

Notice No : FAA-N16 (Amendment) 2012
Issue Date : 11 December 2012

NOTICE ON RECOMMENDATIONS ON INVESTMENT PRODUCTS

Introduction

1 This Notice is issued pursuant to section 58 of the Financial Advisers Act (Cap. 110) and amends the Notice on Recommendations on Investment Products [Notice No. FAA-N16] (the “Notice FAA-N16”).

Amendments

2 The Notice FAA-N16 dated 28 July 2011 and last revised on 1 January 2012 is hereby amended as follows:

(a) by inserting, immediately after the words “For the purposes of this Notice” in paragraph 6, the words “, unless the context otherwise requires”;

(b) by inserting, immediately after the definition of “Benefit Illustration” in paragraph 6, the following definition:

“ “business trust” has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);”;

(c) by inserting, immediately after the words “Specified Investment Product which is neither listed” in the definition of “Customer Knowledge Assessment” in paragraph 6, the words “for quotation”;

(d) by inserting, immediately after the definition of “debenture” in paragraph 6, the following definitions:

“ “deposit” has the same meaning as in section 4B(4) of the Banking Act (Cap. 19);

“derivative”, in relation to a unit in a business trust, has the same meaning as in section 2 of the Business Trusts Act (Cap. 31A);”;

(e) by inserting, immediately after the words “a person” in the definition of “exempt financial adviser” in paragraph 6, the words “who is”;

(f) by deleting the definition of “financial adviser” in paragraph 6, and substituting the following definition:

“ “financial adviser” means a holder of a financial adviser’s licence of the Act or an exempt financial adviser;”;

(g) by inserting, immediately after the definition of “investment product” in paragraph 6, the following definitions:

“ “investment-linked policy” has the same meaning as in the First Schedule to the Insurance Act (Cap. 142);

“investment-linked policy sub-fund” or “ILP sub-fund” has the same meaning as in paragraph 4(e) of the Notice on Investment-Linked Policies [Notice No. MAS 307];

“issuer” means -

(a) in relation to an offer of units in a collective investment scheme, the responsible person for the collective investment scheme;

(b) in relation to an offer of any contract or arrangement in connection with leveraged foreign exchange trading, the holder of a capital markets services licence for leveraged foreign exchange trading that is the counterparty to that contract or arrangement;

(c) in relation to an offer of any other investment products, the entity that issues or will issue the investment product being offered;

“life policy” has the same meaning as in the First Schedule to the Insurance Act (Cap. 142);

“manager” has the same meaning as in paragraph 4(f) of the Notice on Investment-Linked Policies [Notice No. MAS 307];”;

(h) by deleting the definition of “Product Highlights Sheet” in paragraph 6, and substituting the following definition:

“ “Product Highlights Sheet” means a product highlights sheet prepared by issuers or insurers in accordance with the MAS Guidelines on the Product Highlights Sheet (SFA 13-G10) or the Notice on Investment-Linked Policies [Notice No. MAS 307] respectively;”;

(i) by deleting the definition of “product manufacturer” in paragraph 6;

(j) by inserting, immediately after the definition of “Product Highlights Sheet” in paragraph 6, the following definition:

“ “prospectus” has the same meaning as in section 283(1) of the Securities and Futures Act (Cap. 289);”;

(k) by deleting the definition of “recognised securities exchange” in paragraph 6;

(l) by inserting, immediately after the definition of “Product Summary” in paragraph 6, the following definitions:

“ “Relevant Participant” has the same meaning as in paragraph 3(a)(ii) of the Notice on the Sale of Investment Products [Notice No. SFA 04-N12];

“Relevant Policyholder” has the same meaning as in paragraph 4(ka) of the Notice on Investment-Linked Policies [Notice No. MAS 307];”;

(m) by inserting, immediately after the definition of “representative” in paragraph 6, the following definition:

“ “responsible person” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);”;

(n) by deleting the word “and” at the end of the definition of “Switching” in paragraph 6;

(o) by inserting, immediately after the definition of “Switching” in paragraph 6, the following definition:

“transact” means:

- (a) the purchase of any Specified Investment Product other than in connection with the creation of short positions; or
- (b) the sale of any Specified Investment Product in connection with the creation of short positions,

and “transacted” and “transacts” shall have a corresponding meaning; and”;

(p) by inserting, immediately after paragraph 6, the following paragraph:

“6A For the avoidance of doubt, “transaction” referred to in paragraphs 4(b), 12, 32(b), 36(ii), 41A, 41B and 42(b) of this Notice, paragraph (g)(ii) in Annex 1 to this Notice and paragraph 1(c) in Annex 2 to this Notice shall not have a corresponding meaning to the term “transact” as defined in paragraph 6.”;

(q) by deleting the words “product manufacturer” immediately after the words “A financial adviser shall ensure that it has been informed by the” in paragraph 15 and substituting the word “issuer”;

(r) by inserting, immediately after the words “an investment product which is neither listed” in paragraph 15, the words “for quotation”;

(s) by inserting, immediately after the words “a Specified Investment Product that is neither listed” in paragraph 16, the words “for quotation”;

(t) by inserting, immediately after paragraph 17, the following paragraph:

“17A When conducting a Customer Knowledge Assessment for a new client, or for a client whose previous Customer Knowledge Assessment is no longer valid in accordance with paragraph 26, a financial adviser shall assess a client’s investment experience according to:

- (a) the classification of the investment product(s) previously transacted by the client; and
- (b) the listing status of such investment product(s),

at the time that the client had transacted in such investment product(s).”;

(u) by deleting the words “with the transaction” immediately after the words “nevertheless intends to proceed” in paragraph 23, and substituting the words “to transact”;

(v) by deleting the words “with the transaction in the product” immediately after the words “still intends to proceed” in sub-paragraph (b) of paragraph 24, and substituting the words “to transact in the unlisted Specified Investment Product”;

(w) by deleting paragraph 25 and substituting the following paragraph:

“25 In respect of such a client as referred to in paragraph 24 who has confirmed that he intends to proceed to transact in the unlisted Specified Investment Product (referred to in this paragraph as “relevant trade”), the financial adviser shall not allow the client to proceed with the relevant trade unless its senior management, who is not involved in that relevant trade and is not a connected person to the client:

- (a) has confirmed with the client that the client has been properly informed of all relevant facts as required under paragraphs 22 and 24, and that the client is aware of the implications and consequences of proceeding with that relevant trade;
- (b) is satisfied that the financial adviser has complied with the requirements set out in paragraphs 22 and 24; and
- (c) has given approval for the financial adviser to proceed with the client’s request.”;

(x) by deleting paragraph 27 and substituting the following paragraph:

“27 For the avoidance of doubt, even where a client of a financial adviser has been previously assessed by another financial adviser to possess knowledge or experience in the unlisted Specified Investment Product concerned, paragraphs 15 to 26 shall still apply where any financial adviser transacts in the unlisted Specified Investment Product concerned for the first time for such client.”;

(y) by deleting the words “chooses to transact” immediately after the words “to accept the recommendation of the financial adviser and” in sub-paragraph (b) of paragraph 32, and substituting the words “chooses to proceed with the transaction”;

(z) by deleting the words “chosen to transact” immediately after the words “accept the recommendation of the financial adviser and has” in sub-paragraph (ii) of paragraph 36, and substituting the words “chosen to proceed with the transaction”;

(aa) by inserting, immediately after the words “a Specified Investment Product which is listed” in paragraph 41, the words “for quotation”;

(bb) by inserting, immediately after paragraph 41, the following paragraphs:

“Requirements on a financial adviser providing financial advisory services in relation to units in a collective investment scheme, the units of which are Excluded Investment Products (“EIP-CIS”)

41A Where the responsible person of the EIP-CIS is required to ensure that a Customer Knowledge Assessment referred to in paragraph 29B(b)(ii) of the Notice on the Sale of Investment Products [Notice No. SFA 04-N12] is conducted by a financial adviser on every client who is an existing Relevant Participant as a result of any change in investment objective, investment focus or investment approach of the EIP-CIS which would cause the units in an EIP-CIS which are not listed for quotation or quoted on a securities market to be classified as Specified Investment Products, and -

- (a) a financial adviser of an existing Relevant Participant is able to demonstrate to the responsible person concerned that it is unable to conduct a Customer Knowledge Assessment as referred to in paragraph 29B(b)(ii) of the Notice on the Sale of Investment Products [Notice No. SFA 04-N12] for reasons beyond its reasonable control, including where it is unable to contact the existing Relevant Participant despite it having written to that existing Relevant Participant regarding the conduct of

such Customer Knowledge Assessment and having made repeated attempts thereafter to establish contact, or where the existing Relevant Participant refuses to undergo a Customer Knowledge Assessment as referred to in paragraph 29B(b)(ii) of the Notice on the Sale of Investment Products [Notice No. SFA 04-N12]; or

- (b) a financial adviser has conducted a Customer Knowledge Assessment in accordance with paragraph 29B(b)(ii) of the Notice on the Sale of Investment Products [Notice No. SFA 04-N12], and assesses an existing Relevant Participant not to possess the adequate knowledge or experience pursuant to such Customer Knowledge Assessment, and is unable to allow such existing Relevant Participant to proceed to transact in the unlisted Specified Investment Product,

the financial adviser may –

- (i) allow the existing Relevant Participant concerned to continue holding on to his existing position in the EIP-CIS; or
- (ii) on the instructions of the existing Relevant Participant concerned, execute a transaction or transactions on behalf of the existing Relevant Participant concerned to reduce his existing position in the EIP-CIS.

For the avoidance of doubt, the financial adviser shall not count such transactions referred to in sub-paragraph (ii) as “investment experience” for the purposes of conducting the Customer Knowledge Assessment for the existing Relevant Participant concerned.

Requirements on a financial adviser providing financial advisory services in relation to units in an investment-linked policy sub-fund, the units of which are Excluded Investment Products (“EIP-ILP sub-fund”)

41B Where the insurer issuing an investment-linked policy (ILP) that has an EIP-ILP sub-fund within the ILP is required to ensure that a Customer Knowledge Assessment referred to in paragraph 47B of the Notice on Investment-Linked Policies [Notice No. MAS 307] is conducted by a financial adviser on every client who is a Relevant Policyholder as a result of any change in investment objective or investment focus of the EIP-ILP sub-fund, or investment approach of the manager which would cause the units in the EIP-ILP sub-fund to be classified as Specified Investment Products, and -

- (a) a financial adviser of an existing Relevant Policyholder is able to demonstrate to the insurer concerned that it is unable to conduct a Customer Knowledge Assessment as referred to in paragraph 47B of the Notice on Investment-Linked Policies [Notice No. MAS 307] for reasons beyond its reasonable control, including where it is unable to contact the existing Relevant Policyholder despite it having written to that existing Relevant Policyholder regarding the conduct of such Customer Knowledge Assessment and having made repeated attempts thereafter to establish contact, or where the existing Relevant Policyholder refuses to undergo a Customer Knowledge Assessment as referred to in paragraph 47B of the Notice on Investment-Linked Policies [Notice No. MAS 307]; or
- (b) a financial adviser has conducted a Customer Knowledge Assessment in accordance with paragraph 47B of the Notice on Investment-Linked Policies [Notice No. MAS 307], and assesses an existing Relevant Policyholder not to possess the adequate knowledge or experience pursuant to such Customer Knowledge Assessment, and is unable to allow such existing Relevant Policyholder to proceed to transact in the unlisted Specified Investment Product,

the financial adviser may –

- (i) allow the existing Relevant Policyholder concerned to

continue holding on to his existing position in the EIP-ILP sub-fund; or

- (ii) on the instructions of the existing Relevant Policyholder concerned, execute a transaction or transactions on behalf of the existing Relevant Policyholder concerned to reduce his existing position in the EIP-ILP sub-fund.

For the avoidance of doubt, the financial adviser shall not count such transactions referred to in sub-paragraph (ii) as “investment experience” for the purposes of conducting the Customer Knowledge Assessment for the existing Relevant Policyholder concerned. ”;

- (cc) by deleting Annex 1 and substituting the following Annex:

“ANNEX 1 – EXCLUDED INVESTMENT PRODUCTS

Unless otherwise provided here, the terms used or referred to in this Annex shall have the same meanings assigned to them in section 2 of the Act or section 2 of the Securities and Futures Act (Cap. 289), where applicable.

“Excluded Investment Product” means:

- (a) any stocks or shares issued or proposed to be issued by a corporation or body unincorporate, other than where such corporation or body unincorporate is a collective investment scheme;
- (b) any unit of a share which represents ownership of the underlying share, where –
 - (i) the underlying share is held on trust for the unit-holder by a custodian; and
 - (ii) no additional consideration (other than administrative fees) is payable by the unit-holder in the event that he converts the unit of share into the underlying share;

- (c) any right, option or derivative issued or proposed to be issued by a corporation or body unincorporate in respect of its own stocks or shares;
- (d) any unit in a business trust;
- (e) any derivative of units in a business trust;
- (f) any unit in a collective investment scheme, such collective investment scheme being an arrangement:
 - (i) that is a trust;
 - (ii) that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes; and
 - (iii) all or any units of which are listed for quotation on a securities exchange;
- (g) any unit in a collective investment scheme, where the constitutive documents of the scheme contain covenants that bind the manager of the scheme, or where the prospectus of the scheme or any document issued in connection with an offer of units in the scheme (being an offer that is not required to be made in or accompanied by a prospectus under section 296(1) of the Securities and Futures Act (Cap. 289)), contains restrictions that bind the manager of the scheme:
 - (i) to invest only in:
 - (A) deposits; or
 - (B) any products specified in paragraphs (a) to (l) in this Annex; and
 - (ii) not to engage in securities lending or repurchase transactions for the scheme;

- (h) any debenture other than:
 - (i) asset-backed securities as defined in section 262(3) of the Securities and Futures Act (Cap. 289); or
 - (ii) structured notes as defined in regulation 2(1) of the Securities and Futures (Offers of Investments) (Shares and Debentures) Regulations 2005;
- (i) any life policy excluding an investment-linked policy (other than an investment-linked policy where the units in an ILP sub-fund within the investment-linked policy are referred to in paragraph (j));
- (j) any unit in an ILP sub-fund, where the investment objectives and investment focus of the ILP sub-fund, and investment approach of the manager are stated in the product summary as prescribed in Appendix A of the Notice on Investment-Linked Policies [Notice No. MAS 307];
 - (i) to invest only in:
 - (A) deposits; or
 - (B) any products specified in paragraphs (a) to (l) in this Annex; and
 - (ii) not to engage in securities lending or repurchase transactions for the ILP sub-fund;
- (k) any contract or arrangement the effect of which is that one party agrees to exchange currency at an agreed rate of exchange with another party, where such currency exchange is effected immediately; or
- (l) two or more products specified in paragraphs (a) to (k) in this Annex that are linked together in a stapled manner such that one product may not be transferred or otherwise dealt without any of the other product(s).”;

(dd) by deleting the words “life insurance” immediately after the words “investment-linked” in paragraph 1(c)(i) of Annex 2;

(ee) by inserting, immediately after the words “For transactions in Specified Investment Products which are neither listed” in paragraph 1(c)(ii) of Annex 2, the words “for quotation”;

(ff) by inserting, immediately after the words “any Specified Investment Products which are neither listed” in paragraph 1(c)(ii) of Annex 2, the words “for quotation”.

Commencement

3 This Notice shall take effect on 11 December 2012.