



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

This module should be read in conjunction with the [Introduction](#) and with the [Glossary](#), which contains an explanation of abbreviations and other terms used in this Manual. If reading on-line, click on blue underlined headings to activate hyperlinks to the relevant module.

Purpose

To describe the HKMA's approach to supervising the regulated activities of AIs that are registered with the SFC under the Securities and Futures Ordinance

Classification

A statutory guideline issued by the MA under the Banking Ordinance, §7(3)

Previous guidelines superseded

Guideline 13.1 "Supervision of Exempt Dealers" dated 28.12.95;

Circular¹ "SFC's Client Identity Rule" dated 09.03.99;

Circular "Code of Conduct for Persons Registered with the SFC" dated 09.12.99;

Circular "Securities (Margin Financing) (Amendment) Ordinance 2000" dated 01.06.00;

Circular "Electronic Initial Public Offering ("eIPO")" dated 16.08.00;

Circular "Amendments to SFC's Client Identity Rule and Policy" dated 25.07.00;

Circular "The Revised Code of Conduct for Persons Registered with the SFC" dated 16.03.01;

¹ Note that this and the other circulars subsequently listed are those issued by the HKMA. Circulars issued by the SFC mentioned in their titles remain in force until revoked by the SFC.



Supervisory Policy Manual

SB-1	Supervision of Regulated Activities of SFC-Registered Authorized Institutions	V.2 – 27.05.16
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Circular “Fit and Proper Criteria for Staff of Authorized Institutions that are Exempt Dealers” dated 21.03.01;

Circular “Amendments to Guidance Note on Competence and Guidance Note on Continuous Professional Training issued by the SFC” dated 13.08.01;

Circular “Circular issued by the SFC regarding compliance with section 79(1) of the Securities Ordinance” dated 16.10.01;

Circular “Circular issued by the SFC regarding Equity-linked Instruments” dated 10.12.01;

Circular “Marketing of Collective Investment Schemes (CIS)” dated 29.11.02 and

SB-1 “Supervision of Regulated Activities of SFC-Registered Authorized Institutions” (V.1.) dated 28.03.03.

Application

To all AIs that are registered with the SFC under the Securities and Futures Ordinance

Structure

1. Introduction
 - 1.1 Terminology
 - 1.2 Registration with the SFC and scope of regulated activities
 - 1.3 Cooperation between the HKMA and the SFC
2. Supervisory approach
 - 2.1 General
 - 2.2 Guidelines and supervisory standards
 - 2.3 On-site examinations
 - 2.4 Off-site reviews
3. Legal requirements
 - 3.1 The Banking Ordinance



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

- 3.2 The Securities and Futures Ordinance and major subsidiary legislation
 4. Major regulatory requirements
 - 4.1 General
 - 4.2 Fit and Proper Guidelines, Guidelines on Competence and Guidelines on Continuous Professional Training
 - 4.3 Code of Conduct for Persons Licensed by or Registered with the SFC (SFC Code)
 - 4.4 Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC
 - 4.5 Client Identity Rule Policy
 - 4.6 Regulatory requirements for selling of investment products
 - 4.7 Other major regulatory requirements for regulated activities
 - 4.8 Regulatory requirements for prevention of money laundering and terrorist financing
 5. Reporting of certain events
 6. Disciplinary actions
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1. Introduction

1.1 Terminology

1.1.1 In this module:

- “associated entity” has the meaning set out in Schedule 1 to the Securities and Futures Ordinance. In broad terms, an associated entity of a RI refers to a company which is in a controlling entity relationship (as defined in the Securities and Futures Ordinance)



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

with the RI, and receives or holds in Hong Kong client assets of the RI.

- "executive officer" has the meaning set out in §2 of the Banking Ordinance. Essentially, an executive officer is an individual appointed by a RI to directly supervise the conduct of one or more regulated activities of that RI. Such officer must have received prior written consent from the MA;
- "intermediary" means a licensed corporation or a registered institution under the Securities and Futures Ordinance;
- "licensed corporation" means a corporation which is granted a licence by the SFC under §116 or §117 of the Securities and Futures Ordinance;
- "misconduct" for the purposes of Part IX of the Securities and Futures Ordinance has the meaning set out in §193 of that Ordinance;
- "misconduct" in relation to a relevant individual and for the purposes of §58A of the Banking Ordinance has the meaning set out in §58A(6) of that Ordinance;
- "misconduct" in relation to an executive officer and for the purposes of §71C of the Banking Ordinance has the meaning set out in §71C(12) of that Ordinance;
- "regulated function" in relation to a regulated activity has the meaning set out in §20(10) of the Banking Ordinance. It basically refers to any function performed for or on behalf of or by an arrangement with a RI relating to the regulated activity, other than work ordinarily performed by an accountant, clerk or cashier;
- "related corporation" has the meaning set out in Schedule 1 to the Securities and Futures Ordinance;



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

- "relevant individual" has the meaning set out in §20(10) of the Banking Ordinance. In generic terms, a relevant individual is an individual who carries out any regulated function in one or more regulated activities of a RI. An executive officer is therefore a relevant individual;
- "RI" means an AI that is a registered institution under the Securities and Futures Ordinance;
- "securities" has the meaning set out in Schedule 1 to the Securities and Futures Ordinance;
- "SFC" means the Securities and Futures Commission;
- "SFC Code" means the Code of Conduct for Persons Licensed by or Registered with the SFC, issued and updated by the SFC from time to time; and
- "structured product" has the meaning set out in Schedule 1 to the Securities and Futures Ordinance.

1.1.2 The explanations of legal terms given above and the summaries of legal and regulatory requirements provided in the remainder of this module are for readers' reference and guidance only. Legal advice should be sought where precise interpretation is required.

1.2 Registration with the SFC and scope of regulated activities

1.2.1 Under §119 of the Securities and Futures Ordinance, the SFC may, upon application by an AI, register the applicant for carrying on one or more regulated activities specified by the SFC.

1.2.2 For definitions of each of the regulated activities, refer to Schedule 5 to the Securities and Futures Ordinance.

1.2.3 To apply for registration, variation of regulated activity under §127 of the Securities and Futures Ordinance, or modification or waiver of a condition imposed on the registration under §134 of the Securities and Futures



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

Ordinance, an AI needs to complete the specified forms and submit them, together with the required supporting documents, to the SFC. To facilitate planning, applicants should notify the HKMA of their intended application in advance.

- 1.2.4 Every RI also needs to appoint at least two executive officers to directly supervise each regulated activity that is the subject of its registration. It is a statutory condition of registration under Part V of the Securities and Futures Ordinance that, in relation to each regulated activity, there is **at least one executive officer available at all times** to supervise the business of that activity. The executive officers must obtain the MA's written consent and applications should be submitted directly to the HKMA.
- 1.2.5 In deciding whether to register or refuse to register an AI, the SFC will refer the application to the MA, will have regard to any advice given by the MA and may rely wholly or partly on that advice in making its decision.
- 1.2.6 In advising the SFC whether he is satisfied that the applicant is fit and proper to be registered for the regulated activities concerned, the MA will take into account the factors set out in §129 of the Securities and Futures Ordinance. The HKMA will also make reference to any relevant rules, codes, guidelines or guidance issued by the SFC. In practice, the HKMA will evaluate the application taking into account matters such as the AI's previous experience in the activities, management capabilities, controls and resources.

1.3 Cooperation between the HKMA and the SFC

- 1.3.1 While the ultimate responsibility for the regulation of intermediaries in the securities market rests with the SFC, the HKMA is the front line supervisor for RIs and is responsible for the day-to-day supervision of the regulated activities of RIs under the regulatory regime stipulated in the Securities and Futures Ordinance and the Banking Ordinance. §5(3) of the Securities and Futures Ordinance



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

provides, among other things, that the SFC, in performing any of its functions in relation to any RI, may rely, in whole or in part, on the supervision of such RI by the MA.

- 1.3.2 The HKMA and the SFC co-operate in the exercise of various statutory responsibilities and powers in relation to the supervision of RIs' conduct of regulated activities, including registration, examinations, investigations and disciplinary actions, in accordance with the Securities and Futures Ordinance and the Banking Ordinance.
- 1.3.3 A Memorandum of Understanding (MoU) has been signed between the HKMA and the SFC to set out the operational details relating to the respective roles and responsibilities of the two regulators in respect of the securities supervisory regime, and to strengthen co-operation between them. The MoU has been posted on the public website of the HKMA.
- 1.3.4 Under §120 of the Banking Ordinance the MA has the right to exchange information about the regulated activities of RIs with the SFC. Issues of supervisory concern involving the regulated activities of RIs are also discussed in the regular meetings between the two regulators under the MoU. Complaints received by the SFC involving RIs are forwarded to the HKMA for follow up.

2. Supervisory approach

2.1 General

- 2.1.1 Pursuant to §7 of the Banking Ordinance, one of the functions of the MA is to take all reasonable steps to ensure that the businesses of AIs are carried on with integrity, prudence and the appropriate degree of professional competence. Further, the MA's mandate is to promote and encourage proper standards of conduct and sound and prudent business practices amongst AIs.
- 2.1.2 In its efforts to enhance bank customer protection, the HKMA takes into account the G20 High-level Principles on Financial Consumer Protection. These principles, which



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

include disclosure and transparency, and responsible business conduct, have been incorporated in the Code of Banking Practice (“Code”) issued jointly by the Hong Kong Association of Banks and the DTC Association, and endorsed by the HKMA. The Code applies to the overall relationship between AIs and their customers in Hong Kong, and should be observed by AIs in dealing with and providing products and services to their customers. The HKMA has also worked closely with the banking industry to promote customer-centric culture and appropriate values that are consistent with the goal of ensuring sustainable long term growth of the business, which in turn help foster proper business conduct of AIs to take due care of customers’ interests.

- 2.1.3 In the context of regulated activities, the HKMA performs the role of front line supervisor and supervises RIs’ compliance with all relevant requirements, in order to provide an appropriate degree of protection to investors.
- 2.1.4 In practice, a RI’s board² and management bear the primary responsibility for putting in place sound controls and systems commensurate with the RI’s risk profile for properly managing the risks associated with the activities. They have the responsibility of, among others, protecting their customer interests, and are expected to play a proactive role in ensuring effective risk management and instilling customer-centric culture in the RI. Meanwhile, the HKMA monitors RIs’ compliance with relevant laws and regulatory standards, promotes good corporate governance and risk culture, and takes a range of supervisory and enforcement actions to address issues identified.
- 2.1.5 The HKMA adopts a risk-based supervisory approach and measures that are appropriate and proportionate to the

² For a locally-incorporated AI, the board may delegate its oversight duties to designated board-level committee(s). As regards the Hong Kong operations of an overseas incorporated AI, the term “board” generally refers to the local senior management of the AI under the scrutiny by its head office or regional headquarters.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

risks posed by RIs' regulated activities to the investing public. To ensure a fair and consistent supervisory process, generally speaking, there are three levels of measures that the HKMA would consider.

- 2.1.6 The first level of supervisory action is encouraging adoption of good practices. The HKMA would share good practices with the industry, and encourage RIs which have not yet adopted such good practices to do so, as far as practicable, to strengthen their practices and controls.
- 2.1.7 In addition, where the HKMA identifies management, system and / or control deficiencies of RIs in its supervisory process, the HKMA would consider the second and the third level of supervisory action, taking into consideration the nature and the severity of the deficiencies and implications.
- 2.1.8 The second level of supervisory action would be deployed where deficiencies in controls or practices of RIs are identified. Such deficiencies may include RIs' controls or practices that do not meet the regulators' expected standards. To address such deficiencies, the HKMA would consider various supervisory actions according to the specific circumstances of each case. Usually the RI concerned will be required to implement corrective actions to rectify the problem. Where the deficiencies suggest systemic issues, the RI concerned would be required to take more rigorous actions. Typically, it would be instructed to commission an independent review of the relevant controls and / or transactions according to the HKMA's requirements and take proper actions to address the review findings, including to address the aggrieved customers' concerns through such means as enhanced complaint handling procedures. The RI concerned might also be required to cease business practices that have caused serious supervisory concerns.
- 2.1.9 The third level of supervisory action would be triggered when the HKMA finds prima facie case of any ground for



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

discipline, such as misconduct by a RI and / or staff of a RI, or any of them ceasing to be a fit and proper person. In this situation, the HKMA would consider referring the case to its Enforcement Department for possible enforcement, and / or other appropriate follow-up actions, including referring the case to the SFC for investigation or recommending the SFC to take appropriate disciplinary actions.

- 2.1.10 The objective of the HKMA's enforcement work is to enforce the laws in Hong Kong governing the various operations of RIs. By taking effective enforcement and other appropriate follow-up actions against offenders, the HKMA strives to deter improper practices and behaviour in order to promote proper standards of conduct and prudent business practices among RIs, and to provide a measure of protection to depositors and investors.
- 2.1.11 The HKMA sets the enforcement standards with respect to banking conduct and practices under the Banking Ordinance. With respect to the regulatory regime under the Securities and Futures Ordinance and the Banking (Amendment) Ordinance 2002, the HKMA's enforcement standards mirror those adopted by the SFC. The overriding principles of the HKMA's enforcement processes are to ensure fairness, integrity and legal compliance, and to observe the due process.
- 2.1.12 While the HKMA will generally have regard to the above categorization of supervisory and enforcement actions, the actual measures to be taken in each case will be governed by the facts and circumstances of that case.

2.2 Guidelines and supervisory standards

- 2.2.1 The general approach adopted by the HKMA is to require RIs to comply with standards equivalent to those applied by the SFC to licensed corporations in their regulated activities.
- 2.2.2 The SFC has the power under the Securities and Futures Ordinance to issue, from time to time, rules on specific aspects of regulated activities and codes and guidelines in



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

relation to the carrying on of regulated activities. These rules, codes or guidelines, etc. are applicable to RIs insofar as the latter's regulated activities are concerned.

- 2.2.3 The SFC also issues circulars and Frequently Asked Questions from time to time providing further guidance and / or reminding intermediaries to comply with the relevant requirements of the SFC. The SFC consults the HKMA before making, publishing or amending any rules, codes, guidelines and etc. in so far as they apply to AIs for their being RIs or associated entities of intermediaries.
- 2.2.4 In interpreting the regulatory requirements of the SFC, the HKMA consults the SFC where appropriate and draws reference from the latter's experience in applying the requirements to licensed persons.
- 2.2.5 The HKMA may issue circulars, guidelines or guidance notes to RIs on the application of the Securities and Futures Ordinance, as well as the rules, guidelines and business conduct codes issued by the SFC, to the conduct of regulated activities by RIs.
- 2.2.6 In addition, the HKMA takes into account the unique circumstances of banking environment in the supervision of RIs' conduct of regulated activities. In particular, these include the special trust in banks by their customers; the increasing diversity of investment products with varying complexity and risks; and the growing public expectation for enhanced protection of bank customers. Against such background, the HKMA, as the regulator of AIs, may promulgate additional investor protection measures and requirements on top of the requirements of the SFC, by issuing circulars or guidelines to AIs from time to time. The HKMA consults the SFC regarding the circulars or guidelines, in so far as they apply to AIs in relation to carrying on of regulated activities.
- 2.2.7 In promulgating additional investor protection measures, the HKMA acknowledges that it is not appropriate to adopt a one-size-fits-all approach, taking into account the diversity



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

of bank customers which include relatively more sophisticated private banking customers and corporate customers. Therefore some enhanced investor protection measures are targeted at retail customers, whereas a more measured approach is adopted in enhancing investor protection for relatively more sophisticated private banking customers and corporate customers.

2.2.8 The HKMA will take into account a RI's compliance with the applicable legal and regulatory requirements in considering whether that AI satisfies the continuing authorization criterion in respect of adequate systems of control under para. 10 of the Seventh Schedule to the Banking Ordinance.

2.2.9 RIs should ensure their management and staff are well-informed of any new and the latest applicable legal and regulatory requirements.

2.3 On-site examinations

2.3.1 The HKMA conducts on-site examinations of the regulated activities of RIs. The focus of examination is mainly on regulatory compliance, internal controls and management supervision.

2.3.2 The objectives of the examinations are to enable the HKMA to understand the way in which regulated activities of the relevant RI are being conducted and to determine whether it has established appropriate and effective policies, procedures and controls to ensure compliance with the relevant legislation, rules, codes, circulars and guidelines issued by the SFC and the HKMA. RIs should be able to demonstrate that the relevant practices and procedures are well established and effectively applied.

2.3.3 The HKMA monitors the quality and competence of relevant individuals in its on-site examinations, taking into account the relevant provisions in the SFC's Fit and Proper Guidelines, Guidelines on Competence and Guidelines on



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

Continuous Professional Training (see subsection 4.2 below).

2.3.4 While the general power to conduct examination of AIs comes from §55 of the Banking Ordinance, the MA also has a specific power under §180 of the Securities and Futures Ordinance in respect of the inspection of RIs, their associated entities and related corporations. Refer to para. 3.2.3 below for more details.

2.4 Off-site reviews

2.4.1 To facilitate the continuing supervision of the regulated activities of RIs, the HKMA requires all RIs to submit semi-annually the information specified in the “Return of Securities Related Activities – MA(BS)14”. The return is designed to provide the HKMA with a general overview of the regulated activities being carried out by each RI as well as the trends in the industry.

2.4.2 The HKMA also requires RIs to submit regular and / or ad-hoc surveys or reviews for its off-site surveillance.

2.4.3 The HKMA may from time to time deploy mystery shopping programme to test check RIs’ practices.

2.4.4 Information collected from off-site surveillance will be used for prioritising supervisory resources to focus on potential issues (e.g. in determining the scope and focus of on-site examinations).

3. Legal requirements

3.1 The Banking Ordinance

Relevant individuals

3.1.1 Under §20(3) of the Banking Ordinance, every RI is required to submit specified particulars of its relevant individuals to the MA for the inclusion of such individuals’ particulars in



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

the HKMA Register³. In accordance with §20(4B) of the Banking Ordinance, such particulars are available for public inspection in the form of an on-line record on the HKMA public website.

- 3.1.2 A relevant individual does not have to be an employee of the RI. For example, the individual can be an employee of the RI's parent or group company that supports the conduct of a regulated activity of the RI.
- 3.1.3 Pursuant to §20(4) of the Banking Ordinance, RIs should give notice to the MA of any subsequent change in the information submitted for the purpose of the register. Such notification has to be made to the MA within 7 business days of the change. RIs should ensure they have put in place adequate policies and procedures to ensure compliance with this statutory requirement.
- 3.1.4 The reporting of the specified particulars of relevant individuals, including any subsequent change, and the removal of the specified particulars of relevant individuals, is effected by an on-line submission mechanism⁴.
- 3.1.5 Only those individuals whose names are entered in the HKMA Register may engage in any regulated function of any regulated activity of a RI. RIs should therefore submit the names and particulars of individuals for inclusion in the HKMA Register prior to such individuals engaging in such capacity.
- 3.1.6 RIs are expected to establish and maintain a database of the names and particulars of relevant individuals in order to facilitate reporting to the HKMA. To be in line with the information requirements for licensed representatives under the Securities and Futures (Licensing and Registration)(Information) Rules, such database should also

³ This refers to the register established and maintained by the MA under §20(1)(ea) of the Banking Ordinance.

⁴ All changes and removal relating to executive officers however should be notified to the HKMA by submissions in writing or such other means as the HKMA may indicate.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

include the following information or records, with supporting evidence for (d) and (e), for each relevant individual:

- (a) residential address;
- (b) correspondence address, if different from (a);
- (c) contact telephone number;
- (d) details of any registration or authorization (however described) to carry on a regulated activity by the SFC or a regulatory organisation or authority outside Hong Kong⁵;
- (e) any membership (however described) of a stock exchange or futures exchange in Hong Kong or elsewhere;
- (f) the types of services provided by the individual in relation to the conduct of regulated activities on behalf of the RI (which may be in the form of job description); and
- (g) any current directorship, partnership or proprietorship and the dates of appointment, or commencement, of any such directorship, partnership or proprietorship (as the case may be).

3.1.7 **It is a statutory condition of registration for a RI to ensure that its relevant individuals are fit and proper to be so engaged.** In determining whether an individual is and remains fit and proper to be a relevant individual, RIs should ensure that the individual concerned meets the Fit and Proper Guidelines, the Guidelines on Competence and the Guidelines on Continuous Professional Training issued by the SFC. Refer to subsection 4.2 below for specific guidance.

3.1.8 The HKMA will not assess the fitness and propriety of relevant individuals prior to placing their names on the register. As noted in para. 3.1.7 above, this responsibility

⁵ RIs should check whether the individual is permitted to take employment in Hong Kong.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

rests with the RI concerned. The HKMA will however conduct background checks on the relevant individuals with the SFC and, if necessary, other relevant (e.g. supervisory, law enforcement) agencies. RIs should inform all their relevant individuals that their personal information may be forwarded by the HKMA to other bodies for such purpose. The HKMA will treat all data about the individuals concerned in accordance with the Personal Data (Privacy) Ordinance. Any disclosure of such data to other persons will be in accordance with §§120 and 121 of the Banking Ordinance.

Executive officers

- 3.1.9 Under §§71C and 71D of the Banking Ordinance every RI shall appoint **not less than two executive officers to be responsible for directly supervising the conduct of each regulated activity**. Further, it is a statutory condition of registration under Part V of the Securities and Futures Ordinance that, in relation to each regulated activity, there is **at least one executive officer available at all times** to supervise the business of that activity. To ensure compliance, RIs should consider appointing more than two executive officers for each regulated activity where appropriate.
- 3.1.10 The same executive officers can be appointed for more than one regulated activity. They should be fit and proper, vested with sufficient authority and have received the consent of the MA. As executive officers are relevant individuals, their particulars also have to be entered in the HKMA Register.
- 3.1.11 Where a person has become or continues to be an executive officer of an AI in contravention of §71C, it is a ground for revocation of the AI's authorization under para. 15A of the Eighth Schedule to the Banking Ordinance.
- 3.1.12 In considering whether to grant consent to persons applying to become executive officers, the MA will take into account the factors set out in §129 of the Securities and Futures Ordinance and the requirements stipulated by the SFC in



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

the Fit and Proper Guidelines and the Guidelines on Competence. Refer to subsection 4.2 below for specific guidance.

- 3.1.13 As a general guideline, if any of the individuals directly responsible for supervising the conduct of a regulated activity is the Chief Executive, an Alternate Chief Executive, or a Director of a RI, the HKMA would expect such person to be appointed as an executive officer. Where such appointments result in less than two executive officers for any regulated activity, the appointment of the remaining executive officer(s) should be based upon seniority. In other words, the executive officers for each regulated activity should be the relevant individuals in the highest rank according to the RI's internal ranking.
- 3.1.14 Notwithstanding these general guidelines, the MA must be satisfied, among other things, that the appointed executive officers are vested with sufficient authority within the RI for such purpose. The HKMA will take into account the size of the RI, the significance of the regulated activity in relation to the overall business of the institution, the management structure as well as the reporting line of the executive officers.
- 3.1.15 Where a person applies to become an executive officer for more than one regulated activity, the MA is unlikely to give consent in respect of all such regulated activities if there is potential conflict of interest. This may arise if, say, Type 6 and Type 9 regulated activities are supervised by the same individual at the same time. A possible exception is where the proposed executive officer comes from the very top level of management overseeing a substantial part of the AI's operations, e.g. the Chief Executive, an Alternate Chief Executive, or a Director.
- 3.1.16 RIs should note that it is a minimum authorization criterion under para. 4 of the Seventh Schedule to the Banking Ordinance for the MA to be satisfied that an AI has adequate systems of control to ensure that each person



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

who is, or is to be, an executive officer is fit and proper to hold that particular position.

Removal of relevant individuals (including executive officers) from their roles

3.1.17 Where a RI forms the view that a relevant individual is no longer fit and proper to be engaged in the conduct of any regulated activity, it should promptly make submission via the on-line mechanism to remove the individual's name from the HKMA Register within 7 business days. In the case of an executive officer, the RI should notify the HKMA by submission in writing or such other means as the HKMA may indicate within 7 business days.

3.1.18 Where

- a relevant individual is, or was at any time, guilty of misconduct; or
- the MA is of the opinion that a relevant individual is not, or has ceased to be, a fit and proper person in his capacity as that type of relevant individual,

the MA may, after consultation with the SFC, exercise his power under §58A of the Banking Ordinance to remove or suspend the name of the relevant individual concerned from the HKMA Register.

3.1.19 Where

- an executive officer is, or was at any time, guilty of misconduct; or
- the MA has ceased to be satisfied that an executive officer is a fit and proper person to be such type of officer or has sufficient authority within the RI concerned to be such officer,

the MA may, after consultation with the SFC, exercise his power under §71C of the Banking Ordinance to withdraw or suspend his consent.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

3.1.20 In addition, the MA may make recommendations to the SFC regarding the exercise of the latter's powers under the Securities and Futures Ordinance to impose other disciplinary measures on the relevant individuals (including executive officers) concerned. Refer to section 6 below for more details.

3.2 The Securities and Futures Ordinance and major subsidiary legislation

3.2.1 In general, RIs are subject to the provisions of the Securities and Futures Ordinance in the same way as licensed corporations in respect of their regulated activities. The major areas of difference, which arise from the need to avoid regulatory overlap, are:

- capital requirements – RIs are not subject to the Securities and Futures (Financial Resources) Rules; and
- handling of client money – RIs are not subject to the Securities and Futures (Client Money) Rules.

3.2.2 In particular, in the conduct of regulated activities, RIs and their relevant individuals are governed by statutory requirements including but not limited to:

- Rules made by the SFC under Part VI of the Securities and Futures Ordinance, which are also applicable to the associated entities⁶ of intermediaries -

Securities and Futures (Client Securities) Rules:

- These rules prescribe the manner in which RIs must treat and deal with client securities and securities collateral received or held in Hong

⁶ All associated entities of intermediaries are subject to the Securities and Futures (Associated Entities -- Notice) Rules in addition to the three rules made under Part VI of the Securities and Futures Ordinance mentioned below. Those associated entities that are not AIs are also subject to the Securities and Futures (Accounts and Audit) Rules.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

Kong in relation to the conduct of a regulated activity.

- The SFC has issued a guideline “Suggested Control Techniques and Procedures for Enhancing a Firm’s Ability to Comply with the Securities and Futures (Client Securities) Rules and the Securities and Futures (Client Money) Rules”. RIs should adopt those suggested controls relevant to compliance with the Securities and Futures (Client Securities) Rules.

Securities and Futures (Keeping of Records) Rules:

- The rules provide for RIs to keep specified records in relation to regulated activities.

Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules:

- The rules require RIs to provide specified documents to clients to inform them of transactions undertaken and / or assets held for them within specified time periods.

- Part VII of the Securities and Futures Ordinance -
 - rules and codes for business conduct in relation to regulated activities which are made by the SFC under §§168 and 169 respectively;
 - rules on the requirements for options trading made by the SFC under §173;
 - restrictions on short selling (§§170, 171 and 172);
 - restrictions on unsolicited calls (§174) ; and
 - prohibition on certain representations (§176).

Refer to the HKMA circular “Calls in Relation to Securities or Futures Products and Services” dated



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

13.01.03 for specific guidance on the restrictions on unsolicited calls.

- Rules made by the SFC under §397 of Part XVI of the Securities and Futures Ordinance. For example –

Securities and Futures (Professional Investor) Rules:

- The rules prescribe additional classes of persons as “professional investor” in terms of the value of assets they manage or have.

Securities and Futures (Licensing and Registration) (Information) Rules

- The rules supplement the regulatory regime in Part V of the Securities and Futures Ordinance. The rules aim to ensure that the SFC and the HKMA are provided with information required for proper consideration of applications under Part V of the Securities and Futures Ordinance, and that the information provided is updated to reflect major changes that occur.

To ensure compliance, RIs should study the relevant rules in detail and seek legal advice on the precise interpretation where necessary.

3.2.3 Under Part VIII, §180 of the Securities and Futures Ordinance, the MA as the relevant authority can authorize a person in writing to:

- (a) enter the premises of a RI or its associated entity;
- (b) inspect and make copies of records and documents relating to:
 - the business, or any transaction or activity undertaken in the course of (or which may affect) the business, conducted by the RI or the associated entity, or



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

- any transaction carried out by a related corporation of the RI or the associated entity; and
- (c) make inquiries of the RI or the associated entity (or a related corporation of the RI or the associated entity) concerning:
 - any record or document referred to in (b), or
 - any transaction or activity undertaken in the course of, or which may affect, the business conducted by the RI or the associated entity.

The purpose is to ascertain whether a RI or its associated entity complies with the applicable requirements in §180(2) of the Securities and Futures Ordinance.

3.2.4 While the SFC relies on the HKMA for the day-to-day supervision of the regulated activities of RIs, it may commission an investigation of matters relating to a RI under §182 of the Securities and Futures Ordinance, including where it:

- has reasonable cause to believe that:
 - (a) an offence under any of the relevant provisions (as defined in Schedule 1 to the Securities and Futures Ordinance) may have been committed;
 - (b) a person may have engaged in defalcation, fraud, misfeasance or other misconduct in connection with –
 - (i) dealing in any securities or futures contract;
 - (ii) the management of investment in any securities or futures contract;
 - (iii) offering or making any structured product or collective investment scheme; or
 - (iv) giving advice in relation to the allotment of securities, or the acquisition or disposal of, or investment in, any securities, structured



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

product, futures contract, or an interest in any securities, structured product, futures contract or collective investment scheme;

(c) market misconduct may have taken place; or

(d) a person's conduct of any of the activities referred to in (b)(i) to (iv) is not in the interest of the investing public or in the public interest;

- has reason to inquire whether any RI or relevant individual is or was at any time guilty of misconduct, or is not fit and proper to engage in regulated activities;
- has reason to inquire whether any condition under §104, §104A or §105 is being complied with; or
- decides to provide assistance to regulators outside Hong Kong under §186 in respect of the above matters.

Pursuant to §182(4) the SFC shall undertake prior consultation with the MA in respect of any investigation to inquire whether any RI or relevant individual is or was at any time guilty of misconduct, or is not fit and proper to engage in regulated activities.

4. Major regulatory requirements

4.1 General

4.1.1 The HKMA requires RIs to comply with all relevant legislation, rules and regulations and to conduct their regulated activities in a responsible, honest and business-like manner. Senior management should ensure that appropriate policies and procedures, management oversight, internal controls and staff training are in place for such purposes. Failure of any RI or relevant individuals to observe and abide by any applicable legal and regulatory requirement will call into question their fitness and propriety for the conduct of regulated activities, and may lead to disciplinary action.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

4.1.2 A general description of the major regulatory requirements applicable to the regulated activities of RIs and their relevant individuals is given in the following subsections. RIs and their relevant individuals should refer to the relevant documents for detailed requirements and ensure adherence to them. They are also advised to regularly visit the HKMA's website and the SFC's website for updates and Frequently Asked Questions on regulatory requirements.

4.2 Fit and Proper Guidelines, Guidelines on Competence and Guidelines on Continuous Professional Training

4.2.1 The Fit and Proper Guidelines describe the standards that the HKMA and the SFC apply when considering whether a RI is and remains fit and proper for registration. They also specify the standards for assessing the fitness and propriety of relevant individuals (including executive officers) to carry out regulated activities. These encompass areas such as financial status or solvency, educational or other qualifications or experience, ability to carry on regulated activities competently, honestly and fairly, as well as reputation, character, financial integrity and reliability.

4.2.2 The HKMA requires all executive officers to meet the fit and proper guidelines applicable to responsible officers of licensed corporations. All other relevant individuals of RIs should satisfy the guidelines for licensed representatives. As noted in para. 3.1.7 above, the obligation is on the RI to ensure that its relevant individuals are fit and proper.

Competence

4.2.3 Competence is one of the key elements in the fit and proper test. For a RI, competence is considered by reference to the institution's organisational structure and the combined competence of its personnel. One important factor is the policies and procedures on "Chinese Walls" to address potential conflicts of interest arising from carrying on more than one type of regulated activities (e.g. Type 6 and Type 9) concurrently. As a general guideline, RIs should not engage an individual in the conduct of multiple regulated



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

activities concurrently if there is potential conflict of interest. This may arise if, say, Type 6 and Type 9 regulated activities are conducted by the same individual at the same time.

4.2.4 RIs should ensure that all relevant individuals meet the competence requirements set out in the Guidelines on Competence. This means, among other things,

- acquiring a recognized industry qualification, or possessing a degree in a designated field⁷; and
- passing a local regulatory framework paper, unless the individual and the RI meet the exemption criteria relating to experience, scope of activities, regulatory support from other personnel, internal control etc as stipulated in the SFC Guidelines on Competence⁸.

4.2.5 Some important points to note in relation to competence examinations:

- RIs are required to ensure that an individual has passed the relevant industry and local regulatory framework papers before he can be engaged as a relevant individual, unless exempted as provided for in the Guidelines on Competence.

Recognized industry qualification and local regulatory framework paper examinations should be completed not more than 3 years prior to the date of engaging in a regulated function of any regulated activity, unless the individual has remained in the industry (either in Hong Kong or overseas) or can prove recent registration with a relevant overseas regulator.

⁷ This refers to a degree in Accounting, Business Administration, Economics, Finance or Law, or a degree in another field but with passes in at least 2 courses in the designated fields, or an internationally recognized professional qualification in Law, Accounting or Finance.

⁸ In this case, the individual should also complete an additional 5 hours of continuous professional training on local regulatory knowledge in the relevant regulated activity on a one-off basis, either within the preceding 6 months or within 12 months after the exemption.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

- Different regulated activities may require a pass in different papers of the recognized industry qualifications and the local regulatory framework papers. For details of the competence examination papers, refer to the Guidelines on Competence.
- 4.2.6 In line with the SFC’s treatment of licensed representatives, the HKMA will allow a six-month grace period for a relevant individual who has yet to pass the local regulatory framework paper but has otherwise satisfied the competence test. Such grace period should be regarded as a one-off concession and will not normally be allowed again in any future registration or application for consent to become executive officer, in respect of the same examination paper(s). In respect of these individuals, the relevant RI is responsible for:
- ensuring such individuals have met all other requirements under the SFC Fit and Proper Guidelines;
 - keeping proper records indicating that such individuals are subject to the six-month grace period; and
 - ensuring that the aforesaid records are under regular and independent review (which may be performed by internal audit or compliance personnel) and that prompt action is taken to remove an individual from the HKMA Register if that individual cannot obtain a pass in the local regulatory framework paper by the end of the six-month grace period.
- 4.2.7 If an individual applies to be an executive officer for Type 6 regulated activity and intends to give advice on matters falling within the ambit of the Codes on Takeovers and Mergers and Share Buy-backs (“codes-related matters”), he must satisfy the HKMA that he has sufficient experience in this area. For this purpose, the HKMA will take into account the views of the SFC. If the applicant cannot satisfy the HKMA that he has sufficient experience in this area, the



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

MA's consent (if granted) will be subject to a condition that the applicant cannot act as a sole executive officer of the RI in relation to codes-related matters. In the case where the applicant does not intend to give advice on codes-related matters, the MA's consent (if granted) will be subject to a condition that the applicant cannot act as an executive officer to give advice on codes-related matters.

Temporary engagement

4.2.8 In line with the SFC's granting of temporary licences for representatives under the Securities and Futures Ordinance, a RI may temporarily engage an individual in the conduct of a regulated function of one or more regulated activities (refer to the SFC's Licensing Information Booklet for restriction on the types of regulated activity applicable to temporary licences for representatives) provided that:

- the engagement is for a period not exceeding 3 months;
- such engagements of the same individual should not in total exceed 6 months in any period of 24 months;
- such individual carries on the relevant activity for or on behalf of the RI or one of its group companies principally in a place outside Hong Kong;
- the RI is satisfied that the individual is a fit and proper person to be so engaged for the regulated activity; and
- the RI must implement internal control procedures and maintain records to demonstrate that the above conditions have been satisfied.

4.2.9 The specified particulars of such temporarily engaged staff would also need to be included in the HKMA Register, i.e. they are also relevant individuals. It is therefore the responsibility of the RI to ensure that all temporarily engaged staff are fit and proper to be so engaged for the regulated activity. In assessing the competence of such



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

temporarily engaged staff, authorization by an overseas regulator and industry knowledge gained outside Hong Kong will be taken into account.

Continuous professional training

- 4.2.10 To provide assurance that relevant individuals remain competent on a continuing basis, they should receive continuous professional training (CPT) in accordance with the Guidelines on Continuous Professional Training. Such individuals need to attain at least 5 CPT hours per calendar year for each regulated activity in which they are engaging.
- 4.2.11 Relevant individuals who are under temporary engagement are not required to fulfil the CPT requirements since each period of temporary engagement cannot exceed 3 months.
- 4.2.12 The HKMA will not seek to pre-endorse internal training organised by RIs. The HKMA will monitor compliance with the CPT requirements during on-site examinations of the regulated activities of RIs.
- 4.2.13 RIs are responsible for requiring their relevant individuals to update their knowledge and skills continuously through CPT in order to maintain their professional competence and to remain fit and proper. The HKMA will review the fitness and propriety of RIs' relevant individuals in on-site examinations, and may impose higher requirements on CPT hours for individual RIs if it considers this necessary.

Setting up of policies and procedures and keeping of records

- 4.2.14 RIs should put in place adequate policies and procedures to ensure that their relevant individuals are and continue to be fit and proper, according to the Fit and Proper Guidelines, the Guidelines on Competence and the Guidelines on Continuous Professional Training. Controls should include, but are not limited to, the following:
- The responsibilities of relevant individuals should be clearly defined and supported by up-to-date job descriptions, organisation charts and levels of authority.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

- The qualities required for individual positions in terms of skills, knowledge, experience, and training etc. should be clearly defined.
- RIs should have clearly defined policies and procedures for satisfying themselves about the fitness and propriety of relevant individuals at the time of appointment or recruitment. The possible assessment procedures include:
 - obtaining a self-declaration from the individual regarding such matters that will require notification to the HKMA as mentioned in subsection 5.5 below;
 - inspection of the individual’s original documents to evidence educational or professional qualifications (including, where applicable, evidence of having passed the relevant recognized industry qualification and local regulatory framework paper) and membership of any professional bodies or associations;
 - checking public records for evidence of public reprimands, disciplinary actions, personal bankruptcy and judgement debts (and, if the individual is currently a licensed representative or a relevant individual, inspecting the SFC register or the HKMA Register respectively);
 - obtaining references from previous employers and from referees nominated by the individual; and
 - reviewing the record and past performance of the individual who is an existing employee.
- RIs should maintain records and documentary evidence in relation to their assessment in determining how each relevant individual meets the requirements of the Guidelines on Competence. The



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

records and documentary evidence should cover details (including the relevant dates) of the post secondary education attained, professional and vocational courses attended and qualifications achieved, as well as employment history. These should be made available for inspection when required by the HKMA.

- RIs should have clearly defined systems for appraising the performance of relevant individuals. Such systems should give due weight to compliance with internal guidelines and legal and regulatory requirements.
- RIs should design and implement a continuous training programme that best suits the needs of their relevant individuals. This should be subject to annual evaluation with a view to prioritising the training needs of their relevant individuals.
- Records and documentary evidence of attendance or completion of training should be maintained to record the CPT activities undertaken by each relevant individual. These should be kept for a minimum of 3 years and produced for inspection when required by the HKMA.
- There should be designated personnel responsible for ensuring all relevant individuals of the RI are fit and proper in accordance with regulatory requirements and internal guidelines.
- RIs should have clearly defined policies and procedures for investigating apparent breaches of internal guidelines or legal or regulatory requirements by relevant individuals or complaints about the conduct of such individuals. In the course of such investigation, a RI should conduct a thorough assessment to determine whether the individual is fit and proper. The assessment should be properly documented. Any doubt about the individual's fitness



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

and propriety should be cleared before he can be appointed as a relevant individual or allowed to carry on his existing duties as a relevant individual.

- There should be clearly defined policies and procedures for taking internal disciplinary action where this is appropriate.

4.2.15 RIs should also refer to the circulars and guidance issued by the HKMA or the SFC from time to time for other recommended controls in relation to registration and ensuring fitness and propriety of relevant individuals.

4.3 Code of Conduct for Persons Licensed by or Registered with the SFC (SFC Code)

4.3.1 The SFC Code governs the conduct of RIs and relevant individuals in carrying on regulated activities, and gives guidance relating to the practices and standards with which RIs and relevant individuals are ordinarily expected to comply. The SFC Code is principles-based and RIs are responsible for adoption of proper internal controls and risk management systems, having due regard to the nature, size and complexity of their regulated activities.

4.3.2 The SFC and the HKMA are guided by the SFC Code in considering whether a RI or a relevant individual satisfies the requirement that it is fit and proper to remain registered. A breach of the SFC Code will call into question the RI's or the relevant individual's fitness and propriety as such. Also, it will be a misconduct if in the opinion of the regulators it is or likely to be prejudicial to the interest of the investing public or the public interest (see §§58A(6) and 71C(12) of the Banking Ordinance and §193(1) of the Securities and Futures Ordinance).

4.4 Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC

4.4.1 These guidelines amplify para. 4.3 of the SFC Code, which deals with the requirement to have satisfactory internal



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

control procedures and financial and operational capabilities. They set out various key controls and attributes of an adequate internal control system, as well as possible effective methods of achieving these attributes.

- 4.4.2 The internal control needs of RIs may vary, depending upon each RI's particular circumstances, of which the HKMA will take into account when assessing the adequacy of the RI's internal controls.

4.5 Client Identity Rule Policy

- 4.5.1 This policy explains the client identity rule in para. 5.4 of the SFC Code. RIs should make reasonable efforts to establish and record the identity of customers (and the ultimate beneficial owners of accounts, if different) before entering into any transactions on their behalf. They should also provide the SFC, or the exchanges in Hong Kong ("the regulators" for this purpose) with this information within two business days if the regulators so request.

- 4.5.2 RIs should refuse the business of those persons who are not prepared to provide the client identity information to the regulators as requested under the policy.

4.6 Regulatory requirements for selling of investment products

- 4.6.1 There are various regulatory requirements relating to selling practices promulgated by the SFC, including the SFC Code. Among them, para. 5.2 of the SFC Code sets out one of the key investor protection obligations of RIs: Having regard to information about the client of which the RI is or should be aware through the exercise of due diligence, the RI should, when making a recommendation or solicitation, ensure the suitability of the recommendation or solicitation for that client is reasonable in all the circumstances. In May 2007, the SFC issued "Questions and Answers on Suitability Obligations" in order to assist licensed and registered persons who are engaged in financial planning and wealth management business activities to comply with the suitability obligations expected of them. RIs should adopt a



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

holistic approach when conducting suitability assessment, taking into account all relevant factors and circumstances of the client.

- 4.6.2 In addition, the HKMA has introduced a number of investor protection measures for enhancing RIs' sales process of investment products. Below are some key measures for retail banking customers:

HKMA circular "Implementation of recommendations in the HKMA's Report on Issues Concerning the Distribution of Structured Products Connected to Lehman Brothers"⁹ issued on 25.03.2009

- segregating the investment corner from the general banking service area and segregating staff that are involved in selling of investment products from staff involved in general banking business, so that there is no confusion for retail banking customers as to whether they are placing a deposit or making an investment; and
- audio recording the face-to-face sales process and client risk profiling process.

HKMA circular "Implementation of Pre-Investment Cooling-off Period for Retail Customers" issued on 20.05.2010

- implementing a Pre-Investment Cooling-off Period for unlisted structured products so as to allow retail banking customers with less sophistication at least 2 days to understand and consider the appropriateness of the proposed investment, and consult their family or friends before order placement.

- 4.6.3 Taking into account supervisory experience, market condition and feedback from banking industry and bank customers, the HKMA refines the regulatory requirements and provides clarification to facilitate compliance as and when appropriate, provided that the over-arching principles

⁹ Applicability of enhanced measures to sale of investment products to private banking customers and corporate customers is set out in HKMA circulars issued on 20.01.2012 and 20.12.2012 respectively.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

of conduct supervision and investor protection are not compromised. For example, audio recording of face-to-face sales process of certain plain vanilla investment products is not required provided that there is no mismatch between the product risk level and the customer's risk tolerance.

- 4.6.4 The HKMA has also issued a number of circulars to provide guidance to RIs on expected standards in selling certain specific investment products that warrant special attention, especially in relation to product due diligence, product risk disclosure and suitability assessment.
- 4.6.5 The SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products sets out the detailed product-specific requirements applicable to unit trusts and mutual funds, investment-linked assurance schemes and unlisted structured investment products. In particular, product summaries in the form of a Product Key Facts Statement ("Product KFS") shall be prepared for all these products authorized by the SFC. Save as otherwise provided in the applicable product codes, the Product KFS shall be a part of the offering documents of the product. RIs, as distributors, should distribute both the Product KFS and the offering documents to customers prior to or at the point of sale.
- 4.6.6 In addition, according to the SFC Code on Unit Trusts and Mutual Funds, for any customer who is not a holder of a particular CIS authorized by the SFC, no application form may be supplied unless accompanied by the offering document, as well as the scheme's most recent audited annual report and accounts together with any subsequently published semi-annual report.
- 4.6.7 RIs are required to act with due skill, care and diligence and in the best interests of their clients. RIs are therefore expected to be more vigilant in the dealing with the more vulnerable customers, where appropriate. Among others, RIs should allow vulnerable customers to choose during the



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

initial transaction whether they would like to (i) bring along a companion to witness the sales process and / or (ii) have a second front line staff member to handle the sales. The vulnerable customers can choose to have either, neither or both safeguards. Besides, RIs should not entice vulnerable customers to make hasty investment decisions.

4.7 Other major regulatory requirements for regulated activities

4.7.1 RIs should also ensure compliance with the following key SFC codes, guidelines and guidance:

- Guidelines for the Regulation of Automated Trading Services;
- Corporate Finance Adviser Code of Conduct;
- Codes on Takeovers and Mergers and Share Buy-backs;
- Fund Manager Code of Conduct;
- Code of Conduct for Persons Providing Credit Rating Services; and
- Circular to Product Providers of SFC-authorized unit trusts and mutual funds, SFC-authorized investment-linked assurance schemes and SFC-authorized unlisted structured investment products – Guidance on Internal Product Approval Process (dated 30.04.14), in so far as a RI is a relevant product provider.

The SFC has also issued, and issues from time to time, other guidelines, circulars and Frequently Asked Questions to provide guidance on expected standards in conducting various regulated activities. RIs and their relevant individuals are advised to regularly visit the SFC's website for updates on regulatory requirements.

4.8 Regulatory requirements for prevention of money laundering and terrorist financing



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

4.8.1 In addition to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance and the HKMA's Guideline on Anti-Money Laundering and Counter-Terrorist Financing, RIs and associated entities that are AIs are required to have regard to paras. 7.39 and 7.40 of the SFC's Guideline on Anti-Money Laundering and Counter-Terrorist Financing in identifying suspicious transactions in relation to securities, futures and leveraged foreign exchange businesses.

5. Reporting of certain events

5.1 Under §135 of the Securities and Futures Ordinance, a RI is required to notify both the SFC and the HKMA in writing of the following events and within the specified time limits:

- at least 7 business days' advance notice of any intended cessation of any regulated activity;
- at least 7 business days' advance notice of any intended change of address at which it proposes to carry on any regulated activity; and
- a notice (together with full description of the change) within 7 business days of any change in the information as specified in Part 2 of Schedule 3 to the Securities and Futures (Licensing and Registration)(Information) Rules.

5.2 Also, pursuant to §135 of the Securities and Futures Ordinance, an AI (regardless of whether it is a RI or not), where it is a substantial shareholder of a licensed corporation, is required to give a notice in writing (together with full description of the change) to the SFC within 7 business days of any change in the information as specified in Part 4 of Schedule 3 to the Securities and Futures (Licensing and Registration)(Information) Rules. The AI concerned should also report the information to the HKMA in parallel.

5.3 It should be noted that some of the rules made under the Securities and Futures Ordinance contain the specific requirement of notifying the SFC of a breach of certain provisions in such rules. AIs should



Supervisory Policy Manual

SB-1	Supervision of Regulated Activities of SFC-Registered Authorized Institutions	V.2 – 27.05.16
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study all the applicable rules to ensure compliance with their reporting obligations.

5.4 Every AI should notify the HKMA as soon as practicable of the breach of any provision of the Banking (Amendment) Ordinance 2002¹⁰, and the Securities and Futures Ordinance (including its subsidiary legislation), where the breach is committed by:

- the AI itself being an intermediary or an associated entity of another intermediary; or
- its associated entity.

5.5 In line with the reporting requirements imposed by the SFC on licensed representatives under the Securities and Futures (Licensing and Registration)(Information) Rules, RIs are required to notify the HKMA in writing within 7 business days upon knowledge of certain information (including any subsequent changes) of any of their relevant individuals. The required information is on whether or not the person is or has been, in Hong Kong or elsewhere:

- convicted of or charged with any criminal offence (other than a minor offence¹¹) whether or not evidence of such conviction is admissible in proceedings in Hong Kong or elsewhere;
- subject to any disciplinary action or investigation¹² by a regulatory body¹³ or criminal investigatory body¹⁴ (as the case may be);

¹⁰ Highlights of the provisions under the Banking (Amendment) Ordinance 2002 are set out in the HKMA circulars issued on 05.07.2002 and 07.03.2003.

¹¹ “Minor offence” means an offence punishable by a fixed penalty under the Fixed Penalty (Traffic Contraventions) Ordinance (Cap. 237), the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) or the Fixed Penalty (Public Cleanliness Offences) Ordinance (Cap. 570), or offence of a similar nature committed in a place outside Hong Kong.

¹² Subsection 5.5 does not include disclosure of information concerning an ongoing criminal investigation by a regulatory body or criminal investigatory body if such disclosure is prohibited by any statutory provision in Hong Kong or elsewhere. RIs are however required to notify the HKMA of the results of the investigation with 7 business days after they become aware of the completion of such criminal investigation.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

- subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance;
- a substantial shareholder or director of a corporation or business that is or has been subject to any disciplinary action or investigation¹² by a regulatory body¹³ or criminal investigatory body¹⁴ (as the case may be), or involved in the management of such corporation or business;
- a substantial shareholder or director of a corporation or business that is or has been subject to any order of the court or other competent authority for fraud, dishonesty or misfeasance, or involved in the management of such corporation or business;
- engaged in any judicial or other proceedings;
- a party to a scheme of arrangement, or any form of compromise, with his creditors;
- in default of compliance with any judgement or court order;
- a substantial shareholder or director of a corporation or business which was wound up otherwise than by way of a member's voluntary winding up, or involved in the management of such corporation or business;
- a partner of a firm which was dissolved other than with the consent of all the partners;
- bankrupt or aware of the existence of any matters that might render him insolvent or lead to the appointment of a provisional

¹³ "Regulatory body" includes the SFC, the MA, a recognized exchange company (as defined in Schedule 1 to the Securities and Futures Ordinance), any professional body or association, an examination authority, an inspector appointed under any enactment, and other equivalent bodies or persons, in Hong Kong or elsewhere.

¹⁴ "Criminal investigatory body" means the Hong Kong Police Force and the Independent Commission Against Corruption established under §3 of the Independent Commission Against Corruption Ordinance (Cap. 204), and public bodies in Hong Kong or elsewhere carrying out criminal investigations.



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

trustee of his property under the Bankruptcy Ordinance (Cap. 6);

- refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law;
- a substantial shareholder or director of a corporation that has been refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law, or involved in the management of such corporation;
- disqualified from holding the office of director; or
- a patient as defined in §2 of the Mental Health Ordinance (Cap. 136).

5.6 RIs should also refer to the SFC circular to intermediaries regarding compliance with notification requirements (issued on 11.05.2015), which elaborates the SFC's and the HKMA's expectation on how RIs should comply with notification requirements under the Securities and Futures Ordinance, the Securities and Futures (Licensing and Registration) (Information) Rules and the SFC Code. Among others, a RI should notify the SFC and the HKMA of an event where:

- it directly involves the RI or any of its relevant individuals and may have an impact on the fitness and propriety of the RI and any of its relevant individuals;
- it may have a significant impact on the operations or viability of the RI's corporate group as a whole; or
- it arises from a material failure of systems and controls that are applicable to the RI, even if the failure occurred outside of Hong Kong to other group entities.

Also, pursuant to para.12.5 of the SFC Code, RIs are expected to immediately notify the SFC and the HKMA of various events, including any actual or suspected material breach, infringement of or non-compliance with any law, rules and codes administered by



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

the SFC, as well as rules or requirements of other regulatory authorities.

- 5.7 RIs should have procedures and systems in place to meet the reporting requirements. It is expected that corporate groups should have effective internal systems and controls in place to ensure appropriate dissemination of relevant information to the RI from other group entities, wherever located. Besides, the requirements under subsection 5.5 above should be clearly communicated to all relevant individuals.

6. Disciplinary actions

- 6.1 Disciplinary actions in respect of RIs, their relevant individuals and persons involved in the management of their regulated activities are set out in Part IX of the Securities and Futures Ordinance and §§58A and 71C of the Banking Ordinance.
- 6.2 Under Part IX of the Securities and Futures Ordinance, the SFC may exercise any of the following powers where the above persons are or were at any time guilty of misconduct or considered to be not fit and proper:
- revocation or suspension of registration for all or part of the regulated activities (only applicable to RIs);
 - public or private reprimand;
 - prohibition from applying for licence or registration;
 - prohibition from applying for approval as an executive officer of a RI or a responsible officer of a licensed corporation (only applicable to individuals);
 - prohibition from having his name entered in the HKMA Register (only applicable to individuals); and
 - ordering the paying of a pecuniary penalty.
- 6.3 §§58A and 71C of the Banking Ordinance empower the MA to impose any of the following disciplinary sanctions on a relevant



Supervisory Policy Manual

SB-1

Supervision of Regulated Activities of SFC-Registered Authorized Institutions

V.2 – 27.05.16

individual (including executive officer) who is or was at any time guilty of misconduct or considered to be not fit and proper, or on an executive officer who is no longer considered to have sufficient authority within a RI to act in such capacity:

- removal or suspension of all or part of the relevant individual's information contained in the HKMA Register. This in effect prohibits the individual from engaging in any regulated function of any regulated activity of the RI, either permanently or temporarily; and
- in the case of an executive officer, withdrawal or suspension of the consent given by the MA.

6.4 The SFC and the MA are subject to the following statutory procedural requirements for the exercise of the above powers:

- before the exercise of any of such powers, the other regulator will be consulted and the person concerned will be given a reasonable opportunity to be heard; and
- where the regulator decides to exercise the relevant power, the person concerned will be informed of the decision by written notice.

6.5 Where the SFC and the MA have exercised the above powers, the SFC and the MA may disclose to the public details of the decision made, the reasons for which the decision was made, and any material facts relating to the case.

6.6 It is essential for the senior management to draw to the attention of their relevant individuals and persons involved in the management of the regulated activities that they shall be personally and legally liable to these disciplinary sanctions if they are found guilty of misconduct and / or considered to be not fit and proper.

6.7 The Securities and Futures Appeals Tribunal ("SFAT") has jurisdiction to review all decisions about disciplinary actions made by the MA and the SFC in respect of the regulated activities of RIs and their relevant individuals, upon appeal by the latter. The SFAT shall have at its disposal the full range of disciplinary sanctions



Supervisory Policy Manual

SB-1	Supervision of Regulated Activities of SFC-Registered Authorized Institutions	V.2 – 27.05.16
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administered by both regulators in considering an appeal. Being the single appellate body, the SFAT will ensure consistency in the nature and degree of disciplinary sanctions applied by the regulators in similar circumstances.

Contents	Glossary	Home	Introduction
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