

Our Ref.: B1/15C

2 January 2009

The Chief Executive
All Registered Institutions

Dear Sir/Madam,

Circular Issued by the Securities and Futures Commission (SFC) on the Revised Advertising Guidelines Relating to SFC-authorized Collective Investment Schemes

I am writing to draw your attention to a circular issued by the SFC on 30 December 2008 ("the SFC Circular"). The SFC Circular sets out the phased approach to the full implementation of the revised Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes ("the Revised Advertising Guidelines").

If your institution is involved in sales and marketing of SFC-authorized collective investment schemes (CIS), you are urged to take prompt actions to ensure that all staff involved in the related sales and marketing, the production of marketing materials, and the related internal control processes are fully aware of the impact of the SFC Circular. Your institution should have clear communications with the issuers of CIS advertising materials for this purpose.

Your institution should also be mindful of the obligations of intermediaries to undertake proper product due diligence on the CIS to be marketed and that the sales staff thoroughly understand the risks of the products. Intermediaries should not simply rely on the marketing materials in marketing or selling CIS to the investing public.

Copies of the SFC Circular and the Revised Advertising Guidelines are attached as Annex 1 and Annex 2 respectively.

Yours faithfully,

Nelson Man
Executive Director
(Banking Supervision)

c.c. SFC (Attn: Ms Peggy Yang, Director, Investment Products Department)

Encl. Annex 1 (PDF file, 302KB)
Annex 2 (PDF file, 424KB)





SECURITIES AND FUTURES COMMISSION
證券及期貨委員會

Circular

30 December 2008

Circular to issuers of advertisements relating to SFC-authorized Collective Investment Schemes

This circular is directed to issuers ("**Issuers**") of advertisements relating to SFC-authorized collective investment schemes ("**CIS**") authorized under Code on Unit Trusts and Mutual Funds, Code on Investment-Linked Assurance Schemes, Code on Pooled Retirement Funds, and SFC Code on MPF Products (the "**Product Codes**").

Background

Enhanced Disclosure Requirements

It is the primary obligation of the issuers of CIS to ensure that their offering documents continue to be up-to-date and contain sufficient information necessary for investors to make an informed decision regarding the investment and that their marketing materials issued are clear, fair and present a balanced picture with adequate and prominent risk disclosure. In view of the recent financial turmoil, the Commission has, through the issue of a circular on 3 October 2008 (the "**Oct 3 Circular**") and a letter on 5 December 2008, reminded them of such obligations (together with the requirements under the Oct 3 Circular, known as the "**Enhanced Disclosure Requirements**"). To date, the Commission has authorised more than 80 new funds based on the Enhanced Disclosure Requirements.

Revised Advertising Guidelines

In January 2008, the Commission issued a consultation paper to propose streamlining of the pre-vetting of notices and advertisements of CIS authorised under the Product Codes for industry and public consultation (the "**Consultation Paper**"). Such consultation is part and parcel of the Commission's efforts to enhance disclosure, to codify the then existing regulatory practices as well as to help the industry move towards post-vetting of advertisements.

The Commission received full support from the industry during the soft and public consultation. The revised advertising guidelines, as contained in the Consultation Paper, were also tabled before the Committee on Unit Trusts (CUT) and Committee on Investment-Linked Assurance and Pooled Retirement Funds (ILAC) before they were approved by the Commission in June 2008 (the "**Revised Advertising Guidelines**").

The Revised Advertising Guidelines were gazetted in July 2008 and have provided guidance to the industry in the following key areas: (i) requirements regarding performance presentation for the preceding 5 years, where performance information is shown in CIS marketing materials; (ii) disclosure of the name of the issuer of the advertisement to enhance transparency; and (iii) disclosure of special risks pertaining to the CIS. The Revised Advertising Guidelines are applicable to all advertisements relating to CIS authorised by the Commission under the Product Codes (collectively "**marketing materials**"). The streamlining of the pre-vetting of notices and advertisements of CIS authorised under the Product Codes took effect from 1 August 2008. However, it was agreed that the industry



should be given a transitional period to prepare for compliance with the Revised Advertising Guidelines. This allowed Issuers to continue to follow the advertising guidelines included in the respective Product Codes that were in effect prior to 1 August 2008 (the "**Pre-existing Advertising Guidelines**") until 31 December 2008. It was intended that Issuers should comply with the Revised Advertising Guidelines from 1 January 2009 (the "**Commencement Date**"). However the Commission has subsequently received representations calling for a delay in the Commencement Date.

Industry representations

With the imminent approach of the Commencement Date, the industry has recently made representations to the Commission that it is not practicable for them to comply fully with the Revised Advertising Guidelines from the Commencement Date. In addition, some Issuers also indicated difficulties in ensuring compliance with the Enhanced Disclosure Requirements due to the unprecedented market situation. The Commission notes that certain Issuers have in fact adopted the Enhanced Disclosure Requirements in their existing marketing materials and these have been authorised.

The Commission's response

While the Commission understands that the current market conditions have placed considerable stress on the resources of Issuers, the Commission is of the view that disclosure is of paramount importance in order to uphold investor protection and market integrity. The Revised Advertising Guidelines and the Enhanced Disclosure Requirements play an important role in achieving these objectives.

Accordingly, the Commission has determined that, as a general principle, all marketing materials that will be or continue to be used by the Issuers for marketing CIS to the public on or after the Commencement Date must comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements. This general principle applies to all marketing materials regardless of whether they are subject to the Commission's authorisation prior to their issue or are not subject to such pre-vetting or prior authorisation requirement in reliance on an exemption under section 103 of the Securities and Futures Ordinance (the "**SFO**").

However, recognizing the challenges that the industry is facing, the Commission is prepared to take the following administrative measures to address the industry's concerns without compromising investors' interests:

New marketing materials used by the Issuers in marketing CIS to the public

If an Issuer intends to issue new marketing materials which are to be used for marketing CIS to the public, the Revised Advertising Guidelines will apply from the Commencement Date. These new marketing materials should also meet with the standards stated in the Enhanced Disclosure Requirements. With effect from the Commencement Date, applications submitted for authorisation of new marketing materials will only be authorised if they comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements. The term "new marketing materials" means marketing materials which have not previously been used for marketing CIS to the public and includes any marketing materials used prior to the Commencement Date which are materially amended on or after the Commencement Date.



Phased application of the Revised Advertising Guidelines to existing marketing materials that continue to be used for marketing CIS to the public

(1) Stage 1 – Pre-existing Advertising Guidelines continue to apply until 31 March 2009

As regards existing marketing materials, a phased approach will be adopted to allow Issuers more time to amend existing marketing materials to comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements if those existing marketing materials are used in marketing CIS to the public after the Commencement Date. The term “existing marketing materials” means any marketing materials used prior to the Commencement Date, but excludes any marketing materials used prior to the Commencement Date which are materially amended on or after the Commencement Date.

During Stage 1, Issuers may continue to use existing marketing materials, that are already in compliance with the Pre-existing Advertising Guidelines, until 31 March 2009. Such Issuers must familiarize themselves with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements during Stage 1 so that they, and the marketing materials that they use, comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements from 1 April 2009. Issuers are of course encouraged to comply with the Enhanced Disclosure Requirements and the Pre-existing Advertising Guidelines during Stage 1.

For those Issuers who continue to issue existing marketing materials that are in compliance with the Pre-existing Advertising Guidelines, they are urged to take proactive measures in enhancing investor education to make investors fully aware of the features and associated investment risks of the products that they market. In addition, training should be provided by the Issuers to sales staff and distributors so that, at the point of sale, they have the ability to communicate the features and associated investment risks of the products to both existing and new investors.

(2) Stage 2 – Starting 1 April 2009

Upon commencement of Stage 2, the Revised Advertising Guidelines will apply in full force to all existing marketing materials that continue to be used for marketing CIS to the public from that date. Those who fail to comply with the same may face enforcement action by the Commission. The Commission urges the Issuers to seriously assess their ability to comply as soon as possible.

Only in wholly exceptional circumstances will the Commission entertain applications for a further extension of time for compliance. In the most unlikely event that an Issuer foresees that it would encounter insurmountable difficulties in complying with the Revised Advertising Guidelines on the commencement of Stage 2, then may it submit an application to seek an extension of time for compliance for a specific period, providing cogent justification. Such application should in any event be submitted to the Commission by not later than 6 February 2009 (the “**Application**”).

The Commission will consider the merits of each Application, on a case by case basis, and in any event no extension would be given beyond 30 June 2009.



An Issuer that is making an Application should include, at least, the following information in its application: (i) the period for which an extension of time for compliance is sought; (ii) copies of the existing marketing materials which they would like to continue to be used for marketing CIS to the public upon expiration of the Stage 1 and the justification, with reasoned submission, as to why its circumstances are so exceptional that an extension should be granted; (iii) An explanation as to how the Issuer is going to ensure full compliance with Revised Advertising Guidelines by the end of the extension period; (iv) a list of priorities for authorisation of such existing marketing materials (for those requiring authorisation); (v) interim measures that the Issuer will be taking to ensure that investors are fully informed to make investment decisions before the existing marketing materials fully comply with the Revised Advertising Guidelines; and (vi) such other documentation that the Issuer considers appropriate.

The Commission continues to keep active and vigilant surveillance on marketing materials at all times and will continue to do so in monitoring the compliance with the phased approach now adopted in implementing the Revised Advertising Guidelines.

Issuers are reminded that if they fail to comply with the Revised Advertising Guidelines from the commencement of Stage 2 and no extension has been granted by the Commission or where one is granted, it has expired, they would be in breach and the Commission will not hesitate to take any necessary actions to ensure investors' interests are safeguarded. These may include, without limitation, the imposition of authorization conditions on individual Issuers and restricting their marketing materials from distribution to the public or soliciting new subscriptions for the relevant CIS. Issuers are further reminded that under the SFO, the making of misleading or deceptive statements in the marketing materials could attract civil liability and/or constitute a criminal offence.

Intermediaries that are involved in sales and marketing of CIS to investors should be aware of the impact of this circular and the phased approach taken in the implementation of the Revised Advertising Guidelines. It is also important that Intermediaries undertake proper product due diligence on the CIS to be marketed and that their sales staff and distributors thoroughly understand the risks of the products. Intermediaries should not simply rely on the marketing materials in marketing or selling products to the investing public.

Please contact the relevant case officer if you are in any doubt as to your obligations.

**Investment Products Department
Securities and Futures Commission**

Securities and Futures Commission

**Advertising Guidelines
Applicable to Collective Investment Schemes
Authorized under the Product Codes**

Hong Kong
July 2008

Published by

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Explanatory Notes:

These Guidelines shall become effective on 1 August 2008 (the Effective Date”).

Advertisement issuers may continue to follow the advertising guidelines included in the respective Product Codes that are in effect prior to the Effective Date until 31 December 2008, but shall adopt and comply with these Guidelines starting from 1 January 2009.

**Advertising Guidelines Applicable to Collective Investment Schemes Authorized
under the Product Codes**

DEFINITIONS

Unless otherwise defined, words and expressions used in this set of Advertising Guidelines are as defined in the Securities and Futures Ordinance (Cap 571) (the “SFO”) and the following codes, as appropriate:

- (a) Code on Unit Trusts and Mutual Funds (“UT Code”)
- (b) Code on Investment-Linked Assurance Schemes (“ILAS Code”)
- (c) Code on Pooled Retirement Funds (“PRF Code”)
- (d) SFC Code on MPF Products (“MPF Code”)

(collectively, the “Product Codes”)

APPLICATION OF THE ADVERTISING GUIDELINES

This set of Advertising Guidelines is applicable to collective investment schemes authorized by the Commission under any of the Product Codes (“schemes”).

Issuers of advertisements for a scheme (including, for the avoidance of doubt, licensed and registered persons acting as distributors of the scheme), whether the advertisements are authorized by the Commission pursuant to section 105 of the SFO or the advertisements fall within any exemption from authorization under the SFO, are required to follow the guidelines as set out below.

Issuers are responsible for the contents of their scheme advertisements and the monitoring of their publication / distribution. Under no circumstances may an issuer disclaim its liabilities in respect of the accuracy of the contents of its advertisements. Where the information is sourced externally and disclosed as such, the issuer should have reasonable belief that such information is accurate, complete and up-to-date.

These guidelines are intended to apply to all forms of product advertisements, including but not limited to distribution materials (such as print media advertisements, brochures, fact sheets, newsletters and any other regular updates, direct marketing, “fax on demand” services, etc), display-only materials (such as posters, exhibition panels, outdoor displays, etc), broadcasts (such as radio, television, cinema, etc) and interactive systems (such as the internet, interactive voice message systems, etc).

Examples of practical applications of these guidelines can be found in the Frequently Asked Questions on Advertising Materials of Collective Investment Schemes Authorized under the Product Codes as published by the Commission on the website from time to time.

Issuers are welcome to consult the Commission where there is doubt as to the applications of these guidelines on specific issues. While the Commission will respond to questions on interpretation of the guidelines, it should not be expected to answer purely hypothetical questions.

CONTENT OF ADVERTISEMENTS

General Principles

1. Advertisements for a scheme should:
 - (a) not be false, biased, misleading or deceptive;
 - (b) be clear, fair and present a balanced picture of the scheme with adequate risk disclosures; and
 - (c) contain information that is timely and consistent with its offering document.
2. Advertisements may not refer to unauthorized schemes, except as permitted in paragraph 22.

Language and Graphics

3. A statement of opinion regarding a scheme or management company's level of performance must be reasonable.
Example: "Our XYZ Far East Fund is one of the best performing funds in Asia" is a misleading statement if it is not placed in the top quartile of Asian funds in any independent performance report.
4. An advertisement should not contain words or phrases that may give investors the impression that they cannot lose money or that profits are guaranteed, unless the scheme has a guarantee feature.
Examples: safe, secure, protected, no risk, guarantee, promise.
5. An advertisement should not focus on the potential return of a scheme without some balancing reference to the risks involved. An advertisement should not give the impression that an investor could profit without risk.
6. An advertisement should not contain language, artwork or graphics that is inaccurate or inconsistent with its offering document.

Example: An advertisement for a scheme, which carried a special risk warning in its offering document, that suggests it is of low risk would be misleading.

7. An advertisement should not seek to denigrate a scheme's competitors in such a way as might lower the reputation of the industry, or use language or artwork that would be considered by a reasonable person to be in poor taste.

Performance Information

8. Performance information, including charts, graphs and tables, should use either the first or last business day of each month or the first or last dealing day of the scheme in each month as the reference date. For regular publications that are updated on a weekly or more frequent basis (e.g. website), performance information may use the most recent dealing day as the reference date. In any case, the reference date should not be arbitrary. The computation basis should be stated (e.g. offer-to-offer or NAV-to-NAV, with or without dividends reinvested).
9. All performance information, including awards and rankings, should be referenced to the sources and dated. Rankings and award winnings may be quoted from any recognized or published external source. For peer group comparisons, only one source should be used and a clear description of the peer group should be included in the advertisement.
10. No forecast of the scheme's performance may be presented. A substantiated prospective yield is generally acceptable only for schemes that invest substantially in fixed income securities, money market instruments, real estate investment trusts or other investments that provide regular and stable distributions. The disclosure of prospective yield must be accompanied by a disclosure of its calculation basis as well as a warning statement to the effect that a positive distribution yield does not imply a positive return.
11. Performance information of a scheme may be presented only if it has an investment track record of not less than 6 months.
12. Performance information, if presented, should at a minimum include the returns (e.g. NAV / price returns, where applicable) of the immediately preceding 5 years (or, subject to paragraph 11 above, the period since launch if shorter), presented based on complete 12-month periods (or shorter periods for the earliest / latest period presented). Such information constitutes the "minimum performance information" and further performance information may be presented in addition.

Note: (1) Minimum performance information may be made up to a recent reference date, the last calendar year end date or the last financial year end date of the scheme. If the calendar or financial year end date is used, performance information of the latest part-year (being

year-to-date) should also be presented to ensure that the information is up-to-date.

(2) Subject to paragraph 14 below, minimum performance information may be included in the notes to the advertisements.

13. Less-than-one-year's figure(s) quoted in an advertisement should be of at least 3 months in duration, except as required in paragraph 12 or permitted in paragraph 14, and presented in the same format as and no more prominently than the most recent 1-year figure (or since launch figure if the scheme has a track record of shorter than 1 year).
14. Regular publications such as a regularly issued fact sheet may contain performance figures of the latest periods (e.g. latest month, latest quarter, year-to-date, etc), provided such figures are clearly for information purposes and are presented in the same format as and no more prominently than other figures.
15. Performance information on an advertisement should be up to date and no more than 6 months old except for print media advertisements, broadcasts or interactive systems, which should be no more than 3 months old. In all circumstances, information should be updated if more recent information is significantly different.

Example: A variation of 10% or more from that last published statistics to the current performance figure would be considered significant.

16. Performance information must be actual rather than based on simulated results. Hypothetical figures may be permitted for schemes with complicated mechanisms for the purpose of explaining those mechanisms to investors, in which case, such figures must be conservative and the worst-case scenario of the payout mechanism, if any, must be presented. Also, it must be clearly stated to the effect that the figures used are for illustrative purposes only and are not indicative of the actual return likely to be achieved. Annualized returns are only acceptable for presentation of performance figures for periods of more than 1 year.

Comparison of Performance and Use of Comparative Indices

17. When a scheme is compared to an index, such index should be the benchmark for the scheme as disclosed in the offering document or, if no such benchmark is disclosed in the offering documents, an index which most closely reflects the investment focus of the scheme. The index used should be transparent and published. A customized index is only acceptable if it is created based on multiple indices for the purpose of reflecting more fairly the composition of the scheme's investment portfolio and its creation basis is disclosed clearly in the advertisement. A comparative index, once adopted, should be applied consistently and any change should be supported by adequate justification.

18. A comparison of performance figures should be fair, accurate and relevant, comparing “like with like”.

Examples:

Performance of a Hong Kong equity fund against a global index or money market fund would be misleading. However, a performance comparison of different indices, such as a Hong Kong index against a global index, used in an appropriate context, would not be misleading.

For comparison against the performance of an accumulation share class of a scheme or where a scheme does not make distributions, a total return index (which includes both dividends and distributions), but not its price return version, should be used, if available. If a total return index is not available, the advertisements should disclose clearly the respective calculation bases of the scheme performance and the index used.

19. If graphs are shown, they should be clearly presented without distortion. If different sets of data are plotted on the same graph for comparison purpose, the same axis should be used.

Performance Information Denominated in a Foreign Currency

20. If non-US\$/HK\$ denominated returns are shown, the advertisement should also show the returns in US\$/HK\$ terms. Alternatively, the advertisement should include a statement to alert investors to the effect that “*The investment returns are denominated in [foreign currency]. US/HK dollar-based investors are therefore exposed to fluctuations in the US/HK dollar / [foreign currency] exchange rate*”. If performance information is quoted in another currency for comparison with other schemes, either the performance information in the scheme’s base currency or a disclosure of the scheme’s base currency and the basis of currency conversion should be given.

Changes to a Scheme

21. If there has been a change in the operations of a scheme, such as a merger, a restructuring, a change of management companies or their delegates, or a change in its investment objectives or policies or comparative index, where such change has a significant impact on the scheme’s performance (or its presentation), any presentation of performance information prior to such change should be accompanied by a prominent explanation in the disclosure that is appropriate in the context of the advertisement to ensure such presentation is not misleading.

Example: If a scheme has changed its comparative index because there exists a new index which more closely reflects the investment focus of the scheme than the old index, its advertisements may present the performance of the old index for the past periods with a clear

disclosure of the change, including a description of the old and the new indices and the effective date of the change.

Performance Information of an Unauthorized Scheme

22. Reference to past performance of an unauthorized scheme to indicate the management company's past track record can only be used in the following circumstances:
- (a) the authorized scheme is newly launched with a past track record of less than 6 months;
 - (b) the investment objectives of the unauthorized scheme are substantially the same as the authorized scheme, managed by the same management team with similar investment policies and strategies and thus subject to similar level of risk; and
 - (c) the advertisement makes clear that (i) the performance figures quoted are not those of the authorized scheme; (ii) whether the unauthorized scheme is subject to any significantly different terms (e.g. different/lower fees and charges); and (iii) the unauthorized scheme is not authorized by the Commission in Hong Kong and not available to the public of Hong Kong .

Warning Statements / Notes to Prospective Investors

23. Advertisements should contain warning statements / notes:
- (a) to the effect that investment involves risk;
 - (b) that the offering document should be read for further details including the risk factors; and
 - (c) (where past performance is presented) to the effect that the past performance information presented is not indicative of future performance; and
- Note: Where performance information is provided for discretionary benefit schemes, a statement should appear to the effect that the rates of return of the scheme are declared at the discretion of a named party (authorized insurer or other party) which may not be the same as the actual returns of the scheme's underlying assets.*
- (d) (where the advertisement is exempted from pre-vetting and authorization by the Commission pursuant to the SFO) that the advertisement has not been reviewed by the Commission.

24. The text of the warning statements and footnotes may be varied but the message should be clear and not disguised.
25. If a scheme is described as having been authorized by the Commission it must be stated that authorization does not imply official recommendation.
26. Warning statements and footnotes should be well positioned and, where applicable, properly referenced in the advertisement (e.g. at the first point of access of a website, by way of properly reference endnotes, etc). In any event, warning statements and footnotes must be legible in the context of (i) font sizes used; (ii) format and layout of the advertisement; and (iii) where the advertisement is displayed or published.
27. Advertisements of a scheme with special features or involving higher risk investments (e.g. emerging markets, use of financial derivative instruments for investment purposes, etc) should include a warning statement appropriate to the degree of risk inherent in the scheme. Issuers of advertisements should also refer to relevant provisions in applicable Product Code(s) in respect of the specific disclosure requirements for special features of the scheme. The Commission may require additional warning statements to be included in the advertisements of individual or specific types of schemes, where appropriate.

Note: The following materials need not include warning statements or disclosures that are specific to a particular scheme provided that they include the warning statements referred to in paragraph 23:

- (a) *display-only materials that are not for distribution; and*
- (b) *regular publications that include a listing of schemes and their factual information for comparison or information purposes only.*

Information of the Advertisement Issuer

28. The full name of the issuer must be disclosed on all advertisements, except as permitted in paragraph 29(a).

MISCELLANEOUS PROVISIONS

Rules applicable to Radio, Television, Cinema or Other Time-limiting Advertisements / Broadcasts

29. The following are applicable to advertisements, the recipients of which have no control over the time for information delivery (e.g. radio, television, cinema broadcasts, etc):
 - (a) For audio advertisements with no visual display, warning statements referred to in paragraph 23 should be audibly and clearly read out in a

voice-over at the end of each broadcast. The broadcast of the full name of the issuer under paragraph 28 is optional for such audio advertisements.

- (b) For visual advertisements, warning statements referred to in paragraph 23 and the full name of the issuer referred to in paragraph 28 should be displayed for such time as to be sufficiently prominent to allow the viewer to read the entire text of the disclosure with reasonable ease.
- (c) The advertisement should not be disguised as an authoritative report, and should be presented with courtesy and good taste. Disturbing or annoying materials such as blatant sound effects, persistent repetition, or words and phrases implying emergency should be avoided.