



APPENDIX 9
COMMENTS FROM HKMA ON VARIOUS CODES AND GUIDELINES
PUBLISHED BY THE SFC

Comments from HKMA

FAQ on Suitability Obligations under the Code of Conduct

Item no.	Respondent's comments	SFC's response
1	Apart from posting on the SFC's public website, would the SFC take other means to bring the required standards to the attention of licensed corporations and registered institutions (e.g. issuing press release or circular)? The FAQ require the relevant licensed / registered persons to consider their own circumstances and review their existing systems and practices in the light of the FAQ, and where necessary, enhance their own systems and controls to meet the standards. Some additional means apart from simply posting the FAQ on the public website would facilitate the intermediaries' timely action.	We issued a circular to all our licensed corporations and posted the FAQ on the SFC website and suggested HKMA issuing a circular to all registered institutions advising the posting of the FAQ on the SFC website.
2	As set out in the FAQ, the purposes of the FAQ are to clarify suitability obligations in para. 5.2 of the Code of Conduct (which applies when a licensed / registered person <u>makes a recommendation or solicitation</u>) for licensed / registered persons engaged in financial planning and wealth management business activities <u>relating to provision of investment advice</u> . According to our supervisory experience, many retail banks hold a strong view that in their wealth management activities, they do not provide investment advice (although some of them might recognise that they make solicitation) and such view is supported by their legal and compliance personnel. We would therefore wish to seek the	We have amended the opening sentence of the preamble of the FAQ to make clear that "making of recommendations / solicitation" is also covered.



	SFC's clarification on whether "making a recommendation or solicitation" is equivalent to "provision of investment advice"? If not, what are the differences? We would like to request the SFC to make the clarification in the FAQ.	
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Comments from HKMA

Management, Supervision & Internal Control Guidelines

Item no.	Respondent's comments	SFC's response
1	Footnote 1 states "As defined in Part 1 of Schedule of the SFO". This should be revised to "...Part 1 of Schedule 1 of the SFO" to specify the exact schedule.	Agree, the SFC has amended the wordings accordingly.
2	The last phrase of footnote 2 states "and "registered" shall be constructed accordingly". For consistency of wording with the SFO, I think "constructed" should be replaced by "construed".	Agree, the SFC has amended the wordings accordingly.



Comments from HKMA

Fit and Proper Guidelines

Item no.	Respondent's comments	SFC's response
1.	Use "authorized" instead of "authorised" in respect of authorized financial institutions in accordance with the usage in the SFO.	Agree, the SFC has amended the wordings accordingly.
2.	It is noted that "(whether in Hong Kong or elsewhere)" is specified in some criteria in respect of the individual/corporation in the existing Fit and Proper Criteria in considering whether a person is fit and proper person. The SFC may consider applying this to the relevant parts in the Fit and Proper Guidelines as needed, or add a general remark that the events mentioned should cover those in HK and elsewhere.	Please refer to paragraph 3.5.
3.	With reference to item 5 titled "Educational or other qualifications or experience", the targeted persons should include persons registered apart from licensed persons; for example, item 5.1.1(a) should not be restricted to individual "applying for licence as a representative".	Agree. The SFC has amended the wordings to include individual whose name is to be entered in the register maintained by the HKMA in paragraph 5.1.1(a).
4.	Regarding item 5.1.1(b)(iii), is the SFC ready to invite potential executive officers of banks to attend an interview with SFC's licensing staff just like the practice for responsible officer? Please clarify whether this is the policy intention of the SFC.	No, this is not SFC's policy intention. Paragraph 5.1.1(b)(iii) has been removed and amended. Please refer to paragraph 3.7.
5.	Regarding item 2.1(e), please include an individual to which the HKMA has given consent to act as an executive officer. Regarding item 2.1(f), please include an individual whose name has been entered in the HKMA register.	Agree. The SFC has included those in paragraphs 2.1(e) and (f).
6.	It is suggested that "or business" is added into item 7.1.1(a)(vii) which will be read as "a director, substantial shareholder in, or involved in the management of, a corporation or business that..." to be in line with Schedule 1 Part 2 Relevant Information 1.(i) of the gazetted Securities and Futures (Licensing and Registration) (Information) Rules.	Agree. The SFC has adopted the suggested amendment in paragraph 7.1.1(a)(vii).



Comments from HKMA

Guidelines on Competence

Item no.	Respondent's comments	SFC's response
1.	To specify the requirements that relevant individuals have to comply with in different paragraphs to provide clearer guidance to registered institutions.	Paragraphs 2.5 and 2.6 were added as general provisions for relevant individuals to adopt the guidelines.

Guidelines on Continuous Professional Training ("CPT")

Item no.	Respondent's comments	SFC's response
1.	To indicate that training records should be made available for inspection by the HKMA staff for relevant individuals and executive officers of registered institutions.	Agree. See paragraphs 4.2.6 and 4.3.5.
2.	To state that the HKMA may take disciplinary action on relevant individuals and executive officers of registered institutions for non-compliance.	Agree. See paragraph 8.1.