

Client Alert

Financial Services

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Regulatory requirements for market sounding finalised

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The Securities and Futures Commission (**SFC**) has issued consultation conclusions on its Guidelines for Market Soundings (**Guidelines**). The Guidelines will come into effect on 2 May 2025.

This article summarises the requirements of the Guidelines for asset managers and other SFC-licensed buy side participants.

The SFC's consultation conclusions are available [here](#). The final form of the Guidelines is attached as Appendix B to the consultation conclusions. The original SFC consultation is available [here](#).

Regulatory requirements more limited than originally proposed

In good news for buy side participants, both the scope of the Guidelines and the regulatory obligations imposed on buy side participants under the Guidelines are more limited than proposed in the original SFC consultation.

Scope of the Guidelines

Market sounding is defined in the Guidelines as “the communication of information with potential investors, prior to the announcement (if any) of a transaction, to gauge their interest in a possible transaction and assist in determining the terms and specifications related to it, such as its potential timing, size, pricing, structure and trading method”.

Regulatory obligations only arise for (1) certain types of transactions and (2) certain types of information:

- (1) Regulatory obligations only arise if the market sounding is conducted in connection with a possible transaction in (i) shares that are listed on an exchange (either in Hong Kong or elsewhere), or (ii) any other securities which is likely to materially affect the price of shares that are listed on an exchange (either in Hong Kong or elsewhere);
- (2) Regulatory obligations only arise in respect of “Market Sounding Information” that is disclosed during the course of a market sounding – “Market Sounding Information” is defined as “confidential information that is entrusted to [the disclosing person] by a client, an issuer or an existing shareholder selling or buying in the secondary market”.

Regulatory obligations arise for:

- (1) SFC-licensed or registered persons that disclose Market Sounding Information during the course of a market sounding (typically sell-side participants, referred to in the Guidelines as the Disclosing Persons); and
- (2) SFC-licensed or registered persons that receive Market Sounding Information during the course of a market sounding (typically buy-side participants, referred to in the Guidelines as the Receiving Persons).

Obligations of all market participants

Under the Guidelines, all Disclosing Persons and Receiving Persons are required to:

- (a) protect Market Sounding information and safeguard its confidentiality, and ensure they have effective systems of functional barriers to prevent inappropriate disclosure, misuse and leakage of Market Sounding Information;

- (b) have robust governance and oversight arrangements in place to ensure effective management supervision over their market sounding activities;
- (c) establish and maintain effective policies and procedures specifying the manner and expectations in which their market soundings should be conducted; and
- (d) establish effective procedures and controls to monitor and detect suspicious behaviours, suspected misconduct, inappropriate or unauthorised disclosure, misuse or leakage of Market Sounding Information and non-compliance with internal guidelines related to market soundings.

Additional obligations for buy side participants

Under the Guidelines, a Receiving Person will also be required to:

- (a) authorise a person who has adequate knowledge of its internal policies on the receipt and handling of market soundings, and inform Disclosing Persons of such arrangement upon being contacted by Disclosing Persons for the purpose of market soundings;
- (b) inform Disclosing Persons whether it wishes to, or not to, receive market soundings in relation to either all possible transactions or particular types of possible transactions from the Disclosing Persons; and
- (c) in circumstances when a Disclosing Person does not specify whether the communication is a market sounding, use its reasonable effort to verify whether it is in possession of Market Sounding Information.

For (c) above, if a Disclosing Person is an SFC-licensed or registered person, the Disclosing Person will have an obligation under the Guidelines to inform the Receiving Person of the potential to receive Market Sounding Information and to get consent from the Receiving Person to such receipt. In contrast, if the Disclosing Person is not an SFC-licensed or registered person (such as e.g. an overseas broker) then the Disclosing Person will not be subject to the Guidelines and so the Receiving Person will need to use reasonable efforts to verify whether any information it receives is Market Sounding Information.

Further regulatory guidance

The SFC has published FAQs to supplement the Guidelines, including examples of what constitutes Market Sounding Information, what constitutes reasonable efforts to determine whether information is Market Sounding Information, when information ceases to be Market Sounding Information and examples of misuse of Market Sounding Information. The FAQs are available [here](#).

When will the Guidelines come into effect?

The Guidelines will come into effect on 2 May 2025.

What should buy side participants do now?

Buy side participants should:

1. Review the Guidelines and the related FAQs;
2. Ensure key staff, such as relevant responsible officers and managers in charge, portfolio managers and compliance, are aware of the Guidelines and its requirements;
3. Review their existing policies and procedures for market soundings against the Guidelines to identify potential areas for enhancement;
4. Develop a plan to implement necessary enhancements; and

5. Ensure necessary enhancements and any related training activities are implemented before 2 May 2025.

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