

Client Alert

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SFC enhances investor protection measures for offline services on complex products

The Securities and Futures Commission (**SFC**) published its *Consultation Conclusions on Offline Requirements Applicable to Complex Products* ("the **Conclusions**") on 4 October 2018, in which it adopted proposals to enhance the investor protection measures for the offline provision of services involving complex products. As a result, there will be changes to paragraph 5.5 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("**Code of Conduct**"). These changes will take effect on **6 April 2019**.

The additional measures are designed to ensure the suitability of complex products and the provision of product information and warning statements to clients, regardless of whether the transaction involves a solicitation or recommendation, or where the transaction is execution only. These measures largely mirror the additional protective measures introduced by the SFC for online distribution of complex products in the Guidelines on Online Distribution and Advisory Platforms. The SFC is of the view that aligning the online and offline requirements for the distribution of complex products would ensure a level playing field and avoid potential regulatory arbitrage.

Financial intermediaries which provide services in complex products should ensure that:

1. they will have a suitability process in place to ensure that a transaction in a complex product is suitable for the client
2. they will provide sufficient information on the key nature, features and risks of a complex product, as well as warning statements to the client at the point of sale

There are exceptions to the above requirements in respect of complex products which are derivative products traded on an exchange in Hong Kong or in a specified jurisdiction, provided that there has been no solicitation or recommendation. In addition, there are exemptions for corporate professional investors and institutional professional investors under the Code of Conduct.

Financial intermediaries should now start reviewing their systems and controls and arranging necessary operational support to ensure their suitability process and disclosure policies and procedures will comply with the changes.

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