

## Consultation Conclusions on the Evidential Requirements under the Securities and Futures (Professional Investors) Rules (PI Rules)

The Securities and Futures Commission (SFC) published their Consultation Conclusions on the Evidential Requirements under the PI Rules on 23 February 2011.

First, the SFC will proceed to adopt a principles-based approach so that firms may use methods that are appropriate in the circumstances to satisfy themselves that a high net worth investor meets the relevant assets or portfolio threshold at the relevant date to qualify as a professional investor. However, the SFC believes that it is desirable to preserve the existing methods set out in sections 3(a) to 3(c) of the current PI Rules as some market participants would want to continue using them. These methods are examples only, and do not limit the methods used by firms to establish high net worth professional investors.

Sections 3(a) to 3(c) of the existing PI Rules prescribe the following persons as within the definition of "*professional investor*":-

- any **trust corporation** acting as trustee with total assets of not less than HK\$40 million or its equivalent in any foreign currency as ascertained by the most recent audited financial statement within the last 16 months or custodian statements within the last 12 months;
- any **individual**, either alone or with any of his associates, i.e. the spouse or any child of the individual, on a joint account, having a portfolio of not less than HK\$8 million or its equivalent in any foreign currency as stated in an auditor's certificate or ascertained by custodian statements within 12 months; and
- any **corporation or partnership** having a portfolio of not less than HK\$8 million or its equivalent in any foreign currency or total assets of not less than HK\$40 million or its equivalent in any foreign currency as ascertained by the most recent audited financial statements within the last 16 months or custodian statements within the last 12 months.

The SFC expects firms to keep proper records of their assessment process so as to demonstrate that they have exercised professional judgement and have reached a reasonable conclusion that their clients meet the relevant thresholds.

Secondly, the SFC will proceed to use "*relevant date*" (defined in section 2 of the current PI Rules) as the time reference for ascertaining whether an investor meets the relevant assets or portfolio threshold to qualify as a high net worth professional investor.

Thirdly, the SFC will further extend the scope of section 3(d) of the existing PI Rules so that any corporation which is wholly owned by one or more trust corporations, individuals or corporations/partnerships where each of those trust corporations, individuals or corporations/partnerships would qualify as a professional investor under sections 3(a), 3(b) or 3(c) (as the case may be), will qualify as a professional investor.

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*Classification as professional investors*

Paragraphs 15.1 and 15.2 of the SFC Code of Conduct provide that, whilst serving high net worth investor who fall within the definition of "professional investor", firms will not be required to fulfil the requirements set out in paragraph 15.5 of the SFC Code of Conduct.

Paragraph 15.3 of the Code of Conduct goes on to state that, before waiving the requirements set out in paragraph 15.5 for the professional investors, firms should assess and be reasonably satisfied that the investor is knowledgeable and has sufficient expertise in the relevant products and markets. Regards should be given to:

- the type of products in which the investor has traded;
- the frequency and size of trades (a professional investor would be expected to have traded not less than 40 transactions per annum);
- the investor's dealing experience (a professional investor would be expected to have been active in the relevant market for at least 2 years);
- whether the investor has knowledge and expertise in the relevant products; and
- the investor's awareness of the risks involved in trading in the relevant markets.

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This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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