

Securities and Futures Commission

CIS Internet Guidance Note

**[Guidance Note for Persons Advertising
or Offering Collective Investment Schemes
on the Internet]**

Hong Kong
April 2003

1. Introduction

- 1.1 The Securities and Futures Commission (“SFC”) has from time to time received enquiries about the acceptability of certain practices in relation to advertising and offering of collective investment schemes (“CIS”) on the Internet. In this context, CIS has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (“SFO”). In this Guidance Note, the SFC sets out its views on certain specific issues upon which enquiries have been made.
- 1.2 The SFC’s objective of protecting the interests of the investing public can be better

- 3.2 People residing in Hong Kong are free to seek out and to take advantage of financial services and products made available over the Internet. However, the provision of such services and products may fall within the SFC's purview and hence trigger regulatory concern. The SFC will not seek to regulate activities that are conducted from outside Hong Kong and over the Internet, provided that such activities are not targeted at persons residing in Hong Kong and are not detrimental to the interests of the Hong Kong investing public or to the market integrity of Hong Kong².
- 3.3 The fundamental principles of regulation for the advertisement, offering and dealing of CIS, as for other regulated activities, are not premised on the use of a particular medium of communication or delivery. Regulated activities should be uniformly regulated irrespective of whether such activities are conducted via paper-based or electronic media.
- 3.4 Any person who carries out an activity in Hong Kong that triggers a registration requirement must be properly registered with or licensed by the SFC irrespective of the communication or delivery media used in the conduct of such business.

4. Advertisements on the Internet

General

- 4.1 As a general principle, every **advertisement**³ for a CIS targeting the Hong Kong public must be submitted for authorisation by the SFC prior to its issue or publication in Hong Kong unless this is exempted under the SFO. The issue of an unauthorised advertisement may be an offence under Section 103 of the SFO.
- 4.2 For approval of CIS advertisements on the Internet, a hard copy of the relevant webpages should be submitted to the SFC⁴. In approving advertisements of CIS, the SFC will follow the general principles as set out in the advertising guidelines under the respective CIS product codes⁵.

Multimedia Presentation

- 4.3 The technology environment of web-based advertising is able to support the use of audio and/or visual aid for the presentation of materials. The SFC generally does not seek to limit the use of multimedia aids.

² *Reference:* Guidance Note on Internet Regulation

³ "Advertisement" as defined in the Securities and Futures Ordinance

⁴ The SFC is prepared to accept the submission of the relevant graphics, wordings, scripts and text fonts etc that may be used in personalised webpages for approval, instead of requiring the submission of each and every personalised webpage. Each case will be considered on its own merits and relevant persons are encouraged to discuss the issue with the Commission.

⁵ *References :* Code on Unit Trusts and Mutual Funds
Code on Investment-Linked Assurance Schemes
Code on Pooled Retirement Funds
SFC Code on MPF Products

- 4.4 As in CIS advertisements on radio or television, the script and a description of the presentation should be submitted, where applicable, for the SFC's prior approval together with a printed copy of the relevant webpages.

Banner Advertisements and Hyperlinks

- 4.5 Very often, advertisements promoting brand names may appear in the form of "banners" on websites. Such "banners" may only show the name of a company or refer to services offered by a company without any direct reference to CIS products. Such "banners" may also contain an embedded hyperlink to another website where CIS products are advertised. Under normal circumstances, such "banners" would not require SFC authorisation⁶, unless they can be construed as product advertisements.
- 4.6 Where hyperlinks are provided, reasonable efforts should be made to ascertain that such links do not lead to websites containing CIS advertisements targeting the public in Hong Kong and which have not been authorised by the SFC. The provision of a hyperlink to an unauthorised CIS advertisement could constitute an offence under Section 103 of the SFO.

Update of Website Information

- 4.7 Advertisements must not be false, misleading, disparaging or deceptive. Relevant persons should ensure that information on their websites is updated and current, and that outdated information is appropriately removed or archived in order to avoid confusion. Reference should be made to the advertising guidelines in various SFC product codes.

5. Offering of CIS on the Internet

Electronic Prospectus

- 5.1 As a general requirement, authorised CIS must issue an up-to-date prospectus, which should contain the information necessary for investors to be able to make an informed judgement of the investment proposed to them. A **prospectus** refers to any form of document that contains an offer or invitation to the public to purchase an interest in a CIS and has been authorised by the SFC as an offering document.
- 5.2 Where a CIS is **offered online**⁷, the relevant person should provide adequate information to investors, including an electronic prospectus⁸. An **electronic**

⁶ It should be noted that the advertising of certain financial activities or services may trigger SFC licensing requirements –
References: Guidance Note on Internet Regulation
Circular on Provision of Financial Information on the Internet – Licensing Requirements

⁷ In this context, offering a CIS online means making the CIS available for subscription online or providing for online switching into a new investment vehicle, such as switching from one CIS to another. Normally it involves the provision of dealing facilities or transaction capabilities such as an application form or a webpage for giving instructions for the execution of an order. For the avoidance of doubt, placing CIS advertisements on a website without the provision of transaction capability is generally not regarded as offering a CIS online for the purpose of the Note. The provision of an address box on the website where an investor may ask for an application form to be sent to him or her by post is also not regarded as online offering for the purpose of the Note.

⁸ For CIS that are subject to the requirements of the Code on Unit Trusts and Mutual Funds, please also note the requirement of Chapter 6.3 of the code.

- 5.6 A prospectus must be available to investors prior to their gaining access to an application form or the webpages for the execution of an order to purchase an interest in a CIS, i.e. a prospectus must be available “up front”. A prominent statement should be placed on the website to advise investors to read the prospectus prior to executing an order. In this connection, a relevant person should:
- (a) Implement measures to ensure that investors can access a webpage for executing an order only if they have been given sufficient opportunity to read or access the electronic prospectus. For example, the webpage for executing an order should be preceded by webpages containing the prospectus or a webpage containing a hyperlink to the prospectus; and
 - (b) Implement measures to ensure that investors can access a webpage for executing an order only if they have confirmed that sufficient opportunity has been given to them to read or access the electronic prospectus. For example, a confirmation facility is provided on the webpage containing the prospectus or the hyperlink to allow investors to declare, for instance by clicking on the facility, that they have been provided with sufficient opportunity to access or read the relevant prospectus and the information disclosed therein¹².
- 5.7 Unless and until investors have made a positive declaration referred to above, they should not be given access to the webpage for executing an order to purchase an interest in a CIS.

Content of Electronic Prospectus

- 5.8 All reasonable steps should be taken to ensure that electronic prospectuses are identical to the most up-to-date paper versions as authorised by the SFC.
- 5.9 An electronic prospectus should contain the same entire content in the same sequence in all material aspects as in the paper version, without having to refer investors to other websites,w (shou12 Tf 0 Tc 0.024 Tw () Tj .Tw 8e webpag 12 Tf -0.0013 Tc 0.6013 Tw

- 5.12 A website should clearly specify the areas that contain the electronic prospectus.
- 5.13 Hyperlinks from an electronic prospectus on a website to other documents or webpages are not acceptable unless the other documents and information on the other webpages are required to be made available for inspection and/or directly referred to in or form part of the prospectus. A hyperlink providing exit from the electronic prospectus to the previous start point is acceptable.

Language

- 5.14 It is the responsibility of a relevant person to implement proper procedures to ensure that when a prospectus is required to be provided to an investor, the investor is provided with a prospectus in a language that he or she is conversant with.
- 5.15 The SFC accepts that in general, it would be reasonable to expect that an investor who may browse through webpages at his or her pace in either the English or Chinese language, is conversant with that language, and therefore a prospectus in that language would be sufficient for the purpose of this Note, provided that the application form is also only in the language of the website. A relevant person should, however, make reasonable efforts to ascertain whether an investor is in fact conversant with the language of the prospectus before accepting an application if there is reason to believe that the investor may not be so conversant.

Dealings

- 5.16 With regard to dealings in CIS on the Internet, relevant persons should ensure that all the proper operational procedures, including client identity authentication, are followed and all applicable regulations are complied with¹³.
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6. Provision of Analytical Tools

- 6.1 It is noted that analytical tools to facilitate the making of investment decisions are sometimes provided to clients. The provision of these analytical tools may trigger licensing requirements with the SFC¹⁴.
- 6.2

investors concerned have consented to the use of the specified media for the delivery of specified communications.

- 7.2 Some investors may still wish to rely on paper-based information and therefore it cannot be dispensed with at this time