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7 May 2007

The Chief Executive
All Registered Institutions

Dear Sir/Madam,

Questions and Answers on Suitability Obligations
Published by the Securities and Futures Commission (SFC)

I am writing to draw your attention to the list of questions and answers on the suitability obligations of Investment Advisers ("FAQ") that has recently been published by the SFC.

The FAQ are applicable to licensed and registered persons who are engaged in financial planning and wealth management business activities relating to the provision of investment advice, making of recommendations and/or solicitation (referred to as "Investment Advisers" or "IAs" in the FAQ). In connection with the suitability obligations stated in paragraph 5.2 of the Code of Conduct[1], the FAQ set out some practical considerations that Investment Advisers should take into account when they seek to comply with the expected standards of conduct stipulated under the Code of Conduct and the Internal Control Guidelines[2].

I would like to emphasise that, in addition to the requirements in the Code of Conduct and the Internal Control Guidelines, the SFC and the HKMA will take into account compliance with the guidance provided in the FAQ to determine whether a registered institution or its relevant individual is fit and proper to carry out financial planning and wealth management activities in Hong Kong.

You should review the existing systems and practices adopted by your institution to see if they are in compliance with the standards set out in the FAQ. Where necessary, your institution should enhance the systems and controls to meet the standards. The HKMA would monitor the progress of your review in our on-going supervisory process.

Copies of the FAQ are attached as Annex 1 (English version) and Annex 2 (Chinese version). They are also posted on the SFC's public website (www.sfc.hk).

Should you have any questions on this letter, please contact Ms Alice Lee at 2878 1603.

Yours faithfully,

Arthur Yuen
Executive Director
(Banking Supervision)

[1]Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

[2] Management, Supervision, and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission

Encl. Annex 1 - Circular on SFC FAQ (English) (PDF file, 579KB)
Annex 2 - Circular on SFC FAQ (Chinese) (PDF file, 391KB)

SFC (Attn: Mr Stephen Po, Senior Director,
Intermediaries and Investment Products Division)

TOP

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Our Ref: SFO/IS/003/2007

8 May 2007

Circular to All Licensed Corporations

Questions and Answers on Suitability Obligations

Paragraph 5.2 of the Code of Conduct[1], which imposes suitability obligations on licensed and registered persons, states the following:

> "Having regard to information about the client of which the licensed or registered person is or should be aware through the exercise of due diligence, the licensed or registered person should, when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for that client is reasonable in all the circumstances."

In order to assist the licensed and registered persons who are engaged in financial planning and wealth management business activities relating to provision of investment advice, making of recommendations and/or solicitation (hereinafter referred to as "Investment Advisers" ("IAs")) to comply with the abovementioned provision, the SFC has today posted on its website (www.sfc.hk) a list of questions and answers on the suitability obligations of the IAs ("FAQ"). A copy of the FAQ is attached to this circular.

IAs should note that, in addition to the requirements in the Code of Conduct and Internal Control Guidelines[2], the SFC will take into account compliance with guidance in the FAQ to determine whether a licensed or registered person is fit and proper to carry out financial planning and wealth management business in Hong Kong.

IAs are urged to consider their own circumstances and review their existing systems and practices in the light of the FAQ. Where necessary, IAs should enhance their own systems and controls to meet the standards set out in the Code of Conduct and Internal Control Guidelines.

Should you have any queries regarding the contents of this circular, please contact Ms Seine Luk at 2842-7696.

Intermediaries Supervision Department
Securities and Futures Commission

[1] Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
[2] Management, Supervision and Internal Control Guidelines for Persons Licensed By or Registered with the Securities and Futures Commission

Questions and answers on suitability obligations of licensed and registered persons who are engaged in financial planning and wealth management business activities ("FAQ")

Paragraph 5.2 of the Code of Conduct[3] sets out the obligations of licensed and registered persons who are engaged in financial planning and wealth management business activities relating to the provision of investment advice, making of recommendations and/or solicitation (hereinafter referred to as "Investment Advisers" ("IAs")). These FAQ set out some practical considerations that IAs should take into account when they seek to comply with the standards of conduct expected of them under the existing Code of Conduct and Internal Control Guidelines (hereinafter referred to as the "Codes").

The statements below are general statements and IAs should consider their own circumstances and review their existing systems and practices in the light of the FAQ. Where necessary, IAs should enhance their own systems and controls to meet the standards set out in the Codes.

Owing to significant differences that exist in the nature, features and risks of investment products and the personal circumstances of investors, the FAQ are neither intended to be, nor should be construed as, an exhaustive list of all factors that IAs should consider in the conduct of their business.

IAs should note that, in addition to the requirements in the Codes, the SFC will take into account compliance with guidance in the FAQ to determine whether a licensed or registered person is fit and proper to carry out financial planning and wealth management business in Hong Kong.

Apart from the following guidance in the FAQ, IAs are urged to consider taking all necessary action in their particular circumstances to ensure compliance with the Codes. Where appropriate, IAs should seek independent legal advice before taking action on matters to which the answers may be relevant or if they have doubt about how the law applies to them.

1. **What are the suitability obligations expected of IAs?**

   IAs should:

   a) know their clients;
   b) understand the investment products they recommend to clients (*Product due diligence*);
   c) provide reasonably suitable recommendations by matching the risk return profile of each investment product with the personal circumstances of each client to whom it is recommended;
   d) provide all relevant material information to clients and help them make informed investment decisions;

[3] Paragraph 5.2 of the Code of Conduct states that:

"Having regard to information about the client of which the licensed or registered person is or should be aware through the exercise of due diligence, the licensed or registered person should, when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for that client is reasonable in all the circumstances."

e) employ competent staff and provide appropriate training; and
f) document and retain the reasons for each product recommendation made to each client.

2. What are the "Know your client" requirements"?

There are positive obligations on IAs under the Code of Conduct to seek information from clients about their financial situation, investment experience and investment objectives. In order to better understand this client information, IAs should collect from each client information that includes their investment knowledge, investment horizon, risk tolerance (including risk of loss of capital) and capacity to make regular contributions and meet extra collateral requirements, where appropriate.

Each client's information should be fully documented and where appropriate, updated on a continuous basis.

Even if a client does not fully disclose his personal circumstances (e.g. financial situation) to an IA, this would not stop the IA from making an assessment of the client's attitude towards risk, his expectations and so on. If an IA is unable to make that assessment, the IA should, as a minimum, explain to the client the inherent limitations of the advice as a result of the lack of information. Furthermore, the IA should explain to the client the assumptions he made in relation to the advice given.

3. How should IAs conduct due diligence on investment products?

IAs should not recommend investment products which they do not understand. They should conduct due diligence work in selecting appropriate investment products for each client.

Due diligence involves IAs developing a thorough understanding of the structure of investment products, how they work, the nature of underlying investments, the level of risks they bear, the experience and reputation of product issuers and service providers, fees and charges, the relative performance and liquidity of investment products, lock-in periods, termination conditions, valuation and unit pricing, and safe custody arrangements.

Depending on the nature of the investment products and services provided to clients, other factors which IAs need to consider include market and industry risks, economic and political environments, regulatory restrictions and any other factors which may directly or indirectly impact on risk return profiles and growth prospects of investments.

IAs should make their own enquiries and obtain full explanations from product issuers about the risks inherent in the investment products. It is not advisable for IAs to rely on prospectuses, offering circulars or marketing materials as necessarily being self-sufficient and self-explanatory.

IAs should document verification work and enquiries which they have made about the investment products, the criteria for selecting the products and in what aspects they are considered suitable for different risk categories of investors, and the approvals they obtain from senior management for promoting the products.

Lastly, IAs should ensure that product due diligence is conducted on a continuous basis at appropriate intervals having regard to the nature, features and risks of investment products.

4. **How may IAs provide advice that is reasonably suitable for clients?**

Suitability involves IAs matching the risk return profile of each recommended investment product with each client's personal circumstances. Therefore, IAs should use their professional judgement to assess diligently whether the characteristics and risk exposures of each recommended investment product (including transaction costs, effect of gearing and foreign currency risks, where appropriate) are actually suitable for the client and are in the best interests of the client, taking into account the client's investment objectives, investment horizon, risk tolerance, and financial circumstances, etc.

IAs must not take commission rebates or other benefits to be received by them or their related companies as the primary basis for recommending particular investment products to clients. Where IAs only recommend investment products which are issued by their related companies, they should disclose this limited availability of products to each client.

Lastly, IAs should exercise extra care in advising elderly or unsophisticated clients or those who may not be able to make independent investment decisions on complex investment products and rely on IAs for advice, particularly when these clients invest in investment products with long maturity periods and those which will attract hefty penalty charges upon early redemption or withdrawal.

5. **How can IAs help clients make informed decisions?**

IAs should provide each client with recommended investment products' prospectuses or offering circulars and other documents relevant to the investments. It is not enough for IAs to hand over these documents, ask the client to read them, or merely read the documents to the client.

IAs should help each client make informed decisions by giving the client proper explanations of why recommended investment products are suitable for the client and the nature and extent of risks the investment products bear. In addition to explaining the good points of the investment products, IAs should always present balanced views, drawing the client's attention to the disadvantages and downside risks as well. IAs should use simple and plain language, and in a language that the client can readily understand. The explanations must be fair and not misleading.

Each client should be given sufficient time to digest, consider and evaluate the information and recommendations provided by an IA and be given sufficient opportunity to raise queries with the IA. Under no circumstances should IAs use high-pressure or unfair techniques to force or entice any client to make hasty investment decisions.

6. **What are the documentation standards expected of IAs?**

IAs should document and provide a copy to each client of the rationale underlying investment recommendations made to the client.

To demonstrate compliance with regulatory requirements, IAs should document and record contemporaneously the information given to each client and the rationale for recommendations given to the client, including any material queries raised by the client and the responses given by the IA. In addition, IAs should keep sufficient documentation on all client transactions including orders placed to product providers.

7. **Would IAs who use computer models to generate investment recommendations be subject to suitability obligations?**

IAs are also subject to the suitability obligations set out in Question 1 above when they assist clients to make investment decisions by using computer models to generate investment recommendations which make reference to specific client information input into the computer.

IAs should ensure that such computer models take into account all relevant information about each client, use objective criteria to generate investment recommendations which match the client's personal circumstances against suitable investment products and operate in a manner that is not biased.

8. **In terms of the nature and scope of services, what is expected of IAs in client agreements?**

IAs should establish and define their relationships with each client by way of a client agreement before providing services to the client. The client agreement should define rights, obligations and responsibilities of each party and properly reflect the nature and scope of the services to be provided.

For those IAs who provide continuous services to clients, they should review each of their client agreements on a continuous basis to ensure that the nature and scope of the services they provide to each client is properly updated and recorded.

9. **What is senior management of IAs expected to do?**

Governing bodies of IAs (including senior management) should maintain a good corporate governance structure, with clear lines of responsibility and authority, by which IAs' activities are properly directed, managed and controlled in order to serve the best interests of clients.

Senior management is responsible for ensuring that IAs comply with all applicable laws, rules and codes. It should review, assess and be satisfied that the IAs have adequate systems and controls to promptly identify issues and matters that may be detrimental to a client's interest (e.g. cases in which investment advice may have been given merely to meet sales targets or may be driven by financial or other incentives).

In addition, the IAs' senior management should recruit the staff who are fit and proper and have an adequate level of knowledge and skills to provide advice to clients. IAs should also provide regular and appropriate training to their staff and ensure that they keep abreast of developments in the industry.

On an ongoing basis, senior management should ensure that client files are reviewed by qualified and competent personnel. Sampled selection of client files should be risk-based and cover investments in complex investment products by elderly or unsophisticated clients or those who may not be able to make independent investment decisions concerning such investment products.

Client complaints should be promptly investigated in accordance with a properly documented procedure and appropriate remedial measures should be taken without undue delay.

The escalation policies and procedures of IAs should be such that senior management is kept informed on a timely basis of all issues and matters that may call into question compliance with applicable laws, rules and codes and protection of client interests.

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SFC
證監會

Our Ref: SFO/IS/003/2007

2007年5月8日

致所有持牌法團的通函

有關爲客戶提供合理適當建議的責任的《常見問題》

《操守準則》[1]第 5.2 段列明持牌及註冊人士爲客戶提供合理適當建議的責任如下:

> "持牌人或註冊人經考慮其所察覺的或經適當查證後理應察覺的關於該客戶的資料後，持牌人或註冊人在作出建議或招攬行爲時，應確保其向該客戶作出的建議或招攬行爲，在所有情況下都是合理的。"

爲協助向客戶提供投資意見、作出建議和/或招攬行爲的財務策劃及財富管理業務的持牌及註冊人士(以下稱爲"投資顧問") 遵守上述規定，證監會已於今天將一份有關爲客戶提供合理適當建議的責任的《常見問題》上載於本會網頁(www.sfc.hk)，現隨本通函夾附《常見問題》副本。

投資顧問應注意，證監會在考慮投資顧問就其在香港從事財務策劃及財富管理業務是否爲適當人選時，會考慮投資顧問有否遵守《操守準則》及《內部監控指引》[2]內的要求，及有否依循《常見問題》所提供的指引。

投資顧問應根據《常見問題》給予的指引，考慮其本身的情況，並檢討其現行的制度及作業方式。必要時，投資顧問應改進其本身的制度及監控以符合《操守準則》及《內部監控指引》內所訂明的標準。

若你對本通函的內容有任何疑問，請致電 2842-7696 與陸燕梅女士聯絡。

中介團體監察科
證券及期貨事務監察委員會

[1] 《證券及期貨事務監察委員會持牌人或註冊人操守準則》
[2] 《適用於證券及期貨事務監察委員會持牌人或註冊人的管理、監督及內部監控指引》

有關從事財務策劃及財富管理業務的持牌及註冊人士為客戶提供合理適當建議的責任的《常見問題》

《操守準則》第 5.2 段列明爲客戶提供投資意見、作出建議和/或招攬行爲的財務策劃及財富管理業務的持牌及註冊人士(以下稱爲“投資顧問”)在提供此等服務時的責任[3]，這些《常見問題》列明投資顧問就遵守《操守準則》及《內部監控指引》(以下稱爲“綜合操守準則”)時應該考慮的實際因素。

《常見問題》內提供之答案屬一般陳述，投資顧問應根據《常見問題》給予的指引，考慮其本身的情況，並檢討其現行的制度及作業方式。必要時，投資顧問應改進其本身的制度及監控以符合綜合操守準則內所訂明的標準。

由於各投資產品的本質、特性及風險與各投資者的個人情況存在重大的差異，故不應將《常見問題》給予的指引，視爲或詮釋爲一份已羅列投資顧問就其業務操守應考慮的所有因素的清單。

投資顧問應注意，證監會在考慮投資顧問就其在香港從事財務策劃及財富管理業務是否爲適當人選時，會考慮投資顧問有否遵守綜合操守準則內的要求，及有否依循《常見問題》提供的指引。

除了依循《常見問題》所提供的指引外，本會促請投資顧問就其個別情況考慮採取所有必要的行動，以確保其遵守綜合操守準則的規定。投資顧問在採取相關行動以符合《常見問題》內提供之指引前，或對於有關的法例的應用存有疑問時，應尋求獨立的法律意見。

1. 投資顧問在提供合理適當建議予客戶時，有何責任？

   投資顧問應：

   a) 認識他們的客戶；

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[3] 《操守準則》第 5.2 段訂明：

“持牌人或註冊人經考慮其所察覺的或經適當查證後理應察覺的關於該客戶的資料後，持牌人或註冊人在作出建議或招攬行為時，應確保其向該客戶作出的建議或招攬行為，在所有情況下都是合理的。”

b) 了解向客戶推介的投資產品(產品盡職審查)；
c) 將每名客戶的個人情況和向其推介的每項投資產品的風險回報狀況進行配對，從而提供合理適當的建議；
d) 向客戶提供所有重要的相關資料並協助他們作出有根據的投資決定；
e) 聘用勝任的職員及提供適當的培訓；及
f) 以文件載明及保留向每名客戶推介每項產品的理據。

2. 何謂符合“認識你的客戶”的要求？

根據《操守準則》，投資顧問有責任向客戶取得資料去釐定其財政狀況、投資經驗及投資目標。為求更了解客戶的個人情況，投資顧問應向客戶收集有關資料，例如其投資知識、投資期、承受風險能力(包括資本虧損風險)、(如適用的話)及其提供定期供款和額外抵押品的能力等。

每名客戶的資料均應作詳細文件載明，(如適用的話)及應持續更新。

即使客戶沒有向投資顧問完全披露其個人情況(例如財政狀況)，投資顧問亦應就客戶對風險的態度及其期望等事宜作出評估。假如投資顧問未能作出有關評估，最低限度亦應向客戶解釋所提供的投資意見因資料缺乏而出現的固有限制。此外，投資顧問亦應向客戶解釋就其所提供的投資意見而作出的假設。

3. 投資顧問應如何進行投資產品盡職審查？

投資顧問不應向客戶推介其本身不了解的投資產品。他們為每名客戶挑選合適的投資產品時，應進行盡職審查。

盡職審查涉及投資顧問透徹理解投資產品的結構、運作方式、其下投資項目的性質、承受風險的程度、產品發行人及服務提供者的經驗及聲譽、投資該投資產品需要的費用、投資產品的相關表現及流通性、禁售期、終止條款、估值及單位定價以及妥善保管的安排。

投資顧問需要考慮的因素，取決於向客户提供的投資產品及服務性質，其他考慮因素包括相關市場及行業的風險、經濟及政治環境、監管限制以及任何可能會直接或間接影響相關投資產品的風險回報及投資增長前景的因素。

投資顧問應就有關投資產品的固有風險，向產品發行人作出查詢，籍以獲得詳盡的解釋。本會並不建議投資顧問只依靠投資產品發行章程、發售通函或推廣資料內所載的資料，並將該等資料視作為必定足夠並自行說明一切的所需要的資料。

投資顧問應以文件載明他們對投資產品所作出的核實工作及查詢、挑選產品的準則、產品在哪些方面被認為適合不同風險類別的投資者，以及獲得高級管理層的批准去推介該產品。

最後，投資顧問應就有關投資產品的性質、特性及風險，確保每隔一段合適時間進行持續的產品盡職審查。

4. 投資顧問如何向客戶提供合理適當的意見?

投資顧問必須將其推介的每項投資產品的風險回報狀況與每名客戶的個人情況進行配對，從而提供合理適當的意見。因此，投資顧問應運用其專業判斷能力，並顧及客戶的投資目標、投資期、風險承受能力及財政狀況等，勤勉盡責地評估所推介的每項投資產品的特點及所涉及的風險(包括交易成本、槓桿效應及外匯風險(如適用者))是否確實適合客戶，以及符合客戶的最佳利益。

投資顧問不得就他們將會收取的佣金回扣或其他關連公司將收取的其他利益作為向客戶推介某一投資產品的主要依據。若投資顧問只限於推介其關連公司發行的投資產品，便應向每名客戶披露此限制。

最後，投資顧問在向長者、或對投資於投資產品缺乏認識的客戶、或那些未能就複雜的投資產品作出獨立投資決定並需要倚賴投資顧問的意見的人士提供意見時，必須格外審慎，尤其是當此等客戶是投資於禁售期限長，並於提早贖回時會被徵收巨額罰款的投資產品。

5. 投資顧問如何協助客戶作出有根據的決定？

投資顧問應向每名客戶提供所推介的投資產品的發行章程、或發售通函、及與該等投資有關的其他文件。單單把這些文件交給客戶，要求客戶閱讀文件，或僅向客戶讀出文件內容是並不足夠。

投資顧問應就所推介的投資產品為何適合客戶，以及該等投資產品的性質及風險程度，給予客戶適當的解釋以協助客戶作出有根據的決定。除了說明投資產品的好處外，投資顧問亦應向客戶提出持平的意見，使客戶同時注意到該投資產品的缺點及下跌的風險。投資顧問在向客戶解釋投資產品時，應採用簡單、淺白、而客戶又可以容易明白的語言，所作出的解釋必須不偏不倚及絕無誤導成份。

每名客戶均應獲得充足的時間消化、考慮及評估投資顧問提供的資料及建議，並獲得足夠機會向投資顧問提出疑問。在任何情況下，投資顧問均不應以高壓或不公平的手段逼使或誘使任何客戶作出倉卒的投資決定。

6. 投資顧問在擬備文件紀錄時應符合哪些標準?

投資顧問應以文件載明及紀錄向每名客戶所提供的投資建議的依據，並向每名客戶提供依據的副本。

為證明符合監管規定，投資顧問在向每名客戶提供相關資料及投資建議的依據時，應同時以文件載明及紀錄所提供的資料及建議依據，該等資料應包括客戶提出任何重要的疑問及投資顧問的回應。此外，投資顧問亦應就所有客戶交易保留充足的文件記錄，包括向產品提供者發出的交易指示。

7. 使用電腦程式得出投資建議的投資顧問，是否有責任向客戶提供合理適當的投資建議？

當投資顧問使用電腦程式，透過輸入特定客戶資料于電腦，從而得出電腦程式產生之投資建議，並參考該等建議，用作協助客戶作出投資決定時，他們亦應遵守《常見問題》內之問題 1 所列明的責任，應確保向客戶提供合理適當的投資建議。

投資顧問應確保該電腦程式考慮到每名客戶的所有相關資料、使用客觀的標準把客戶的個人情況跟合適的投資產品進行配對，從而得出合理適當的投資建議，並確保提供投資建議的過程是不偏不倚。

8. 就服務性質及範圍而言，投資顧問應在客戶協議書內訂明甚麼？

投資顧問為客戶提供服務之前，應透過客戶協議書確立及訂明他們與每名客戶之間的關係。客戶協議書應訂明各方的權利，義務及責任，並正確地反映出所提供服務的性質及範圍。

為客戶持續提供服務的投資顧問，應不斷檢閱每份客戶協議書以確保能妥善地更新及記錄他們為每名客戶所提供的服務性質及範圍。

9. 投資顧問的高級管理層應採取甚麼行動？

投資顧問的管治團體(包括高級管理層)應維持良好的企業管治架構和清晰的權責，使投資顧問的活動得到適當的指示，管理和監控，以維護客戶的最佳利益。

高級管理層有責任確保投資顧問遵守所有適用的法例、規則及守則，並應該檢討、評估及確立足夠的制度及監控措施，以迅速識別可能會令客戶利益受損的事項及事宜(例如涉及可能純粹為達到銷售目標或可能受到現金或其他獎勵方式所推動而提供投資建議的個案)。

此外，高級管理層應確保投資顧問的職員為適當人選，並具備足夠的知識及技能為客戶提供合理適當的建議。投資顧問亦應為其職員提供定期及適當的培訓，並確保他們不斷緊貼業界的發展。

高級管理層應確保由合資格及稱職的人員持續檢閱客戶檔案，檢閱方式以風險為本及抽樣方式進行。所檢閱的客戶檔案須涵蓋年長或對產品缺乏認識的客戶，或那些未能對複雜的投資產品作出獨立投資決定的人士。

投資顧問應及時跟進客戶的投訴，並根據已妥善記錄的程序，盡快作出調查及採取適當的補救措施，避免不必要的延誤。

投資顧問的滙報政策及程序，應能及時通知高級管理層所有可能與適用的法例、規則和守則不符及可能損害客戶權益的事件及事宜。