



HONG KONG MONETARY AUTHORITY
香港金融管理局

Our ref : B1/15C
G16/1C

24 August 2018

The Chief Executive
All Authorized Institutions

Dear Sir / Madam,

Online Distribution and Advisory Platforms for Non-SFO-Regulated Structured Investment Products

I am writing to provide guidance on online distribution and advisory platforms for structured investment products not regulated by the Securities and Futures Ordinance (non-SFO-regulated structured investment products).

In September 2017, the Hong Kong Monetary Authority (HKMA) announced a number of initiatives to prepare Hong Kong to move into a New Era of Smart Banking and encourage the banking sector to embrace the opportunities brought about by the convergence of banking and technology. In particular, our Banking Made Easy initiative aims to minimise regulatory frictions to promote customers' digital experience, including online wealth management.

Following the issuance of the Guidelines on Online Distribution and Advisory Platforms (SFC's Guidelines) by the Securities and Futures Commission (SFC) on 28 March 2018, the HKMA consulted the banking industry in May 2018 on applying the same principles to online and offline distribution and advisory platforms for non-SFO-regulated structured investment products on a risk-based basis.

Taking into consideration feedback received, the HKMA has refined the proposals, and the detailed requirements for online distribution and advisory platforms for non-SFO-regulated structured investment products are set out in the **Annex**.

Authorized institutions (AIs) should implement the requirements for online platforms set out in this circular by 23 August 2019. Upon the finalisation of the proposed requirements applicable to offline sale of complex products by the SFC, the HKMA will issue guidance on the corresponding treatment for non-SFO-regulated structured investment products.

If you have any questions on this circular, please contact Ms Anita Chan on 2878-1538 or Ms Florence To on 2878-1582.

Yours faithfully,

Alan Au
Executive Director (Banking Conduct)

Encl.

c.c. SFC
(Attn: Ms Julia Leung, Deputy Chief Executive Officer and Executive Director (Intermediaries) and
Ms Christina Choi, Executive Director (Investment Products))

**Online Distribution and Advisory Platforms for
Non-SFO-regulated Structured Investment Products**

I. Core principles for operation of online platform and specific guidance on robo-advice

1. AIs should adopt the core principles (i.e. Chapter 2) and the specific guidance on robo-advice (i.e. Chapter 4) in the SFC's Guidelines for online distribution and advisory platforms for non-SFO-regulated structured investment products to the extent where relevant and appropriate.

II. Application of the Suitability Requirement for non-SFO-regulated structured investment products

2. Subject to streamlined arrangements set out in paragraphs 3 and 4 below, the HKMA expects AIs selling non-SFO-regulated structured investment products should adopt the Suitability Requirement set out in paragraph 5.2 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (SFC's Code of Conduct), the relevant guidance in Chapter 5 of the SFC's Guidelines and the relevant SFC's Frequently Asked Questions (FAQs)¹.

(i) Standardised Non-SFO-regulated Structured Deposits

3. Considering that some currency-linked deposits and interest rate-linked deposits have standardised features; are common to bank customers; and are not difficult for investors to understand, the requirements as set out in the SFC's Guidelines for derivative products traded on an exchange are considered as an appropriate reference point in respect of investor protection measures. Where there is no solicitation or recommendation, distribution of Standardised Non-SFO-regulated Structured Deposits (i) to customers having sufficient investment experience in the product²; (ii) with 100% principal

¹ FAQs on Triggering of Suitability Obligations, FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons and parts D and E of FAQs on the SFC's Guidelines.

² It refers to customers who have executed five or more transactions in the product of the subject transaction within the past three years. For the purpose of this investment experience assessment, currency-linked deposits with the same payout structure but linked to different single currency pair can be regarded as the same product. In other words, investment experience in principal-protected currency-linked deposits cannot be counted towards investment experience for non-principal-protected currency-linked deposits.

protection³; or (iii) in low concentration⁴ would not trigger the Suitability Requirement. AIs should follow the requirements in paragraph 5.1A and 5.3 of the SFC's Code of Conduct to ensure that the customer has knowledge of derivatives and sufficient net worth to be able to assume the risks and bear the potential losses⁵.

4. While product structures and features vary and keep evolving, an investment product can be considered as a Standardised Non-SFO-regulated Structured Deposit if it meets all of the following criteria:
 - (a) It is a deposit with an AI that falls within the meaning of “currency-linked instrument” / “interest rate-linked instrument” under Part 1 of Schedule 1 to the Securities and Futures Ordinance;
 - (b) It makes reference to a single major currency pair (HK dollar, US dollar, Euro, UK Pound Sterling, Australian dollar, New Zealand dollar, Canadian dollar, Swiss Franc, Japanese Yen, Renminbi (both CNY and CNH) and Singapore dollar) or interest rate only;
 - (c) It is not leveraged, i.e. investors will not lose more than the amount invested. Investing on margin should be regarded as leveraged; and
 - (d) It does not consist of a series of contracts or a series of settlements, where customers are obliged to purchase / sell / settle periodically within a specified period.
5. For distribution of Standardised Non-SFO-regulated Structured Deposits to customers without sufficient investment experience in the product; that are not

³ It means investors will receive at least 100% of the principal amount if the investors hold the investment until maturity and there is no issuer default.

⁴ “Low concentration” means investment in a specific product on a cumulative basis is within a reasonable threshold as determined by the AI. For the purpose of paragraphs 3 and 5 of this Annex, “low concentration” is assessed on a per currency pair basis or per interest rate basis (as the case may be). For guidance of concentration risk assessment, AIs can also refer to the relevant points of the SFC's FAQs on Compliance with Suitability Obligations by Licensed or Registered Persons and FAQs on the SFC's Guidelines.

⁵ For the purpose of paragraph 3 of this Annex,

- a customer having sufficient investment experience in the product, in general, will have met paragraph 5.1A of the SFC's Code of Conduct;
- in respect of paragraph 5.3 of the SFC's Code of Conduct, for a transaction with 100% principal protection or in low concentration; and does not involve leverage, in general, the customer can be regarded as having sufficient net worth to be able to assume the risks and bear the potential losses of trading in the products.

100% principal protected; and are not in low concentration, an AI should ensure that the transaction is suitable for the customer.

6. Following the existing requirements, solicitation, or provision of investment recommendation or advice on Standardised Non-SFO-regulated Structured Deposits will trigger the Suitability Requirement.

(ii) Other non-SFO-regulated structured investment products

7. Other non-SFO-regulated structured investment products (e.g. foreign exchange accumulators / decumulators issued by AIs; currency-linked notes issued by AIs; currency-linked deposits linked to non-major currency pair or linked to a basket of currencies; or hybrid currency and interest rate-linked deposits) are complex products, and AIs should ensure suitability irrespective of whether there is solicitation or recommendation.
8. A flowchart illustrating the application of Suitability Requirement on online platforms is contained in the **Appendix** for ease of reference. For the avoidance of doubts, AIs should also comply with other applicable regulatory requirements or guidance, for example, HKMA's circulars on accumulators / decumulators, Pre-investment Cooling-off Period, and Important Facts Statement (IFS), etc.

III. Minimum information and warning statements for non-SFO-regulated structured investment product

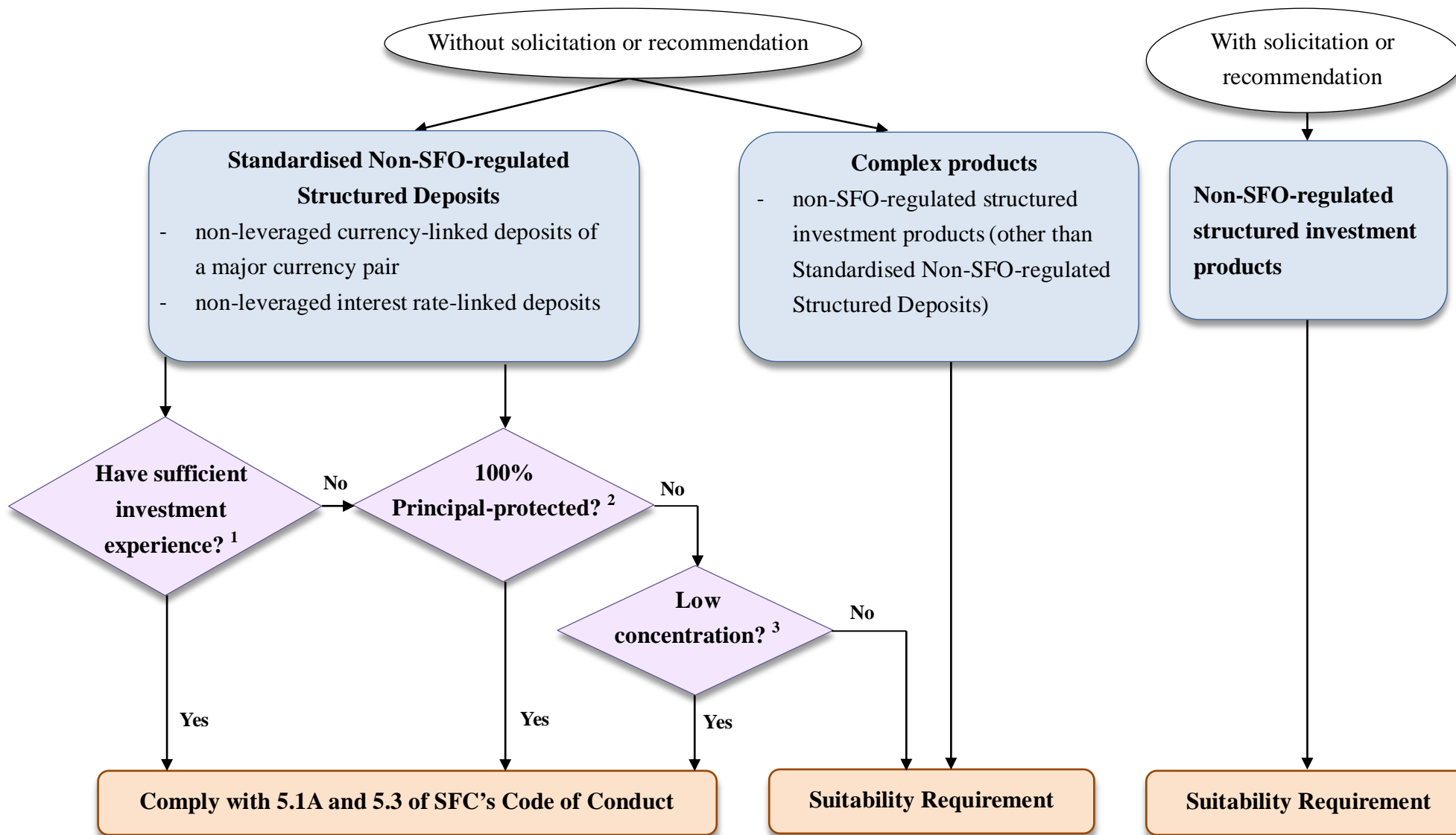
9. In respect of a non-SFO-regulated structured investment product (excluding Standardised Non-SFO-regulated Structured Deposits), AIs should provide sufficient information about the key nature, features and risks of the product to enable customers to understand the product before making an investment decision. AIs should also ensure that there are prominent and clear warning statement(s) on the online platforms to warn customers about the product prior to and reasonably proximate to the point of sale or advice. Reference can be made to a non-exhaustive list of examples of the minimum information and types of warning statements in the guidance "Minimum information to be provided and warning statements" issued by the SFC, where relevant.
10. Where the applicable minimum information and warning statements are contained in the IFS of a currency- / interest rate- linked product, posting of such IFS on the online platforms would generally satisfy this requirement.

IV. Exemptions for Institutional Professional Investors and Corporate Professional Investors⁶

11. AIs dealing with Institutional Professional Investors and Corporate Professional Investors in respect of sale of non-SFO-regulated structured investment products could adopt the exemptions stipulated in paragraph 15 of the SFC's Code of Conduct and paragraphs 6.3, 6.7 and 6.8 of the SFC's Guidelines, including the suitability requirement, minimum information and warning statements.

⁶ "Institutional Professional Investors" refer to that defined in the SFC's Code of Conduct. For the purpose of this circular, "Corporate Professional Investors" refer to those professional investors where AIs have complied with paragraphs 15.3A and 15.3B of the SFC's Code of Conduct.

Online Distribution and Advisory Platforms for Non-SFO-regulated Structured Investment Products



¹ It refers to customers who have executed five or more transactions in the product of the subject transaction within the past three years.

² It means investors will receive at least 100% of the principal amount if the investors hold the investment until maturity and there is no issuer default.

³ Meaning investment in a specific product on a cumulative basis is within a reasonable threshold as determined by the AI.