



HONG KONG MONETARY AUTHORITY
香港金融管理局

Our Ref: B1/15C
G16/1C

5 January 2018

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Enhanced disclosure requirements on sale of structured products not regulated by the Securities and Futures Ordinance (SFO)

The Securities and Futures Commission (SFC) published on 16 November 2017 consultation conclusions on Proposals to Enhance Asset Management Regulation and Point-of-sale Transparency, as well as a set of frequently asked questions (FAQs), on the application of paragraph 8.3 on “Disclosure of monetary and non-monetary benefits” and paragraph 10.2 “Independence” of the Code of Conduct for Persons Licensed by or Registered with the SFC (Code).

As set out in the circular of 20 December 2012 entitled “Applicability of the SFC’s regulatory requirements to sale of structured products that are not regulated by the SFO”, the Hong Kong Monetary Authority (HKMA) expects authorized institutions (AIs) to continue to apply consistently high standards and act in best interests of their customers in the sale of investment products. In selling investment products that are not regulated by the SFO, AIs are reminded to follow similar standards as those applicable to SFO-regulated investment products. In particular, the HKMA expects AIs to apply revised paragraphs 8.3 and 8.3A of the Code to their sale of structured products not regulated by the SFO, including but not limited to products that are linked to currency(ies) and/or interest rate(s).

Disclosure of benefits

Following the revised paragraph 8.3(b)(ii) of the Code, where monetary benefits received or receivable by an AI and/or any of its associates from a product issuer (directly or indirectly) for distributing a non-SFO-regulated structured product are not quantifiable prior to or at the point of entering into a transaction, the AI should disclose the existence and nature of such monetary benefits, and the maximum percentage of such monetary benefits receivable per year prior to or at the point of entering into the transaction. The disclosure should be made on a transaction basis. AIs may comply with this requirement by disclosing the percentage range of such

monetary benefits on an annualised basis, as long as the maximum percentage is disclosed in each case.

The HKMA considers that disclosure of the dollar equivalent of such monetary benefits could give customers an idea of how much fees in dollar terms are payable/paid to the intermediary by a product issuer. Therefore, the HKMA encourages AIs to also disclose the dollar equivalent. If AIs do so, the dollar equivalent should be disclosed on an annualised basis if the product concerned has no specific tenor. If the product has a specific tenor, it is not necessary to annualise the dollar equivalent, and AIs may instead disclose the dollar equivalent corresponding to the tenor of the product concerned.

According to the answer to Question 1 of the SFC's FAQs, the required disclosure of non-quantifiable monetary benefits under paragraph 8.3(b)(ii) of the Code does not apply to the case where no explicit monetary benefits will be received but the distributor will benefit from the origination and distribution of an investment product issued by itself or any of its associates. Based on our understanding, most of the non-SFO-regulated structured products being offered by AIs are currency-linked or interest rate-linked products issued by the AI itself or its associates. Non-explicit monetary benefits from such products issued by an AI itself or any of its associates will be captured under paragraph 8.3(b)(i) of the Code, which only requires one-off generic disclosure. AIs are advised to assess carefully, and seek professional advice if needed, the applicability of the relevant requirements to their business activities.

Disclosure of whether an AI is independent

Following the revised paragraph 8.3A(a)(iii) of the Code, where an AI distributes a non-SFO-regulated structured product to a customer (including where it sells a product to or buys such product from the customer), the AI should disclose to the customer prior to or at the point of entering into the transaction whether or not the AI itself is independent (with reference to the requirements set out in paragraph 10.2 of the Code) and the bases for such determination in the form of a statement as specified in Schedule 9 to the Code. The disclosure could be made on a one-off basis.

Implementation arrangements

AIs should implement the enhanced disclosure requirements set out in this circular before the end of 2018.

Senior management of AIs have the responsibility to review and put in place adequate controls and practices, and provide sufficient training and guidance to staff to ensure compliance with regulatory standards.

If you have any questions on this circular, please contact Ms Anita Chan on 2878-1538 or Ms Florence To on 2878-1582.

Yours faithfully,

Alan Au
Executive Director (Banking Conduct)

c.c. SFC (Attn: Ms Julia Leung, Executive Director (Intermediaries))