

Oversight

E-dissemination of fund documents

October 2020

Introduction

On 29 September 2020, the Hong Kong Securities and Futures Commission (SFC) issued [a circular on the electronic dissemination of investment product documents](#) (Circular) which provides guidance to issuers and intermediaries on the post-sale dissemination of product documents in electronic form (e-dissemination). At the same time, the SFC updated the [Frequently Asked Questions on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds](#) (FAQs) to include a new section regarding e-dissemination of fund documents.

This [Oversight](#) sets out an overview of the scope of application of the Circular and the general principles applicable to e-dissemination, and the additional practical guidance given by the SFC in the form of the newly added FAQs.

Existing practice

Issuers of investment products authorised by the SFC including collective investment schemes (funds) authorised by the SFC under the Securities and Futures Ordinance (SFC-authorized funds) are required to issue and disseminate to investors product documents such as offering documents, notices, announcements and financial reports (Product Documents) pursuant to their constitutive documents and the applicable legal and regulatory requirements.

Prior to the publication of the Circular, there have not been any express prohibitions by the SFC on e-dissemination of investment product documents. However, the SFC's guidance as to e-dissemination and the provision of information electronically in general has been limited and to a certain extent in a piece-meal manner. For instance, in relation to the suspension of dealing in units or shares of SFC-authorized funds, Chapter 11.7 of the SFC's [Code on Unit Trusts and Mutual Funds](#) (UT Code) states that where there is such a suspension, this must be published in accordance with Chapter 10.7 of the UT Code (i.e. at least monthly during the period of suspension "in an appropriate manner"), and the means of dissemination may include newspapers, telephone hotlines and websites. In relation to the maintenance of websites, Chapter 11.7A of the UT Code recommends maintenance by a SFC-authorized fund "as a matter of best practice" for the publication of relevant documents and information.

On the other hand, Chapter 8.6(u) of the UT Code explicitly requires passive exchange traded funds (ETFs) to publish trading information (such as real-time indicative net asset value and full holdings of the passive ETFs) to the public through the passive ETF's own website or such other channels as the SFC considers appropriate. A similar requirement on the publication of a funds' last closing net asset value on the funds' website is also imposed on closed-end funds authorised by the SFC under Chapter 8.11 of the UT Code.

Notwithstanding the provisions in the UT Code which explicitly refer to e-dissemination, the SFC has not provided specific guidance on practical issues surrounding e-dissemination such as non-delivery of electronic messages.

The SFC says that it has noted the increased use of electronic media and aims to provide in the Circular and the FAQs guidance on both the applicable general principles and specific requirements in order to help facilitate e-dissemination.

Application of the Circular

The Circular is applicable to issuers of investment products authorised by the SFC including SFC-authorised funds.

In respect of ETFs and real estate investment trusts (REITs) which are SFC-authorised funds listed on The Stock Exchange of Hong Kong Limited, their Product Documents should continue to be disseminated electronically pursuant to their constitutive documents and applicable requirements. However, the Circular will apply to e-dissemination of Product Documents of **unlisted** unit or share classes of listed SFC-authorised Funds.

Intermediaries (i.e. banks registered with the SFC for securities business or SFC licensed corporations) who hold investment products (whether they are SFC-authorised funds or otherwise) on behalf of their clients are also required to disseminate relevant documents of product issuers to their clients in a timely manner pursuant to the **Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission** (Code of Conduct). The Circular does not change the disclosure requirements of intermediaries under the Code of Conduct. Rather, it is intended to provide guidance if they wish to adopt e-dissemination arrangement to fulfil this disclosure requirement.

It is worth noting that e-dissemination in the context of the Circular covers post-sale e-dissemination of documents only. This may include, for instance, the provision of electronic copies of documents to investors and electronic notification that the documents are accessible online and where they can be so accessed. In respect of provision of Product Documents to clients at the point of sale, intermediaries may design their own procedures depending on their operations and circumstances of each case.

Transitional arrangements

For issuers who wish to adopt e-dissemination, the SFC has highlighted in paragraph 8 of the Circular that the e-dissemination arrangements must be in compliance with the applicable laws and regulations governing SFC-authorised funds and their constitutive documents. Where adopting e-dissemination necessitates changes to constitutive documents, prior approval from the SFC pursuant to Chapter 11.1(a) of the UT Code is not required if the changes are made solely to enable e-dissemination.

For intermediaries, they should ensure compliance with their relevant client agreements.

As regards the transitional arrangements, the SFC has set out the following practical requirements in paragraph 9 of the Circular:

- A printed notice must to be sent to investors (Transition Notice) at least one month prior to the adoption of the e-dissemination arrangement.
- The Transition Notice should provide necessary information covering relevant details of the e-dissemination arrangement, the implications of such arrangement from the investor's perspective, and the procedures for investors who wish to change the means of delivery.
- Where applicable, clear and prominent warning statements must be included in the Transition Notice 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. Any action required on the investors' part if they wish to change the means of delivery should also be specified.

It is important to note that unless an investor responds with instructions to receive product information in the form of paper documents, e-dissemination for that investor can proceed on the effective date.

The SFC has also set out in paragraph 10 of the Circular additional requirements applicable to issuers and intermediaries where investors transition from receiving paper Product Documents to e-dissemination arrangements:

- Investors should be entitled to receive the documents free of charge in one means of their choice (i.e. either in paper form or via an electronic means specified by the issuer or intermediary).
- Subject to the above, if charges are to be imposed for the provision of documents, the issuer or intermediary must notify investors of the charges in advance and ensure that all charges are fair and reasonable.

Again it is important to note that investors must be allowed to change the means of delivery at any time subject to reasonable prior notice. Procedures for changing the means of delivery and the issuers' or intermediaries' Hong Kong contact details for enquiries relating to e-dissemination arrangements should be provided to investors.

General principles

The SFC has laid down general principles applicable to all e-dissemination arrangements (General Principles) in paragraphs 11 to 13 of the Circular. The General Principles are applicable not only to products which are currently disseminating paper Product Documents and wish to transition to e-dissemination, they also apply to SFC-authorized funds that are already disseminating the Product Documents to investors electronically as of the date of the Circular. The General Principles are summarised as follows:

- E-dissemination arrangements must comply with applicable laws and regulations.
- Timely dissemination to investors is required. Issuers must ensure that effective measures are in place to achieve this. Where intermediaries are involved, issuers must be reasonably satisfied that the intermediaries have relevant effective measures and that there are relevant effective measures to enable the intermediaries to access product information in a timely manner.
- Issuers and intermediaries should put in place systems and controls to detect and rectify any unsuccessful e-dissemination to investors where practicable. Where an electronic communication that is sent to an investor is returned to the sender undelivered, the issuer or intermediary should assess the effectiveness of such communication means and consider remedial actions.
- If applicable, the contents of the electronic product documents and the paper copies should be identical.
- Where documents are disseminated electronically by notifying investors where they can be accessed online, such documents should be (i) accessible by investors for a reasonable period of time and (ii) in a form which allows investors to retain them.
- Where a third party supports e-dissemination arrangements, the issuer or intermediary remains responsible for ensuring compliance with the applicable requirements. They need to exercise due skill, care and diligence when selecting and monitoring third party service providers.
- Issuers and intermediaries should maintain proper records relating to communications with investors via e-dissemination arrangements, for example the date and time of dissemination.

Additional guidance in FAQs

Further to the above, the SFC has also provided additional practical guidance in the newly added FAQs on the following topics:

- **Notice as regards changes to constitutional documents:** at least one month's advance notice to the investors must be provided. The SFC also provided helpful guidance on the preparation of such notice e.g. it may be merged with the Transition Notice where applicable (Question 24 of the FAQs).

- **Additional specific guidance on the information to be included in the Transition Notice:** the SFC has expanded on the transitional arrangement requirements outlined in paragraph 9 of the Circular. For instance, as regards the implications of the e-dissemination arrangement for investors, information such as the effective date of adoption of 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 has to be included. Hong Kong contact details for e-dissemination related queries must also be stated (Question 26 of the FAQs).
- **Dissemination of financial reports:** the SFC has clarified that SFC-authorized funds which currently follow Chapter 11.6 of the UT Code (i.e. notifying holders of where such reports can be obtained in printed and electronic form, without distributing such reports) are permitted to continue with this arrangement. However, the Circular and its requirements will be relevant where such a SFC-authorized fund decides to adopt an e-dissemination arrangement whereby the holders will no longer receive paper notification or paper financial reports unless requested by the holders (Question 27 of the FAQs).

Conclusion

Overall, the Circular and the inclusion of new FAQs in relation to e-dissemination represent a welcome step in modernising the delivery of investment product documents, particularly in view of the limited guidance prior to this update. Together these provide helpful guidance in principle and in practice, which are expected to benefit interested issuers and intermediaries greatly in implementing a smooth transition from paper to electronic means of dissemination. While the change is voluntary, in light of the long-term environmental and operational benefits upon its adoption, it is likely that the Circular and the FAQs will offer sufficient encouragement and practical assistance for product issuers and intermediaries to embark on the transition. That said, investors must still have the right to opt out of e-dissemination.

Whilst the Circular only applies to SFC-authorized funds and other products approved by the SFC, those intermediaries which distribute private funds may also take the Circular and FAQs as helpful guidance as to regulatory expectations under the Code of Conduct.

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