

Frequently Asked Questions on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds

The SFC provides basic information about post-authorization compliance issues of SFC-authorized unit trusts and mutual funds in frequently asked questions (FAQs) which are not exhaustive and for general reference only. Please note that all applications for authorization are considered on a case-by-case basis, and applicants should contact the SFC when in doubt.

Novel coronavirus (COVID-19)¹

	Question	Answer
1.	<p>Due to the extreme market volatility and uncertainty in local and international markets relating to the COVID-19 outbreak, can fund managers increase the swing factor to be applied on the net asset value (NAV) of their SFC-authorized funds beyond the maximum swing factor as disclosed in the funds' offering documents?</p> <p>Will such increase require prior SFC approval?</p>	<p>In view of the potential impact on, among others, the volatility and liquidity of the underlying invested assets of the SFC-authorized funds relating to the COVID-19 outbreak, fund managers should ensure that all assets of their funds are fairly and accurately valued and liquidity risk management tools (such as swing pricing or anti-dilution levy) are used appropriately. Fund managers must ensure fair treatment to all investors including redeeming investors and those remaining in the funds.</p> <p>Given the exceptional market circumstances, it is important that fund managers are sufficiently agile to respond to extreme market situations so that the funds can be managed in the best interests of investors. Fund managers may increase the swing factor beyond the maximum level that has been set out in the funds' offering documents as a temporary measure, without SFC's prior approval subject to the following conditions:</p>

¹ Extracted from FAQ 1, 2 and 3 under Section 3 of the Frequently Asked Questions on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds. Capitalised terms defined therein shall have the same meaning here (unless otherwise provided).

	Question	Answer
		<p>(i) the decision to revise the swing factor under the fund’s swing pricing mechanism must be duly justified (including a robust methodology that provides an accurate NAV which is representative of the prevailing market conditions) and is in the best interests of investors, following a robust internal governance process supported by proper records/documentations;</p> <p>(ii) the fund managers/the fund must notify existing and new investors (and, to the extent applicable, properly inform distributors of the fund) that a swing factor which exceeds the limit disclosed in the offering document may be used before applying the revised swing factor;</p> <p>(iii) the fund managers must be able to demonstrate and justify that the swing factor applied at any time was representative of the prevailing market conditions and was in the best interests of investors; and</p> <p>(iv) the revision and use of revised swing factor is permitted under the fund’s constitutive documents, and complies with the applicable laws and regulatory requirements imposed by their home regulators.</p> <p>To enable fund managers to apply the increased swing factor as efficiently as possible, fund managers may notify investors through the fund’s website and/or through the fund’s usual communication channels, and apply the revised swing factor with immediate effect (provided that the above conditions are met).</p> <p>Fund managers are required to give the SFC early alerts of any material issues affecting their SFC-authorized funds. As such, they must inform the SFC of the above as soon as practicable if they intend to increase or apply the swing factor exceeding the one that is disclosed in the offering documents. Notification to investors shall also be filed with the SFC.</p> <p>SFC may ask the fund managers to justify on an ex-post basis the level of the swing factor applied and to provide documentary evidence in relation to (iii).</p>

	Question	Answer
		This FAQ will also apply to anti-dilution levy in a similar manner.
2.	Can an SFC-authorized fund apply swing pricing mechanism under the proposed temporary measure in FAQ 1 above, if it has not disclosed in the offering document that swing pricing may be used?	<p>The temporary measure applies to funds which have already disclosed the use of swing pricing mechanism as a liquidity risk management tool in their offering documents.</p> <p>Funds which do not have such disclosure in their offering documents but which might wish to use swing pricing will be dealt with on a case by case basis. The SFC will need to better understand, among others, the circumstances as to why they need to apply swing pricing given that their offering documents have not disclosed this as well as other matters such as whether they are permitted to do so under relevant governing laws and constitutive documents and by their home regulators.</p> <p>Given the current market conditions, fund managers are urged to make proper assessment to ensure that investors' interests will not be prejudiced and investors are treated fairly at all times. Fund managers are strongly encouraged to consult the SFC if in doubt.</p> <p>This FAQ will also apply to anti-dilution levy in a similar manner.</p>
3.	Will the SFC implement any temporary relief measures as regards post-authorizations due to the operational difficulties relating to the COVID-19 outbreak?	<p>In view of the potential operational difficulties faced by fund managers during the COVID-19 outbreak, the SFC is implementing the following temporary relief measures to alleviate the administrative burden in respect of post-authorization matters.</p> <p>A) <u>Accepting documents by soft copy only</u></p> <p>Fund managers are allowed to submit documents by soft copy only for all applications and post-filings, including but not limited to documents submitted for fulfilment of post-authorization conditions.</p> <p>The official receipt date of an application or a post-filing shall be a business day on which the full and complete set of soft copy documents is received by the SFC.</p>

	Question	Answer
		<p><i>B) <u>Accepting un-signed documents</u></i></p> <p>We will accept submission of un-signed copies of the relevant application forms, filing forms, confirmations and other relevant documents (the “Relevant Forms”) provided that they are submitted with an email confirmation (from a person who meets the signatory requirements for the Relevant Forms) that such forms and documents in connection with the subject application or filing are in order.</p> <p>Fund managers are still required to submit (following existing protocol) the duly executed and signed Relevant Forms to the SFC as soon as practicable afterwards.</p>

Last updated: 1 April 2020