

Client Alert

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Enhanced Disclosure Requirements for Discretionary Accounts

Introduction

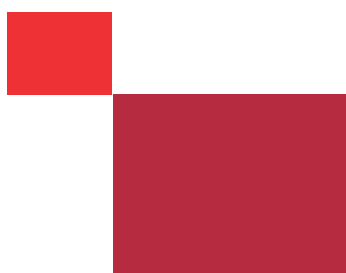
Further to the *Consultation Conclusions on Proposals to Enhance Asset Management Regulation and Point-of-sale Transparency and Further Consultation on Proposed Disclosure Requirements Applicable to Discretionary Accounts*, on 23 May 2018, the Securities and Futures Commission (SFC) released its *Consultation Conclusions on Proposed Disclosure Requirements Applicable to Discretionary Accounts* ("**Conclusions**") and concluded to proceed with the enhanced disclosure requirements for intermediaries providing discretionary accounts services.

The changes are set out in the new paragraph 7.2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**) and the changes will take into effect on **25 November 2018**. The SFC has issued [FAQs](#) to provide further guideline on their application.

Separately, in respect of non-SFC-regulated products under discretionary accounts managed by Authorised Institutions (AIs), the Hong Kong Monetary Authority (**HKMA**) issued a circular on [25 May 2018](#) (**HKMA Circular**) informing AIs that they are also required to disclose monetary and non-monetary benefits for such transactions in accordance with the requirements in the new paragraph 7.2 of the Code of Conduct. The effective date for such changes under the HKMA Circular is **25 November 2018**.

The disclosure requirements are applicable where:

- the intermediaries or their associates explicitly receive monetary benefits from product issuers for effecting a transaction for a client
- the intermediaries take no market risk and make a trading profit for effecting a purchase of an investment product from a third party for a client or a sale of an investment product to a third party for a client
- the intermediaries effect a transaction in an investment product which is issued by them or their associates with no explicit monetary benefits
- the intermediaries or their associates receive from a product issuer non-monetary benefits for effecting a transaction for a client





Key Actions

Assess type of benefit and nature of arrangement

Depending on the type of benefit and arrangement, a discretionary account manager will be required to make *specific* or *generic* disclosures.

Specific disclosure

Benefit	Disclosure requirement
Monetary benefits from a product issuer (whether quantifiable or not) under explicit remuneration arrangement	Maximum percentage of monetary benefits receivable by type of investment product Where benefits are non-quantifiable, the existence and nature of the benefits
Trading profit made from products purchased from or sold to a third party for a client (no market risk taken)	Maximum percentage of trading profit made by type of investment product

Generic disclosure

Benefit	Disclosure requirement
Monetary benefits for effecting a transaction in an investment product issued by the intermediary or its associates under a non-explicit remuneration arrangement	The fact that the intermediary or its associates will benefit from the transaction
Non-monetary benefits from a product issuer for effecting a transaction for a client	The existence and nature of the non-monetary benefits

Review and revise processes and documentation to comply with enhanced disclosure requirements

Processes should be put in place to ensure that the relevant disclosure is made in writing to clients at the account opening stage, or before entering into a discretionary client agreement.

Only a one-off disclosure is required, but where there are changes such as additional investment product types or an increase in the maximum percentage of the monetary benefits receivable, an updated disclosure should be provided as soon as reasonably practicable.

The length or style of disclosure is not prescribed. Provided the requirements are observed, intermediaries are free to adopt any manner of disclosure that is appropriate to the facts and circumstances of each case. The SFC expects intermediaries to exercise their professional judgment in determining the form of the disclosure.

Take steps

We recommend that intermediaries which provide discretionary account services consider taking the following steps to ensure that they are in a



position to comply with the requirements under the new paragraph 7.2 of the Code of Conduct by **25 November 2018**:

- *Assess benefits*: put in place measures to assess what are the monetary and non-monetary benefits receivable and to calculate maximum percentage of monetary benefits and trading profits, if applicable.

Form and manner of disclosures: consider how specific and generic disclosures will be presented and documented, and when and how the disclosure will be made to clients.

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