



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Circular

30 December 2008

Circular to issuers of advertisements relating to SFC-authorized Collective Investment Schemes

This circular is directed to issuers (“**Issuers**”) of advertisements relating to SFC-authorized collective investment schemes (“**CIS**”) authorized under Code on Unit Trusts and Mutual Funds, Code on Investment-Linked Assurance Schemes, Code on Pooled Retirement Funds, and SFC Code on MPF Products (the “**Product Codes**”).

Background

Enhanced Disclosure Requirements

It is the primary obligation of the issuers of CIS to ensure that their offering documents continue to be up-to-date and contain sufficient information necessary for investors to make an informed decision regarding the investment and that their marketing materials issued are clear, fair and present a balanced picture with adequate and prominent risk disclosure. In view of the recent financial turmoil, the Commission has, through the issue of a circular on 3 October 2008 (the “**Oct 3 Circular**”) and a letter on 5 December 2008, reminded them of such obligations (together with the requirements under the Oct 3 Circular, known as the “**Enhanced Disclosure Requirements**”). To date, the Commission has authorised more than 80 new funds based on the Enhanced Disclosure Requirements.

Revised Advertising Guidelines

In January 2008, the Commission issued a consultation paper to propose streamlining of the pre-vetting of notices and advertisements of CIS authorised under the Product Codes for industry and public consultation (the “**Consultation Paper**”). Such consultation is part and parcel of the Commission's efforts to enhance disclosure, to codify the then existing regulatory practices as well as to help the industry move towards post-vetting of advertisements.

The Commission received full support from the industry during the soft and public consultation. The revised advertising guidelines, as contained in the Consultation Paper, were also tabled before the Committee on Unit Trusts (CUT) and Committee on Investment-Linked Assurance and Pooled Retirement Funds (ILAC) before they were approved by the Commission in June 2008 (the “**Revised Advertising Guidelines**”).

The Revised Advertising Guidelines were gazetted in July 2008 and have provided guidance to the industry in the following key areas: (i) requirements regarding performance presentation for the preceding 5 years, where performance information is shown in CIS marketing materials; (ii) disclosure of the name of the issuer of the advertisement to enhance transparency; and (iii) disclosure of special risks pertaining to the CIS. The Revised Advertising Guidelines are applicable to all advertisements relating to CIS authorised by the Commission under the Product Codes (collectively “**marketing materials**”). The streamlining of the pre-vetting of notices and advertisements of CIS authorised under the Product Codes took effect from 1 August 2008. However, it was agreed that the industry



should be given a transitional period to prepare for compliance with the Revised Advertising Guidelines. This allowed Issuers to continue to follow the advertising guidelines included in the respective Product Codes that were in effect prior to 1 August 2008 (the “**Pre-existing Advertising Guidelines**”) until 31 December 2008. It was intended that Issuers should comply with the Revised Advertising Guidelines from 1 January 2009 (the “**Commencement Date**”). However the Commission has subsequently received representations calling for a delay in the Commencement Date.

Industry representations

With the imminent approach of the Commencement Date, the industry has recently made representations to the Commission that it is not practicable for them to comply fully with the Revised Advertising Guidelines from the Commencement Date. In addition, some Issuers also indicated difficulties in ensuring compliance with the Enhanced Disclosure Requirements due to the unprecedented market situation. The Commission notes that certain Issuers have in fact adopted the Enhanced Disclosure Requirements in their existing marketing materials and these have been authorised.

The Commission's response

While the Commission understands that the current market conditions have placed considerable stress on the resources of Issuers, the Commission is of the view that disclosure is of paramount importance in order to uphold investor protection and market integrity. The Revised Advertising Guidelines and the Enhanced Disclosure Requirements play an important role in achieving these objectives.

Accordingly, the Commission has determined that, as a general principle, all marketing materials that will be or continue to be used by the Issuers for marketing CIS to the public on or after the Commencement Date must comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements. This general principle applies to all marketing materials regardless of whether they are subject to the Commission's authorisation prior to their issue or are not subject to such pre-vetting or prior authorisation requirement in reliance on an exemption under section 103 of the Securities and Futures Ordinance (the “**SFO**”).

However, recognizing the challenges that the industry is facing, the Commission is prepared to take the following administrative measures to address the industry's concerns without compromising investors' interests:

New marketing materials used by the Issuers in marketing CIS to the public

If an Issuer intends to issue new marketing materials which are to be used for marketing CIS to the public, the Revised Advertising Guidelines will apply from the Commencement Date. These new marketing materials should also meet with the standards stated in the Enhanced Disclosure Requirements. With effect from the Commencement Date, applications submitted for authorisation of new marketing materials will only be authorised if they comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements. The term “new marketing materials” means marketing materials which have not previously been used for marketing CIS to the public and includes any marketing materials used prior to the Commencement Date which are materially amended on or after the Commencement Date.



Phased application of the Revised Advertising Guidelines to existing marketing materials that continue to be used for marketing CIS to the public

(1) Stage 1 – Pre-existing Advertising Guidelines continue to apply until 31 March 2009

As regards existing marketing materials, a phased approach will be adopted to allow Issuers more time to amend existing marketing materials to comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements if those existing marketing materials are used in marketing CIS to the public after the Commencement Date. The term “existing marketing materials” means any marketing materials used prior to the Commencement Date, but excludes any marketing materials used prior to the Commencement Date which are materially amended on or after the Commencement Date.

During Stage 1, Issuers may continue to use existing marketing materials, that are already in compliance with the Pre-existing Advertising Guidelines, until 31 March 2009. Such Issuers must familiarize themselves with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements during Stage 1 so that they, and the marketing materials that they use, comply with the Revised Advertising Guidelines and the Enhanced Disclosure Requirements from 1 April 2009. Issuers are of course encouraged to comply with the Enhanced Disclosure Requirements and the Pre-existing Advertising Guidelines during Stage 1.

For those Issuers who continue to issue existing marketing materials that are in compliance with the Pre-existing Advertising Guidelines, they are urged to take proactive measures in enhancing investor education to make investors fully aware of the features and associated investment risks of the products that they market. In addition, training should be provided by the Issuers to sales staff and distributors so that, at the point of sale, they have the ability to communicate the features and associated investment risks of the products to both existing and new investors.

(2) Stage 2 – Starting 1 April 2009

Upon commencement of Stage 2, the Revised Advertising Guidelines will apply in full force to all existing marketing materials that continue to be used for marketing CIS to the public from that date. Those who fail to comply with the same may face enforcement action by the Commission. The Commission urges the Issuers to seriously assess their ability to comply as soon as possible.

Only in wholly exceptional circumstances will the Commission entertain applications for a further extension of time for compliance. In the most unlikely event that an Issuer foresees that it would encounter insurmountable difficulties in complying with the Revised Advertising Guidelines on the commencement of Stage 2, then may it submit an application to seek an extension of time for compliance for a specific period, providing cogent justification. Such application should in any event be submitted to the Commission by not later than 6 February 2009 (the “**Application**”).

The Commission will consider the merits of each Application, on a case by case basis, and in any event no extension would be given beyond 30 June 2009.



An Issuer that is making an Application should include, at least, the following information in its application: (i) the period for which an extension of time for compliance is sought; (ii) copies of the existing marketing materials which they would like to continue to be used for marketing CIS to the public upon expiration of the Stage 1 and the justification, with reasoned submission, as to why its circumstances are so exceptional that an extension should be granted; (iii) An explanation as to how the Issuer is going to ensure full compliance with Revised Advertising Guidelines by the end of the extension period; (iv) a list of priorities for authorisation of such existing marketing materials (for those requiring authorisation); (v) interim measures that the Issuer will be taking to ensure that investors are fully informed to make investment decisions before the existing marketing materials fully comply with the Revised Advertising Guidelines; and (vi) such other documentation that the Issuer considers appropriate.

The Commission continues to keep active and vigilant surveillance on marketing materials at all times and will continue to do so in monitoring the compliance with the phased approach now adopted in implementing the Revised Advertising Guidelines.

Issuers are reminded that if they fail to comply with the Revised Advertising Guidelines from the commencement of Stage 2 and no extension has been granted by the Commission or where one is granted, it has expired, they would be in breach and the Commission will not hesitate to take any necessary actions to ensure investors' interests are safeguarded. These may include, without limitation, the imposition of authorization conditions on individual Issuers and restricting their marketing materials from distribution to the public or soliciting new subscriptions for the relevant CIS. Issuers are further reminded that under the SFO, the making of misleading or deceptive statements in the marketing materials could attract civil liability and/or constitute a criminal offence.

Intermediaries that are involved in sales and marketing of CIS to investors should be aware of the impact of this circular and the phased approach taken in the implementation of the Revised Advertising Guidelines. It is also important that Intermediaries undertake proper product due diligence on the CIS to be marketed and that their sales staff and distributors thoroughly understand the risks of the products. Intermediaries should not simply rely on the marketing materials in marketing or selling products to the investing public.

Please contact the relevant case officer if you are in any doubt as to your obligations.

**Investment Products Department
Securities and Futures Commission**