

FREQUENTLY ASKED QUESTIONS
GUIDELINES ON CONDUCT FOR CAPITAL MARKET INTERMEDIARIES

1. Why has the SC revised the *Guidelines on Conduct for Capital Market Intermediaries (Conduct Guidelines)*?

The revised Conduct Guidelines has been issued to provide better guidance to capital market intermediaries (CMI) and their representatives in raising their standards in cultivating a corporate culture and business conduct which is focused on delivering the outcomes set out in paragraph 1.02 of the revised Conduct Guidelines (Outcomes), to clients.

The revised Conduct Guidelines, among others, includes new provisions in relation to the following:

- (a) CMI's treatment of vulnerable clients;
- (b) Provision of personal advice to clients; and
- (c) Provision of a capital market related service on or through an online platform.

In addition, the revised Conduct Guidelines also clarifies and enhances certain existing requirements, including:

- (a) The role of a CMI's board and senior management in promoting the Outcomes;
- (b) The SC's expectations on a CMI's treatment of clients; and
- (c) Situations in which a CMI is expected to exercise reasonable care, skill and diligence.

2. What should a CMI consider in designing controls, policies and procedures (CPP) to ensure compliance with the revised Conduct Guidelines?

Pursuant to paragraph 5.01 of the revised Conduct Guidelines, a CMI must establish CPP that enable the CMI to comply with the requirements imposed under the revised Conduct Guidelines. In designing the CPP, a CMI must take into account the risk arising from the type of activity it carries on and the nature and scale of its business. Controls put in place can include preventive, detective, and corrective controls.

Preventive controls are put in place to prevent negative outcomes, detective controls are usually processes put in place to identify potential issues arising from the activity carried out while corrective controls are measures that are implemented to correct problems or issues after they have been identified. The CPP should be reviewed regularly to ensure that they remain relevant and effective.

3. Where a CMI is subject to more than one guideline that imposes conduct requirements, which guideline should the CMI comply with?

The requirements set out under the revised Conduct Guidelines are general conduct requirements which are in addition to and not in derogation of any other requirements. A CMI is expected to comply with the general conduct requirements where the requirements are relevant to the activity that the CMI is carrying on. Where however, the CMI is subject to other guidelines that impose specific or stricter requirements on the relevant activity, the CMI must also comply with the stricter requirements in addition to the general conduct requirements.

Examples of situations where a CMI may be subject to more than one guideline which imposes conduct requirements are set out below:

(a) Management of conflict of interest

Revised Conduct Guidelines	<i>Guidelines on Market Conduct and Business Practices for Stockbroking Companies and Licensed Representatives (Stockbroking Guidelines)</i>
Sets out general requirements for a CMI to identify and manage conflicts of interests.	Sets out a specific requirement that a stockbroking company having knowledge of a research report must not purchase or sell securities in advance of the release of that research report as it would amount to a conflict of interest.

In this instance, a CMI who is a stockbroking company having knowledge of a research report, must comply with the specific requirements under the Stockbroking Guidelines in addition to the general requirements under the revised Conduct Guidelines.

(b) Protection of clients' assets

Revised Conduct Guidelines	<i>Guidelines on Compliance Function for Fund Management Companies (FMC Guidelines)</i>
Sets out general requirements for a CMI to ensure that there are appropriate safeguards in place to protect clients' assets.	Sets out specific requirements for a fund management company (FMC) to:

	<p>(i) appoint a custodian to maintain a trust account for its clients' assets; and</p> <p>(ii) ensure that its clients' assets are transferred to the trust account maintained by the custodian no later than the next business day after it receives clients' assets through its own account.</p>
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In this instance, a CMI who is an FMC, must comply with the specific requirements in respect of the protection of clients' assets under the FMC Guidelines in addition to the general requirements for the same under the revised Conduct Guidelines.

(c) Duty to exercise reasonable care, skill and diligence

Revised Conduct Guidelines	FMC Guidelines
Sets out general requirements for a CMI to exercise reasonable care, skill and diligence when giving advice to its clients, among others, to ensure that the CMI has reasonable basis for that advice.	Sets out specific requirements which require a portfolio manager to have a reasonable and adequate basis in setting the investment policy and making investment recommendation for a client. Before implementing the investment policy or investment recommendation, the portfolio manager must establish and understand the risk profile, investment objectives, limitations, restrictions and instructions of the client.

In this instance, a CMI who is a portfolio manager giving advice, must comply with the specific requirements under the FMC Guidelines in addition to the general requirements under the revised Conduct Guidelines.

4. Are the conduct requirements set out in the revised Conduct Guidelines applicable to a CMI providing a capital market related service to a client who is a sophisticated investor?

As discussed above, the purpose of the revised Conduct Guidelines is to ensure the delivery of the Outcomes to all clients, including clients who are sophisticated investors. As such, the conduct requirements in the revised Conduct Guidelines will also apply to

a CMI providing a capital market related service to a client who is a sophisticated investor, unless stated otherwise.

5. What is the SC's expectation regarding 'honesty'?

Pursuant to paragraphs 6.01 and 6.02 of the revised Conduct Guidelines, a CMI and its representatives are expected to act honestly at all times when dealing with clients. This includes that a CMI should not intentionally or recklessly mislead or deceive its clients at any stage of its relationship with its clients.

For example, a CMI should not represent a fund to a client as being a sustainable and responsible investment (SRI) fund if the CMI is aware or ought to have been aware that the fund is not structured in the manner required, or no longer complies with the requirements, under the *Guidelines on Sustainable and Responsible Investment Funds*. To do otherwise would result in the CMI misleading the client and thus, not acting honestly.

6. What is the SC's expectation regarding 'fairness'?

Pursuant to paragraphs 6.01 and 6.02 of the revised Conduct Guidelines, a CMI and its representatives are expected to treat clients with fairness when carrying on or providing a capital market related service. Acting with 'fairness' entails, among others, a CMI–

- (a) giving due consideration to a client's circumstances including any vulnerabilities that the client may have. This is to ensure that a CMI does not disadvantage a client because of the client's circumstances and that the CMI delivers the Outcomes to all clients;
- (b) communicating information to a client in a manner that enables the client to understand the product and its associated risks. In this respect, a CMI should use simple and clear language and avoid using technical language or terms; and
- (c) demonstrating that it has explained to the client, the implications of terms which affect the client's rights and obligations contained in a standard form contract.

7. Can a standard form contract prepared by a CMI include terms that benefit the CMI or restrict the rights of the client?

Yes. The revised Conduct Guidelines does not prohibit a standard form contract from including terms that benefit the CMI or restrict the client's rights. However, as set out in question 6, the CMI must explain the implications of such terms to the client.

Therefore, it is in the interest of the CMI to take steps to identify terms which would affect the client's rights and obligations. Examples of such terms are set out in paragraph 6.04 of the revised Conduct Guidelines.

8. What is the standard expected of a CMI and its representatives when exercising care, skill and diligence in its dealings with clients?

Pursuant to paragraph 8.01 of the revised Conduct Guidelines, the standard expected is 'reasonable' care, skill and diligence. The 'reasonable' standard is an objective standard. It is based on how a hypothetical reasonable person with similar skills and expertise, would act in the given circumstances. Consideration will be given to factors such as the nature of and circumstances surrounding the conduct in question, the knowledge and expertise of the reasonable person, whether any industrial or professional standards apply to the reasonable person, and the relationship between the reasonable person and the person who is wronged.

9. Why has the SC introduced requirements in relation to the treatment of vulnerable clients under the revised Conduct Guidelines?

Chapter 7 of the revised Conduct Guidelines sets out requirements in relation to the treatment of vulnerable clients. This is to ensure that a vulnerable client is not disadvantaged by his circumstances and that all clients, including vulnerable clients, are treated fairly.

Therefore, a CMI who is aware of its client's vulnerability must not exploit the client's vulnerability to the CMI's own advantage. Further, the CMI should also take steps to ensure that the client's vulnerability does not impede the client's ability to make an informed investment decision.

10. If a client fails to disclose his vulnerability, would the CMI be held responsible for failing to identify the client as vulnerable?

The SC would not hold a CMI responsible for failing to identify a client as vulnerable if the CMI is able to show that it has exercised reasonable care in identifying a vulnerable client.

For example, the CMI would not be held responsible where the client has chosen not to inform the CMI of his vulnerability despite the CMI having explained to the client towards the client's understanding of vulnerabilities and asked if the client has any vulnerabilities as well as the importance of disclosing such information to the CMI.

11. What is the SC's expectation regarding the provision of information to clients?

A CMI and its representatives must provide information to its clients in accordance with paragraphs 6.02(b) and (c) of the revised Conduct Guidelines. Information which is factual in nature is not considered to be 'advice' for purposes of the revised Conduct Guidelines. Therefore, the requirements under Chapter 9 of the revised Conduct

Guidelines do not apply to the provision of factual information, provided that the CMI explains to the client that it is only providing factual information and not personal advice.

For the avoidance of doubt, factual information refers to information which is objective and ascertainable, the accuracy of which cannot be reasonably questioned. Unlike the giving of advice, the provision of factual information does not involve an assessment of either the features of the capital market product or the particular circumstances of the client.

In complying with the requirements under paragraphs 6.02(b) and (c), a CMI and its representatives should ensure that any information provided to clients (whether on or through an online platform, or otherwise) promotes the clients' understanding of the features, terms, price and risks of the capital market product or service.

12. Can a person registered under section 76A of the CMSA give personal advice?

No, a person registered under section 76A of the CMSA cannot give personal advice as such person is not permitted to give investment advice, whether as a principal activity or incidental activity.

13. What are the key differences between the suitability assessment requirements under Part 4 of the *Guidelines on Sales Practices of Unlisted Capital Market Products* (Sales Practices Guidelines) and the specific requirements in relation to personal advice under Chapter 9 of the revised Conduct Guidelines?

Both the Sales Practices Guidelines and revised Conduct Guidelines require that there is a reasonable basis for making a recommendation or giving personal advice to a client, the basis of which must be documented.

In this regard, the revised Conduct Guidelines have largely adopted the suitability requirements applicable to recommendations given on a face-to-face basis under the Sales Practices Guidelines. In addition, the revised Conduct Guidelines set out new areas such as requirements pertaining to personal advice given on or through online platforms.

The table below sets out a comparison of the key requirements under both guidelines:

Requirements	Sales Practices Guidelines	Revised Conduct Guidelines
Information and risk warnings prior to gathering client information	✘	✓
Gather client information	✓	✓
Review information gathered and product	✓	✓

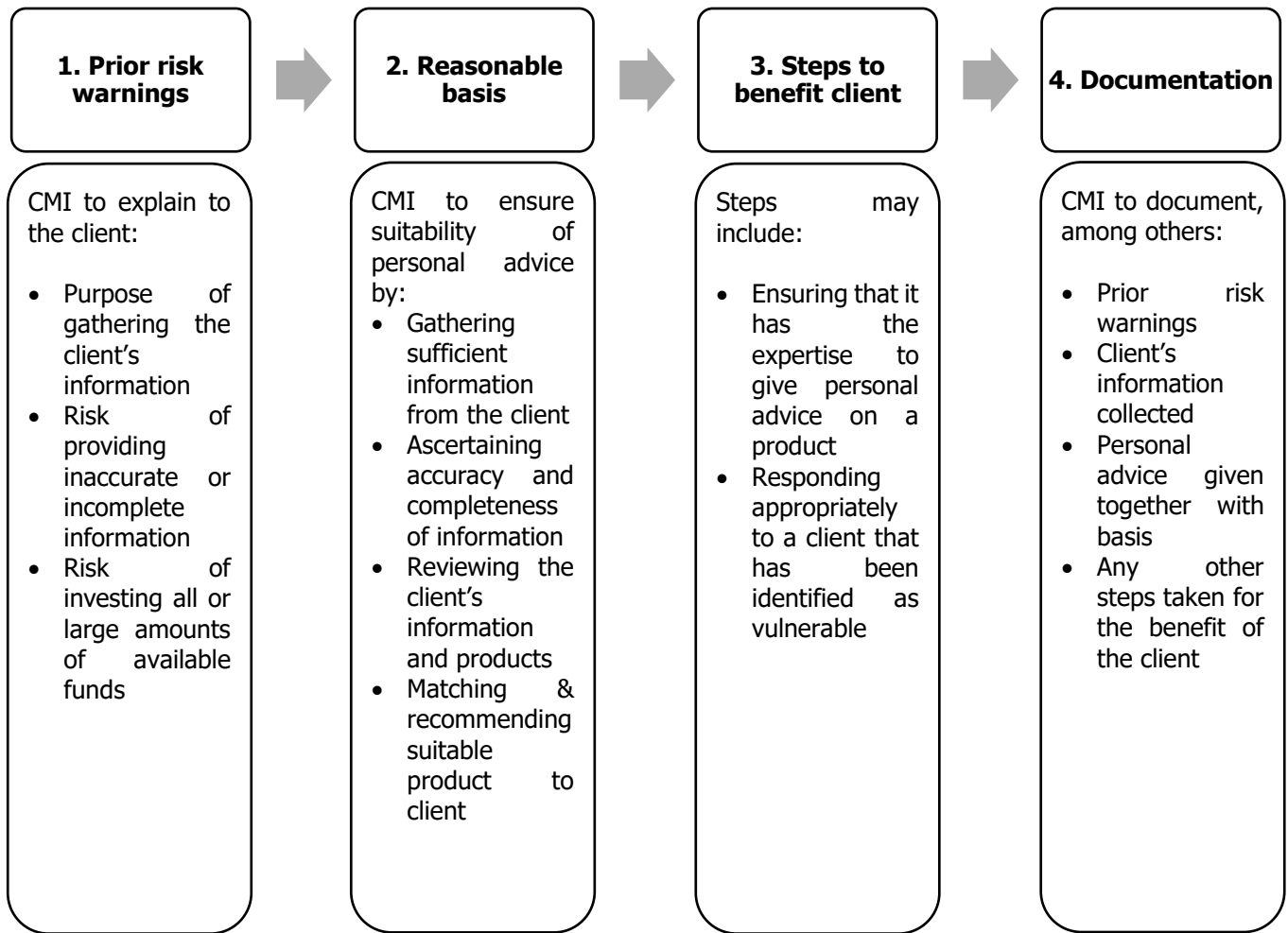
Take steps to benefit the client	✘	✓
Match suitable product to client	✓	✓ (with additional requirements and Guidance on matching)
Make recommendation of suitable product	✓	✓
Document client information and recommendation	✓	✓
Requirements for recommendations given on or through an online platforms	✘	✓

14. What steps must be taken to comply with the requirements in relation to personal advice under Chapter 9 of the revised Conduct Guidelines?

The revised Conduct Guidelines set out specific requirements in relation to the giving of personal advice under paragraphs 9.07 – 9.10. Where personal advice is given on or through an online platform, a CMI may comply with the modified requirements under paragraph 9.11.

The diagram below sets out the requirements to be complied with.

Specific requirements in relation to personal advice



Where personal advice is given on or through an online platform, a CMI is deemed to have complied with steps 2 and 3, provided it complies with the modified requirements below.

Modified requirements

- Client information collected is not limited to 'customer due diligence' purposes;
- Online platform is entirely automated and programmed with compulsory questions to filter out or warn clients whose circumstances would render him unsuitable for the product;
- Online platform is programmed to detect inconsistent responses; and
- Client is alerted that the advice given only takes into account the information collected.