



By email (enfconsultation@sfc.hk)

12 August 2022

Our Ref.: C/CFC, M134987

The Securities and Futures Commission
54/F, One Island East
18 Westlands Road, Quarry Bay
Hong Kong

Dear Sirs,

Re: Consultation Paper on Proposed Amendments to Enforcement-related Provisions of the Securities and Futures Ordinance

The Hong Kong Institute of CPAs' Corporate Finance Committee ("CFC") has considered the Consultation Paper on Proposed Amendments to Enforcement-related Provisions of the Securities and Futures Ordinance ("CP"), issued by the Securities and Futures Commission ("SFC"), on 10 June 2022.

In principle, we support measures to strengthen protection of the interests of the investing public and, at the same time, uphold the reputation of Hong Kong's financial markets, including through effective enforcement action. At the same time, we have some comments on the details of the proposals in the consultation paper, as indicated below.

Question 1 - Do you agree with: (i) the proposal to amend section 213 of the Securities and Futures Ordinance ("SFO") to expand the basis on which the SFC may apply to the Court of First Instance for remedial and other orders after having exercised any of its powers under section 194 or 196 of the SFO against a regulated person, and; (ii) the proposed consequential amendments to section 213(1), (2), (7) and (11)? Please explain your view.

We agree with the proposal and the proposed consequential amendments on the basis that they would give the SFC the power to require a regulated person, who has been found guilty of misconduct, or not to be a fit and proper person to remain a regulated person under Section 194 or 196 of the SFO, to take any steps to restore, compensate or otherwise protect the interests of investors or clients who may have been adversely affected by the regulated person's conduct. This will enhance the SFC's ability to act as the protector of the collective interests of investors.

Question 2 - Do you have any comments on the proposed consequential amendments to section 213(3A) in respect of open-ended fund companies? Please explain your view.

We agree with this proposal.

Question 3 - Do you agree with the proposal to amend the exemption set out in section 103(3)(k) and the consequential amendments to section 103(3)(j)? Please explain your view.



We agree, in principle, with underlying aim of the proposal that unrestricted advertisements of investment products, which are or are intended to be sold only to professional investors (“PIs”), as defined, should not be issued to the general public without the SFC’s approval. However, it may be going too far to propose that such advertisements “*may only be issued to PIs who have been identified as such in advance by an intermediary through its know-your-client and related procedures, regardless of whether or not such an intention has been stated on the advertisements*”, as suggested in paragraph 28 of the CP.

Unless authorised by the SFC, this would seem to preclude, among other things, advertising by an intermediary aimed at other PIs that are not already existing clients. If, instead, it is required to be made very clear, e.g., in a relevant advertisement on a website, that the investment products advertised are intended for, and available to, PIs only, would that not be sufficient? Alternatively, the SFC could indicate that, generally, it will authorise advertisements to a wider audience, provided that they carry prominently a suitable “health warning” that the investment products being advertised are available only to PIs.

It is stated in paragraph 26 of the CP that:

“Unauthorised advertisements of investment products which may not be suitable for retail investors may be issued to the general public even though the products are intended for sale only to PIs. As a result, retail investors may be exposed to unauthorised offers or solicitations to invest in risky or complex products which are unsuitable for them.”

As retail investors will not be eligible to invest in such products in any case, more information should be provided regarding whether the SFC has come across many instances of retail investors being solicited to invest in these high-risk products illegally, or whether this proposal is being put forward primarily as a preventative measure. Clearly, if there is evidence of retail investors being induced to buy investment products intended only for PIs, then strong enforcement action should be taken against the perpetrators.

We also take this opportunity to reiterate a recommendation that we have made on previous occasions, namely, that the definition of “Individual Professional Investor” is in need of review. As the CFC has pointed out in certain responses to consultations conducted by the Hong Kong Stock Exchange, there is a need to update the definition, given that the size of investment portfolio that qualifies an individual to be categorised as a “PI”, i.e. not less than HK\$8 million, has not been increased for almost 20 years. It is now equivalent to no more than the value of a small property in Hong Kong. Moreover, a “portfolio” could be merely a time deposit at a bank. Persons holding this amount of assets may have very limited knowledge about investments and, as such, their interests should be adequately protected. The definition of an individual PI, therefore, should be reviewed.

As regards the proposal in paragraph 29 of the CP, relating to the exemption for advertisements for investment products sold or intended to be sold only to persons outside Hong Kong, under section 103(3)(j) of the SFO, the recommendation is not clear. The CP states that as the section “*is phrased in terms which are identical to the PI exemption, the SFC considers that for good order, this provision should be amended in identical terms for consistency and to avoid confusion*”. Does this mean



that the SFC is proposing that such advertisements should be issued only to investors that have been identified as being outside of Hong Kong, and if so how is it envisaged that this would be effected in practice? Is it intended to refer to residing outside Hong Kong?

As for advertisements for products intended only for PIs, we would suggest that it should be sufficient if it is made very clear in any relevant advertisement that the investment products are intended for and available only to persons outside Hong Kong; or, at least, the SFC should indicate that it will generally authorise advertisements to a wider audience, provided that they carry an appropriate and prominent warning. In addition, the term “persons outside Hong Kong” needs to be clearly defined.

Question 4 - Do you agree with the proposal to expand the scope of insider dealing provisions of the SFO to cover insider dealing perpetrated in Hong Kong with respect to overseas-listed securities or their derivatives? Please explain your view.

Question 5 - Do you agree with the proposal to expand the scope of insider dealing provisions of the SFO to cover insider dealing perpetrated outside of Hong Kong, if it involves any Hong Kong-listed securities or their derivatives? Please explain your view.

We agree with the proposal to expand the scope of the insider dealing provisions in the SFO to cover insider dealing perpetrated outside of Hong Kong, if it involves any Hong Kong-listed securities or their derivatives. Without this amendment, it would be relatively easy to circumvent the provisions.

We also understand the rationale for the proposal to extend the SFC’s powers to insider dealing perpetrated in Hong Kong with respect to overseas-listed securities or their derivatives, particularly in view of the Stock Connect, and the possible expansion of such arrangements in future. We also note that the SFC refers to similar powers in place in Australia, United Kingdom and Singapore, in paragraphs 44-46 of the CP.

At the same time, the latter proposal may not be entirely uncontroversial and, prima facie, the principal responsibility for pursuing insider dealing on overseas markets lies with the regulatory or law enforcement authorities in those markets. There should be no debate about the SFC ensuring that it has all the necessary powers to gather evidence, etc., in order to assist overseas authorities to pursue insider dealing on their markets, where the conduct has taken place in Hong Kong, if requested to do so. The question is only whether it is also necessary to take a further step beyond this to enable the SFC to pursue such cases directly in Hong Kong.



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Should you have any questions on this submission, please feel free to contact me at the Institute on 2287 7084 or at <peter@hkiipa.org.hk>.

Yours faithfully,

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PMT/NCL



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