



The Law Society's Submissions on

- (1) **Consultation Conclusions on Proposed Guidelines on Online Distribution and Advisory Platforms**
- (2) **Further Consultation on Offline Requirements Applicable to Complex Products**

BACKGROUND

The Law Society has studied the "*Consultation Conclusions on the Proposed Guidelines on Online Distribution and Advisory Platforms and Further Consultation on Offline Requirements Applicable to Complex Products*" released in March 2018 by the Securities and Futures Commission (the "SFC") ("**Consultation Paper**").

The Law Society makes the following submission in response to (1) the SFC's consultation conclusions (Sections I and II below) and (2) those consultation questions raised in the Consultation Paper (Section III below). Our comments on the consultation conclusion are set out by reference to those consultation questions raised in the earlier consultation on the subject matter by SFC in May 2017.

Where appropriate, we ask reference be drawn to our earlier submission on the subject matter dated 18 July 2017.

CONSULTATION CONCLUSION

Section I – Online and offline sales processes

***Question 1:** Do you agree with the factors relevant to online platforms identified above? Please explain your view.*

Consultation Conclusions: para. 27-45

Law Society's comments:

We agree with the factors relevant to online platforms identified in the Consultation Paper in 2017. In our view they are all of potential application although not all of them will be relevant to every situation.

Question 2: Are there any factors that the SFC has not identified? Are these covered by existing conduct requirements? If not, do you have any suggestions about how they can be addressed through specific requirements. Please explain your view.

Consultation Conclusions: para. 27-45

Law Society's comments:

We are not aware of any specific additional factors although we note that the technology and business practices in this area are likely to continue to evolve and, therefore, flexibility is needed to ensure that the regulations do not become an impediment causing Hong Kong to lag other markets. We are of the view that the largely principle based approach set out in the Code of Conduct etc. is likely to provide a means of addressing any gaps which may appear as a result of market developments, especially if, as is contemplated in the Proposed Guidelines, they are supported by prompt guidance to the market from the SFC when such occasions arise (e.g. by updating or supplementing the relevant FAQs).

Section II – Proposed Guidelines

Question 3: Do you have any comments on the Core Principles in the Proposed Guidelines as outlined above? Are there any other areas which you think the Proposed Guidelines should cover? Please explain your view.

Consultation Conclusions: para. 46-71

Law Society's comments:

We have no further comments.

Question 4: Are there any other areas relating to robo-advice which you think the Proposed Guidelines should cover? Please explain your view.

Consultation Conclusions: para. 72-92

Law Society's comments:

No further comments.

Question 5: What are your views on the shortcoming of robo-advice? How can the Proposed Guidelines be further enhanced to address these issues?

Consultation Conclusions: para. 72-92

Law Society's comments:

Robo-advice carries a number of inherent shortcomings, in particular the difficulties in tailoring it to match the circumstances, risk-tolerance of the investor. We see no obvious or practical way to address this issue which goes beyond that scope of the disclosure and acknowledgement approach contemplated in the Proposed Guidelines.

Question 6: Do you have any comments on the guidance on the Suitability Requirement to be provided in the Proposed Guidelines?

Consultation Conclusions: para. 93-131

Law Society's comments:

No further comments.

Question 7: Do you have any comments on how the design and overall impression created by an online platform's content could trigger the Suitability Requirement?

Consultation Conclusions: para. 93-131

Law Society's comments:

No further comments.

Question 8: Do you have any comments on the above examples of when the posting of materials on online platforms would or would not amount to a solicitation or recommendation?

Consultation Conclusions: para. 93-131

Law Society's comments:

No further comments.

Question 9: Are there any examples not mentioned above that may suggest that the content or presentation of materials would amount to a solicitation or recommendation? Please explain your view.

Consultation Conclusions: para. 93-131

Law Society's comments:

No comment.

Question 10: Do you have any view on how risk analysis assessments and client profiling should be conducted and the quantitative and qualitative factors that any risk methodology should take into account?

Consultation Conclusions: para. 93-131

Law Society's comments:

We have no further views on this issue.

Question 11: Do you have any comments on the definition of a complex product, and the considerations that should be taken into account in determining whether a product is complex?

Consultation Conclusions: para. 132-185

Law Society's comments:

No further comments.

Question 12: Do you have any comments on the list of investment products that are considered to be "non-complex"?

Consultation Conclusions: para. 132-185

Law Society's comments:

Even though they involve derivatives, currency hedged funds should be treated as non-complex because the sole purpose of the currency hedge is to reduce risk and it is a factor that is readily understood by retail investors.

Question 13: Do you have any comments on the list of examples of investment products that are considered to be "complex"? Please explain your view.

Consultation Conclusions: para. 132-185

Law Society's comments:

All insurance linked and "wrap" products should be considered complex in view of their commercial and legal complexity.

Question 14: In the online environment, do you think that risks arising from the sale of complex products should be addressed by requiring Platform Operators to ensure transactions in complex products are suitable for clients? Please explain your view.

Consultation Conclusions: para. 186-232

Law Society's comments:

In our view obligations to ensure client suitability requirements for complex products should not be negated merely by reason of the manner in which the products are sold to investors.

Question 15: As the SFC's concern arises from the sale of complex products, do you agree that the same requirement to ensure suitability should also to offline sales of complex products? Please explain your view.

Consultation Conclusions: para. 186-232

Law Society's comments:

We repeat that the answer should in principle be yes, otherwise retail investors will be at greater risk of being sold unsuitable products if they invest through online platforms than face-to-face platforms.

***Question 16:** Are there any other additional or alternative protective measures that should be introduced for the same of complex products online?*

Consultation Conclusions: para. 186-232

Law Society's comments:

No further comments.

***Question 17:** Are there any types of investment products (e.g., accumulators) that should not be made available on online platforms even where the Platform Operator is required to ensure suitability?*

Consultation Conclusions: para. 186-232

Law Society's comments:

We repeat that in principle the answer should be no. In our view, if the robo-adviser can satisfy the client suitability requirements where applicable then there is no reason not to provide the same products regardless of the nature of the distribution platform.

***Question 18:** Do you think the items of minimum information set out in Appendix 4 are sufficient and appropriate? Please explain your view.*

Consultation Conclusions: para. 186-232

Law Society's comments:

The list is "non-exhaustive" and supported by the principle based approach of the Proposed Guidelines. Accordingly, we see no need for additional items.

***Question 19:** Do you have any comments on the proposed warning statements set out in Appendix 4 that should be made on an online platform?*

Consultation Conclusions: para. 186-232

Law Society's comments:

No further comments.

***Question 20:** Do you think a 12-month transition period is appropriate? If not, what do you think would be an appropriate transition period? Please set out your reasons.*

Consultation Conclusions: para. 233-239

Law Society's comments:

We agree that a transition period of 12 months or less is appropriate. The proposals are not so significant as to justify any longer period.

CONSULTATION QUESTIONS

Section III – Further consultation on offline requirements applicable to complex products

***Question 1:** Do you have any comments on the proposed amendments to the Code of Conduct? Please explain your view.*

Law Society's response:

No.

***Question 2:** Do you think a six-month transition period is appropriate? If not, what do you think would be an appropriate transition period and please set out your reasons.*

Law Society's response:

We believe that a six-month transition period is reasonable, although aligning this with the 12-month transition period for alignment of online and offline requirements would, possibly, be less disruptive to businesses.

**The Law Society of Hong Kong
29 May 2018**