

Investment Management Alert

October 20, 2015

SFC Introduces Revamped Process to Expedite Fund Applications and Authorizations

Introduction

In order to streamline and reduce the processing time of fund authorization processes, the Hong Kong Securities and Futures Commission (**SFC**) announced the launch of new initiatives to enhance the authorization process for new fund applications on 9 October 2015.

The revised procedures will come into effect on 9 November 2015 (the “**Effective Date**”) and be adopted by the SFC for a six-month pilot period ending 8 May 2016 (the “**Pilot Period**”). The SFC may extend the Pilot Period and/or make changes to the revised procedures as appropriate at the end of the Pilot Period.

The Existing Procedures

The SFC’s authorization of new fund applications usually involves a review of the suitability of the investment fund, as well as the suitability of the investment fund’s operators and service providers, in particular the manager and the trustee/custodian. Section 103 of the Securities and Futures Ordinance (**SFO**) requires that, subject to certain exemptions, only investment funds which have been authorised by the SFC may be offered to the retail public in Hong Kong (“**SFC-authorized Funds**”). The SFC’s authorization requirements for investment funds are set out in the Code on Unit Trusts and Mutual Funds (the “**UT Code**”).

The SFC typically took three to six months to process an application for authorization of a fund under the UT Code and sometimes longer where the fund is a “specialised fund”, as described in Chapter 8 of the UT Code. From January 2014, the SFC adopted a new application lapse policy which stated that, if, for any reason, six months have elapsed from the date the application was taken up by the SFC 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 “**Lapse Policy**”).

The Revised Procedures

The SFC will adopt a two-stream approach in processing new fund applications, where new fund applications will be classified into either the:

- Standard applications stream or
- Non-standard applications stream.

Standard applications will be fast-tracked with an aim that SFC authorization, if granted, will be given on average between one to two months from the take-up date of the applications (“**Standard Applications**”).

Non-standard applications will be processed with an aim that SFC authorization, if granted, will be given on average between two to three months from the take-up date of the applications (“**Non-Standard Applications**”). All applications which do not comply with the eligibility criteria for Standard Applications will be processed as Non-Standard Applications.

Standard Applications

Standard Applications are intended to cover less complicated applications for which funds under the applications are simpler in nature in comparison with those under the Non-Standard Applications. In general, a new fund application will be processed as a Standard Application if the following criteria are met:

- the fund(s) under application is/are sub-funds(s) under an existing SFC-authorized umbrella fund
- the relevant new sub-fund is (i) a fund which complies with Chapter 7 of the UT Code or a UCITS fund which does not use financial derivative instruments extensively for investment purposes; or (ii) a physical ETF or unlisted index fund tracking an index which is adopted by other existing SFC-authorized Fund(s) or is a plain vanilla index¹
- the new sub-fund(s) is/are not seeking authorization as approved pooled investment fund(s) under the SFC Code on MPF Products
- the new sub-funds(s) is/are managed by existing approved management company/delegated investment managers managing other existing SFC-authorized Fund(s) with good regulatory records
- the trustee/custodian of the new sub-fund(s) is acting as trustee/custodian of other existing SFC-authorized Fund(s) which has confirmed its continuous compliance of the requirements applicable to trustee/custodian of SFC-authorized Funds
- the application documentation is complete and in good order and of quality
- there are no material issues and/or policy implications relating to the application as considered by the SFC.

Application to Mainland-Hong Kong Mutual Funds Recognition Scheme

The revised procedures will not apply to eligible mainland Chinese funds which are seeking SFC authorization under the Mainland-Hong Kong Mutual Funds Recognition Scheme during the Pilot Period; however, the SFC intends to assess the applicability of the revised procedures to such products after expiry of the Pilot Period.

¹ Plain vanilla index will generally include free float market capitalization weighted equities index and will generally exclude strategy index, smart-beta/value-based index, equal weighted equities index, equities index with covered call and/or hedging elements, etc.

Response Time Limits

The SFC expects that applicants will provide proper and quality submissions at the time of application and proper, complete and substantive responses to the SFC throughout the fund application process in a timely manner. The SFC will set certain response time limits in respect of the applicants' responses to requisitions from the SFC regarding Standard Applications and Non-Standard Applications. Failure to respond to the SFC within such time limits may lead to the SFC refusing the fund application.

It is the SFC's policy to strictly refuse a Standard Application if the applicant fails to meet the applicable time limit of one month in addressing all outstanding issues regarding the application. In contrast, applicants to the Non-Standard Applications will be given 14 business days to respond to the initial SFC requisitions, and 10 business days to respond to the subsequent SFC requisitions thereafter.

Revised Performance Pledges

Under the revised procedures, the SFC will take up or refuse to take up Standard Applications or Non-Standard Applications within five business days upon receipt of the application, and issue the first set of responses/requisitions to the new fund application within 14 business days from the take-up date (the "**Revised Performance Pledges**"). All new fund applications will be subject to the Revised Performance Pledges and the Lapse Policy.

Transitional Arrangements

Applications which are made after the Effective Date will be processed under the revised procedures. Existing fund authorization applications which have not been granted authorization by the SFC but were received by the SFC before the Effective Date will be processed in accordance with the existing authorisation process subject to the Lapse Policy.

This client alert has been prepared for general information purposes only. The information presented is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Reliance must not be placed or decisions taken on the basis of this client alert without specific legal advice. Akin Gump Strauss Hauer & Feld LLP does not practice Hong Kong law. For more information or assistance on the issues discussed in this alert, please contact Anne-Marie Godfrey at anne-marie.godfrey@akingump.com (+852 3694 3040), or your usual contact at Akin Gump Strauss Hauer & Feld LLP.

Contact Information

If you have any questions regarding this alert, please contact:

Anne-Marie Godfrey

anne-marie.godfrey@akingump.com

+852 3694.3040

Hong Kong