

Frequently Asked Questions relating to Structured Investment Products under the Code on Unlisted Structured Investment Products

This FAQ is prepared by the Structured Products Team of the Investment Products Division of the Securities and Futures Commission (“SFC”) and aims to provide basic information to market practitioners concerning the procedures for application for authorization under Part IV of the Securities and Futures Ordinance (“SFO”) in respect of unlisted structured investment products (and/or their relevant documents, invitations and advertisements) that are subject to the Code on Unlisted Structured Investment Products (“SIP” and “SIP Code” respectively).

Applicants are encouraged to contact the Structured Products Team if in doubt on any specific issues arising from the application / interpretation of the SIP Code or this FAQ. Please note that each application is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

Unless otherwise defined herein, all capitalised terms shall have the meanings given to such terms in the SIP Code.

Section 1 – Procedures of application for authorization

	Question	Answer
1.	When did the SIP Code take effect?	<p>The SIP Code (as part of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products, "Handbook") became effective upon its publication in the Government Gazette on 25 June 2010 ("Effective Date") (subject to modification and changes from time to time).</p> <p>The SIP Code immediately applies to:</p>

	Question	Answer
		<p>(a) an application to renew an authorization that existed before the Effective Date;</p> <p>(b) all applications in respect of which authorizations are not granted as at the Effective Date (irrespective of whether such applications are/were made before, on, or after, the Effective Date).</p>
2.	Upon the coming into effect of the SIP Code, is there a new set of procedures for application for authorization under Part IV of the SFO in respect of SIP (and/or their relevant documents, invitations and advertisements)?	Yes, as set out in this FAQ.
3.	To which applications do the application procedures in this FAQ apply?	The procedures set out under this FAQ apply to all applications received by the SFC on or after the Effective Date. All applications received by the SFC on or after 1 January 2014 will be processed according to the revised timelines, as referred to in question 9.
4.	What are the new application procedures?	<p>Generally, an application will only be taken up when an applicant has submitted a duly signed and completed Application Form, supported by <u>all</u> relevant documents, Form of Information and Undertakings and Compliance Checklist (see question 5 below for further details) to the SFC.</p> <p>If the SFC is not satisfied with the completeness or sufficiency of the information contained in the first submission package, the package will be returned to the applicant and the application will not be taken up. The SFC also reserves the right not to take up an application if such application is accompanied by documents that do not meet the requirements of the SIP Code in any material aspect. Otherwise, the application will be taken up within 2 business days of the submission (“Take-</p>

	Question	Answer
		<p>up Date”). The relevant case officer will issue an electronic-mail to the applicant (or its legal advisers) to inform the applicant that the SFC will process the application. The applicant is expected to submit the applicable application fee as mentioned in question 10 below as soon as practicable upon receipt of an acknowledgement of take-up from the SFC, and shall contact its SFC case team to discuss the payment arrangement. Once the application fee is paid, it will not be refunded.</p> <p>After the application is taken up, the relevant case team will proceed with reviewing the relevant documents submitted and provide its comments on the documents or matters relating to the subject application in discharge of the SFC’s regulatory functions. Without prejudice to the SFO and the Handbook, during the vetting process, the SFC may from time to time request for the submission of additional supporting information or documents (e.g. legal opinion or translation certificate) which it deems necessary for facilitating the SFC’s consideration in whether to grant the authorization or in exercise of any of its regulatory powers.</p>
5.	What documents do I need to submit with my application?	<p>Applicants are required to submit the following documents with the application:</p> <ul style="list-style-type: none"> (a) a duly signed and completed Application Form; (b) a duly signed and completed Checklist for Contents Requirement in Offering Documents for Unlisted Structured Investment Products (“Compliance Checklist”); (c) a duly signed and completed Form of Information and Undertakings required from the Issuer, Guarantor, Product Arranger in respect of SIPs and the issuer of Advertisement(s) in respect of SIPs (“Form of Information and Undertakings”); (d) a duly signed and completed Confirmation as required pursuant to the

	Question	Answer
		<p>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 entitled “Guidance on Internal Product Approval Process”, as amended from time to time (“Confirmation of Compliance with Guidance on Internal Product Approval Process”);</p> <p>(e) a duly signed and completed Confirmation from the nominated approved person in support for an application for the nomination of approved person in respect of unlisted structured investment product(s);</p> <p>(f) a draft or proof of each document must be submitted in good order and suitable for clearance for the SFC’s prior vetting (where applicable, marked with annotation notes to show full compliance with the SIP Code) before the relevant authorization may be granted; and</p> <p>(g) a cheque made payable to “Securities and Futures Commission”, or other means of payment acceptable to the SFC, in the amount of the applicable application fee (see questions 5A and 10 below on payment of fees).</p> <p>During the application process, all changes made in any subsequent draft documentation must be properly and comprehensively marked up to facilitate review by the case team.</p>
5A.	What are the requirements for submitting documents and application fee in support of a new application to the SFC?	<p>To commence an application, various documents, including, for example, offering documents, completed checklist, form of information and undertakings and confirmations, as well as the application fee are required to be submitted to the SFC.</p> <p>A) <u>Submission of new application documents by soft copy only</u></p>

	Question	Answer
		<p>Applicants are no longer required to submit hard copy of application-related documents. Instead, applicants shall submit all application-related documents by soft copy only.</p> <p>The official receipt date of a new application shall be a business day on which the full and complete set of soft copy documents is received by the SFC at or before 6 pm (after which the receipt date will be deemed as the following business day).</p> <p><i>B) <u>Alternatives for signing application documents</u></i></p> <p>Option 1: We will accept submission of un-signed copies of the relevant application forms, checklists, forms of information and undertakings, confirmations and other relevant documents (the “Relevant Forms”), which are required to be completed, as applicable, by an applicant, product arranger, guarantor or other parties, provided that the Relevant Forms shall be submitted with an email confirmation (from a person who meets the signatory requirements) that all information and, where applicable, confirmations and undertakings contained in the Relevant Forms (and all documents submitted relating thereto) are true and accurate.</p> <p>Option 2: An applicant may submit scanned copies of the Relevant Forms signed by a person who meets the signatory requirements.</p> <p>For the avoidance of doubt, submission of hard copies of the Relevant Forms is not required under both options.</p> <p><i>C) <u>Taking up new application(s) with application fee(s) to follow</u></i></p> <p>The SFC will take up new applications if they are in good order and the application fee is the only outstanding matter. An applicant is expected to</p>

	Question	Answer
		<p>submit the application fee as soon as practicable upon receipt of an acknowledgement of take-up from the SFC, and shall contact its SFC case team to discuss the payment arrangement.</p>
6.	<p>What documents do I need to submit before authorization?</p>	<p>Applicants are required to submit the following documents to the SFC before authorization:</p> <ul style="list-style-type: none"> (a) (if any change is to be made to the Compliance Checklist and/or Form of Information and Undertakings submitted with the application) the duly signed and completed final version of such Compliance Checklist and/or Form of Information and Undertakings; (b) where applicable, each of the advertisements, invitations or documents in final form the issue of which requires the SFC's authorization; (c) any other supporting documents (e.g. legal opinion or translation certificate) required to be provided or which the SFC may deem necessary; and (d) a cheque made payable to "Securities and Futures Commission", or other means of payment acceptable to the SFC, in the amount of the applicable authorization fee.
7.	<p>When will authorization be granted and what does an applicant need to do upon authorization?</p>	<p>Authorization under the relevant provision(s) of the SFO will be granted upon the payment of the applicable authorization fee and the SFC being satisfied that:</p> <ul style="list-style-type: none"> (a) all documents submitted and/or the product itself (as the case may be) having met the applicable requirements; (b) all relevant supporting information or documents having been submitted; and (c) all eligibility or other requirements applicable to the Issuer and other relevant

	Question	Answer
		<p>parties having been met.</p> <p>Within 5 business days after the authorization in respect of an offering document is granted, an applicant is required to submit to the SFC a locked electronic PDF copy of each of the authorized offering documents for posting onto the SFC's website which serves as an information repository for SIP.</p>
8.	How long does the application/vetting process usually take?	<p>While the SFC strives to be as efficient as possible in reviewing the application and, when considered appropriate, granting the necessary authorization, the length of the process may vary from case to case, depending on a number of factors, including but not limited to: the quality of the draft documents submitted, the turnaround time of the drafts and the response time to our requisitions by the applicant (or its advisers) and the characteristics of the product and/or its documents.</p> <p>Subject to satisfaction of the SFC's comments and queries, authorization under the relevant provision(s) of the SFO will be granted upon the payment of the applicable authorization fee and the other prerequisites set out in this FAQ being satisfied.</p>
9.	Will an application lapse after a certain period of time? If so, how long? What should I do if my application has lapsed? Will I be given any prior notice by the SFC in respect of the impending lapse of my application?	<p>Reference is made to the circular to applicants of SFC-authorized investment products relating to the revised application lapse policy dated 29 November 2013.</p> <p>In respect of applications received by the SFC on or after 1 January 2014, if, for any reason, 6 months have elapsed from the Take-up Date (the "6-month Period") and no authorization has been granted, the application will lapse subject to the SFC's right to grant an extension at its sole discretion. The application fee in respect of the application will not be refunded to the applicant.</p> <p>If, for any reason, 4 months have elapsed from the Take-up Date (the "4-month Period") and no authorization has been granted, the SFC will issue a letter</p>

	Question	Answer
		<p>reminding and informing the applicant that the application will in general lapse at the expiry of 6 months from the Take-up Date.</p> <p>In cases of non-compliance with any key requirement(s), the SFC would be minded to issue a letter of mindedness to refuse an application earlier than 4 months from the Take-up Date where appropriate so that there is efficient use of resources for processing proper applications.</p> <p>In general, the SFC will only consider granting an extension under exceptional circumstances upon the submission of satisfactory grounds by the applicant. The application fee will not be refunded to the applicant. Once an application has lapsed, if the applicant wishes to re-submit its application, the applicant shall make a new application, whereupon it will need to pay the application fee for the new application and repeat the application procedures.</p> <p>Please also see Question 13 for the transitional arrangements relating to outstanding applications received before 1 January 2014.</p>
10.	<p>What fees does an applicant need to pay? When to pay? Is there any fee waiver?</p>	<p>As mentioned above, an applicant must pay (a) an application fee as soon as practicable upon receipt of an acknowledgement of take-up from the SFC, and (b) an authorization fee upon the granting of the authorization.</p> <p>The applicable fees payable are as provided in the Securities and Futures (Fees) Rules (Cap. 571AF) ("Fees Rules"), subject to the SFC's power to grant waiver pursuant to section 11 (waiver of fees) of the Fees Rules. Upon an application for fee waiver supported by valid reasons, if the SFC is of the opinion that the payment of the fee would be unduly burdensome or inappropriate, the SFC may waive in whole or in part, the payment of any fees, or refund in whole or in part, any fees paid, subject to any applicable minimum amount.</p> <p>The following application and authorization fees will normally be payable in</p>

	Question	Answer
		<p>respect of each application made on or after the Effective Date under section 105(1) of the SFO:</p> <p>(a) <i>each offering document</i>: HK\$20,000 for application and HK\$10,000 for authorization (i.e. HK\$30,000 in total). (See Note 1 below)</p> <p>(b) <i>each advertisement</i>: a partial waiver of fees may be granted, i.e. HK\$6,000 for application and HK\$3,000 for authorization (i.e. HK\$9,000 in total). (See Note 2 below)</p> <p>Note 1: Where an offering document is submitted in separate (as opposed to combined) English and Chinese language versions, the SFC is prepared to consider an application for fee waiver and charge a total fee of HK\$30,000 for both language versions.</p> <p>Note 2: Where an advertisement is submitted in separate (as opposed to combined) English and Chinese language versions, the SFC is prepared to consider an application for fee waiver and charge a total fee of HK\$9,000 for both language versions.</p>
11.	<p>Upon the gazettal and taking effect of the Securities and Futures and Companies Legislation (Structured Products Amendment) Ordinance 2011 (the “Amendment Ordinance”) on 13 May 2011, are there any new application requirements?</p>	<p>Upon the Amendment Ordinance taking effect, the SFC is empowered under Part IV of the SFO to authorize structured products (under the new section 104A(1) of the SFO) and the issue of offering documents and advertisements for structured products (under section 105(1) of the SFO).</p> <p>As stated in Overarching Principle 1.14 of the Handbook, authorization of a product under the SFO would normally be granted together with the authorization of its offering document(s) under section 105 of the SFO. It is the general policy of the SFC not to consider authorizing a product under the SFO alone without a concurrent authorization of its offering document(s).</p>

	Question	Answer
		<p>For SIP the offering document(s) of which are to be authorized on or after 13 May 2011, applicants must make an application under section 104A(1) of the SFO for each product (on a per product key fact statement basis). Applicants must fill in the updated Application Form and the updated Form of Information and Undertakings (i.e. documents (a) and (c) under question 5 above) and pay the relevant product application and authorization fees (please refer to question 12 below).</p> <p>For SIP the offering document(s) of which were authorized prior to 13 May 2011, it will not be necessary for issuers to make an application under section 104A(1) of the SFO for the product(s) being offered under such authorized offering document(s) during the remaining validity period of authorization. Applications under both section 104A(1) and section 105(1) of the SFO will be required upon the renewal of the existing authorization.</p>
12.	What fees are payable in respect of application and authorization under section 104A(1) of the SFO?	<p>The applicable fees payable are as provided in the Fees Rules. The following application and authorization fees will be payable in respect of each application made under section 104A(1) of the SFO:</p> <p><i>Each product (on a per Product Key Fact Statement basis):</i> HK\$2,000 for application and HK\$1,000 for authorization (i.e. HK\$3,000 in total).</p>
13.	Will the 6-month Period apply to applications that were received by the SFC before 1 January 2014 but authorizations in respect of which have not been granted before 1 January 2014? Also, how will the 4-month Period apply?	<p>No. As set out in the circular to applicants of SFC-authorized investment products relating to the revised application lapse policy dated 29 November 2013, applications for authorization received before 1 January 2014 in respect of which no authorization has been granted before 1 January 2014 will continue to be subject to a 12-month application lapse policy:</p> <p>In respect of applications received by the SFC before 1 January 2014:</p> <p>(a) if, for any reason, 12 months have elapsed from the Take-up Date and no</p>

	Question	Answer
		<p>authorization has been granted, the application will lapse subject to the SFC's right to grant an extension at its sole discretion in limited circumstances. The application fee in respect of the application will not be refunded to the applicant; and</p> <p>(b) if, for any reason, 9 months have elapsed from the Take-up Date and no authorization has been granted, the SFC will issue a letter reminding and informing the applicant that the application will in general lapse at the expiry of 12 months from the Take-up Date.</p>

Section 2 – Post-authorization requirements

	Question	Answer
1.	<p>What are the requirements for submitting documents to the SFC in connection with ongoing matters pertaining to SFC-authorized SIPs?</p>	<p>Set out below are the requirements for submitting documents to the SFC in connection with ongoing matters of SFC-authorized SIPs, including but not limited to applications for the issuance of any addendum to the offering documents, issuance of any advertisement and change of approved person.</p> <p>A) <u>Submission of documents by soft copy only</u></p> <p>Please refer to paragraph (A) of question 5A under section 1 of this FAQ.</p> <p>B) <u>Alternatives for signing documents</u></p> <p>Please refer to paragraph (B) of question 5A under section 1 of this FAQ.</p> <p>C) <u>Taking up ongoing matters application(s) with application fee(s) to follow</u></p> <p>Please refer to paragraph (C) of question 5A under section 1 of this FAQ.</p>

	Question	Answer
2.	Can SFC-authorized SIPs disseminate product documents to investors electronically?	<p>The SFC has issued a circular entitled “Circular on the electronic dissemination of investment product documents” dated 29 September 2020 (“ED Circular”), which sets out, among other things, the general principles for issuers to disseminate product documents electronically (“E-Dissemination Arrangement”).</p> <p>Capitalized terms used in FAQs 3 to 6 below have the same meaning as those defined in the ED Circular.</p>
3.	Do changes to the offering documents and/or terms and conditions of an existing SFC-authorized SIP which are made solely to enable E-Dissemination Arrangement require prior approval from the SFC?	<p>Where changes to the offering documents and/or terms and conditions of an existing SFC-authorized SIP are required to be made solely to enable the E-Dissemination Arrangement, SFC’s prior approval will not be required.</p> <p>Advance written notice must be provided to investors before the proposed changes to offering documents and/or terms and conditions of the relevant SFC-authorized SIP take effect. At least one month’s advance written notice is expected.</p> <p>The advance written notice should provide necessary information to enable investors to appraise the proposed changes and to make an informed judgment of their investments in the SFC-authorized SIP. For example, the advance notice should inform investors of the proposed changes to offering documents and/or terms and conditions and when the E-Dissemination Arrangement may take effect. If no specific date for rollout of the E-Dissemination Arrangement has been decided yet, the notice should inform investors of this and that separate advance notice will be provided to investors prior to the adoption of the E-Dissemination Arrangement.</p> <p>Where applicable, the Transition Notice (see FAQ 5 below) can be merged with the above notice provided that all the required information is clearly set out, including the effective date(s) of the proposed changes to the offering documents and/or terms and conditions and adoption of the E-Dissemination Arrangement for</p>

	Question	Answer
		the SFC-authorized SIP.
4.	For an SFC-authorized SIP which is currently disseminating paper Product Documents to investors, does it need to seek SFC's prior approval to adopt E-Dissemination Arrangement in respect of the SFC-authorized SIP?	<p>No prior approval is required to be obtained from the SFC for an SFC-authorized SIP to implement E-Dissemination Arrangement.</p> <p>However, before adopting E-Dissemination Arrangement, issuers must ensure that the E-Dissemination Arrangement and the transitional arrangement (including a printed Transition Notice to investors) comply with the SFC-authorized SIPs' terms and conditions and applicable regulatory requirements, and are consistent with disclosure in offering documents. Paragraphs 8-10 of the ED Circular set out guidelines for the transitional arrangements and the reference therein to "Question 26 of Frequently Asked Questions on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds" under the footnote 8 shall mean "Question 5 under section 2 of Frequently Asked Questions relating to Structured Investment Products under the Code on Unlisted Structured Investment Products".</p>
5.	What information is required to be included in the Transition Notice?	<p>Paragraph 9 of the ED Circular sets out the guiding principles for the Transition Notice.</p> <p>Each issuer should ensure that the Transition Notice contains information which is necessary to enable investors to understand the E-Dissemination Arrangement, how it might affect their rights or interests as investors of the relevant SFC-authorized SIP and the procedures for investors who wish to change the means of delivery.</p> <p>The following information should be included in the Transition Notice:</p> <p>(a) Relevant details of the E-Dissemination Arrangement</p> <ul style="list-style-type: none"> - the precise manner in which Product Documents will be disseminated electronically to investors, with clear specification of the electronic means to be adopted (e.g. whether the electronic Product Documents will be sent to investors by email, or investors will receive notification by SMS

	Question	Answer
		<p>informing them that the Product Documents are accessible online and the particular website/platform where the electronic Product Documents can be accessed, etc.);</p> <p>(b) Implications of the E-Dissemination Arrangement for investors</p> <ul style="list-style-type: none"> - the effective date of adoption of the E-Dissemination Arrangement, and where applicable, the date on which paper Product Documents will cease to be provided unless otherwise requested by investors; - where applicable, appropriate hardware and software, internet access, a specific email address, mobile phone number or other electronic address of the investors will be required for receiving email, SMS or other electronic notifications from the issuer, or accessing Product Documents under the E-Dissemination Arrangement; - the applicable risks associated with the E-Dissemination Arrangement, and a statement reminding investors to save or print a copy of the Product Documents for future reference if necessary; and - investors may change the means of delivery at any time subject to reasonable prior notice; <p>(c) Fee charging arrangement for provision of Product Documents</p> <ul style="list-style-type: none"> - a statement to the effect that the investors are entitled to receive Product Documents free of charge in one means of their choice (ie, an investor may choose to receive Product Documents either in paper form or via an electronic means specified by the issuer); and - if any charges are to be imposed for the provision of Product Documents to investors, the amount of such charges (which should be fair and reasonable); <p>(d) The procedures for investors who wish to change the means of delivery after adoption of the E-Dissemination Arrangement including details on how</p>

	Question	Answer
		<p>investors can request for the change;</p> <p>(e) Where applicable, clear and prominent warning statements:</p> <ul style="list-style-type: none"> - to alert investors that they will no longer receive product information in the form of paper documents after the effective date of the E-Dissemination Arrangement; and - specifying any action required from investors if they wish to continue to receive paper Product Documents (including how they can make the request and any time deadline for such request); and <p>(f) Hong Kong contact details for enquiries relating to the E-Dissemination Arrangement (including address and telephone number).</p>
6.	Does the ED Circular apply to SFC-authorized SIPs that are already disseminating the Product Documents to investors electronically (“Relevant SIPs”) as of the date of the ED Circular?	The transitional arrangements set out under paragraphs 8-10 of the ED Circular do not apply to the Relevant SIPs. However, the Relevant SIPs are subject to the general principles in paragraphs 11-13 of the ED Circular which apply to all E-Dissemination Arrangements.

Last updated: 9 October 2020