

21st July 2017

Sent by Email and by Post

The Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Dear Sirs/Madams,

Re: Consultation Paper on the Proposed Guidelines on Online Distribution and Advisory Platforms

The Hong Kong Society of Financial Analysts Ltd (HKSFA) has the pleasure to submit its response to the captioned Consultation Paper.

In general, we believe the regulatory approach is sound and reasonable. We agree with the general approach of requiring advice by robo-advisers and the sale of complex products to be subject to suitability requirements; and that factual information display not subject to suitability requirements. Going forward, it is advised that the SFC should continue with the issuing of practical guidance or conduct a thematic review to ensure consistency of the rules application, as the principles-based rules could open to wide-ranging interpretations.

We include our specific response to the questions posted in the appendix. Thanks very much for your kind attention.

Yours sincerely,
For and on behalf of
The Hong Kong Society of Financial Analysts

Frederick Tsang, CFA
Co-chair, Advocacy Committee

Claudius Tsang, CFA
Co-chair, Advocacy Committee

Appendix: HKSA Specific Response to the Questions

Q.1

Do you agree with the factors relevant to online platforms identified above? Please explain your view.

Answer to Q.1:

We agree. Not every investment product listed on a platform is appropriate or suitable for the investors who may be able to get access to the platform. Therefore, proper access control should be in place to make sure the right product being offered to the appropriate investors.

Q.2

Are there any factors that the SFC has not identified? Are these covered by existing conduct requirements? If not, do you have any suggestions about how they can be addressed through specific requirements? Please explain your view.

Answer to Q.2:

Existing codes have properly covered the factors considered.

Q.3

Do you have any comments on the Core Principles in the Proposed Guidelines as outlined above? Are there any other areas which you think the Proposed Guidelines should cover? Please explain your view.

Answer to Q.3:

The Proposed Guidelines could cover areas where online platforms provide “Interactive elements” besides static materials. For instance, real time chat rooms and messages that may trigger suitability requirements should be considered.

Q.4

Are there any other areas relating to robo-advice which you think the Proposed Guidelines should cover? Please explain your view.

Answer to Q.4:

Algorithms of the robo-advice should be properly documented and reviewed by the management of the platform operators such that its advice should not be biased or directed towards a particular product.

Q.5

What are your views on the shortcomings of robo-advice? How can the Proposed Guidelines be further enhanced to address these issues?

Robo-advice lags the interactive elements of normal investment advice, that it may ignore the feelings and interaction between the advisors and clients. Client experience may not be as good as in the traditional set up.

Answer to Q.5:

After robo-advice is generated, it is suggested that a random sample check should be performed by the investment advisors on cross-checking the recommendations.

Q.6

Do you have any comments on the guidance on the Suitability Requirement to be provided in the Proposed Guidelines?

Answer to Q.6:

If possible, the SFC could provide more specific examples or cases for the incidence that would or would not trigger Suitability Requirement such that market participants could easily follow without ambiguity.

Q.7

Do you have any comments on how the design and overall impression created by an online platform's content could trigger the Suitability Requirement?

Answer to Q.7:

The design and overall impression of the platform should be fair to eyes of the clients such that clients can make an impartial decision on the investment products.

Q.8

Do you have any comments on the above examples of when the posting of materials on online platforms would or would not amount to a solicitation or recommendation?

Answer to Q.8:

On example (2) when Suitability Requirement is triggered: If there is no "Don't Miss out!" or "Act Now" in the research report, will it trigger Suitability? On example (3) when Suitability is triggered: If there is no accompanying statement of "product of risk rating X may suit you...", will this trigger Suitability?

Q.9

Are there any examples not mentioned above that may suggest that the content or presentation of materials would amount to a solicitation or recommendation? Please explain your view.

Answer to Q.9:

The examples are as follows:

- I. Mere posting of investment research / advisors' view on a particular product (e.g. equity / bond recommendations);
- II. Posting of Macro-economic view on the platform;
- III. Posting of FX views on the platform;

Q.10

Do you have any view on how risk analysis assessments and client profiling should be conducted and the quantitative and qualitative factors that any risk methodology should take into account?

Answer to Q.10:

Both quantitative and qualitative views should be taken into account on risk analysis assessments and client profiling. The questionnaires should not be biased towards or favour a particular risk class.

Q.11

Do you have any comments on the definition of a complex product, and the considerations that should be taken into account in determining whether a product is complex?

Answer to Q.11:

Buying protective "Change of Control" put may not be considered as a "derivative". Simple Callable bond may not be classified as complex.

Q.12

Do you have any comments on the list of investment products that are considered to be "non-complex"?

Answer to Q.12:

More definitions or examples should be given to non-complex bonds.

Q.13

Do you have any comments on the list of examples of investment products that are considered to be “complex”? Please explain your view.

Answer to Q.13:

Buying protective “Change of Control” put should not be considered as a “derivative” and simple Callable bond may be classified as non-complex.

Q.14.

In the online environment, do you think that risks arising from the sale of complex products should be addressed by requiring Platform Operators to ensure transactions in complex products are suitable for clients? Please explain your view.

Answer to Q.14:

Potentially, financial institutions may direct clients to use online platform in order to circumvent Suitability Requirement.

Q.15

As the SFC’s concern arises from the sale of complex products, do you agree that the same requirement to ensure suitability should also apply to offline sales of complex products? Please explain your view.

Answer to Q.15:

We agree. There could be a loophole for financial institutions to ask clients to go online for the execution of complex products. Thus, same requirement should be enforced to protect investors.

Q.16.

Are there any other additional or alternative protective measures that should be introduced for the sale of complex products online?

Answer to Q.16:

Product brochures on complex products should be made available to investors.

Investor training should be provided first before they are eligible to buy investment products online.

Q.17

Are there any types of investment products (eg, accumulators) that should not be made available on online platforms even where the Platform Operator is required to ensure suitability?

Answer to Q.17:

As long as adequate disclosure, training and risk profiling are provided, all types of products should be made available online. This should be the market trend and it helps to take full benefits of automation and fin-tech available to the Platform Operators.

Q.18

Do you think the items of minimum information set out in Appendix 4 are sufficient and appropriate? Please explain your view.

Answer to Q.18:

The following information should also be provided:

1. Potential maximum drawdown of the complex products
2. Max Bid-ask spread if unwind.

Q.19

Do you have any comments on the proposed warning statements set out in Appendix 4 that should be made on an online platform?

Answer to Q.19:

It should be enough.

Q.20

Do you think a 12-month transition period is appropriate? If not, what do you think would be an appropriate transition period? Please set out your reasons.

Answer to Q.20:

Depending on the scale of operations, twelve to eighteen months can be considered.

End