on the website of such fund or such fund's manager⁹, as an alternative way of complying with the requirement to publish, at least once a month via appropriate means, the fact that dealing is suspended.

(ii) Section 11.1 scheme changes - prior notification

The one-month prior notice to investors for proposed scheme changes under Section 11.1 of the Code on Unit Trusts and Mutual Funds can be shortened if written consent from all affected investors has been obtained.

(iii) Annual report notification

If an SFC-authorized fund's offering documents have already disclosed the means and the timeframe for investors to obtain the fund's annual reports, there is now no need for a separate notice to inform investors of the fund's annual report publication.

(4) Derivative investments

(A) Change of derivative investments¹⁰

If the change of investment policy, strategy or restrictions on the use of a fund's derivatives only involves a reduction in a fund's derivative investments, then the SFC's prior approval is not required but notification of one month in advance should be given to the investors.

(B) Calculation of fund's net derivative exposure

In the SFC's Guide on the Use of Financial Derivative Instruments¹¹ for Unit Trusts and Mutual Funds, the SFC added examples of investment strategies that adopt options to achieve a return profile similar to those of structured products which will not qualify as a netting, hedging or risk mitigation arrangement in the calculation of a fund's net derivative exposure. For instance, adding upside cap, downside buffer and/or downside floor to a delta-one equity index exposure will not qualify but a covered call investment strategy without other structured return features can qualify as a netting arrangement to a fund's exposure to the underlying asset of the covered call.

(5) Disclosure requirements¹²

Lastly, the SFC clarified that the disclosure guidance set out in the Guide on Practices and Procedures for Application for Authorisation of Units Trusts and Mutual Funds is non-mandatory and for reference only, which aims to facilitate the preparation of a fund's offering documents.

⁴ E.g., the laws and regulations being breached.

⁵ E.g., the affected period, underlying reason(s) and responsible party(ies)).

⁶ For breach(es) of (i) investment restriction(s) under the fund's home jurisdiction's laws and regulations; and/or (ii) other restriction(s) or requirement(s) that is/are subject to the fund's home regulator's supervision.

⁷ For breach(es) of (i) provisions under the UT Code that are applicable to UCITS funds (e.g., the fund's net derivative exposure); and/or (ii) other applicable SFC-specific disclosure requirements (e.g., investments in certain specific asset classes, risk disclosures, disclosures of ongoing charges and past performance information, etc.).

⁸ Q3A1, 16E and 27 of FAQs on Post Authorisation Compliance.

⁹ By posting prominent message(s) with a hyperlink to the relevant suspension notice published on the website, as permitted by the fund's constitutive documents and offering documents.

¹⁰ Q5 of FAQs on Post Authorisation Compliance.

¹¹ Paragraph 2(a) of Annex 2.

¹² Q19 and 20 of FAQs on Post Authorisation Compliance.

What this means for market participants

The Updated Guidance is an example of how processes can be improved and efficiencies can be increased without compromising investor interests and protection when the SFC and market participants engage. The Updated Guidance is positive news for SFC-authorized funds and their service providers, which should be able to operate with more efficiency after the removal of some redundant procedural requirements and formalities. To fully benefit from the streamlined regulations while ensuring full compliance with the requirements, service providers should carefully review the consequentially updated FAQs, forms and guides mentioned in the Annex to the Circular.

Let's talk

For a deeper discussion of how this impacts your business, please contact us.

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The materials contained in this document were assembled in January 2024 and were based on the law enforceable and information available at that time.



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