SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products

證監會有關單位信託及互惠基金、與投資有關的人壽保險計劃及非上市結構性投資產品的手冊

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Section I: Overarching Principles Section

Chapter 1: Preliminary

Introduction to the Handbook

1.1 The Handbook is made under section 399 of the SFO and establishes codes or guidelines for the authorization of products covered by the Handbook and their offering documents and advertisements. These guidelines are not intended to be exhaustive.

1.2 Section I of the Handbook sets out the high-level principles and requirements that are intended to apply to all products. More detailed product-specific requirements applicable to specific types of products are contained in the applicable product code.

1.3 The Handbook provides general guidelines for authorization of products specifically stated in the applicable product codes. The Commission will have regard to both the spirit as well as the letter of the General Principles set out in Chapter 3 of this Overarching Principles Section in considering products authorization applications and whether products should remain authorized.

1.4 All products, their Product Providers and the Specified Entities are expected to comply with all applicable principles and requirements set out in Section I of the Handbook in addition to the detailed product-specific requirements applicable to specific types of products that are contained in the applicable product code.

1.5 The Handbook does not have the force of law and shall not be interpreted in a way that will override the provision of any law.

Effect of breach of the Handbook

1.6 Failure by any person to comply with any applicable provision of the Handbook:

(a) shall not by itself render the person liable to any judicial or other proceedings, but in any proceedings under the SFO before any court, the Handbook may be admissible in evidence, and if any provision set out in the Handbook appears to the court to be relevant to any question arising in the proceedings, it may be taken into account in determining the question;

(b) may cause the Commission to consider whether such failure adversely reflects on the person's fitness and properness (in so far as the relevant person is licensed or registered under the SFO and its obligations are stated in the Handbook);

(c) may cause the Commission to consider whether such failure adversely reflects on whether the product, the offering document and/or the advertisements should remain authorized;

(d) may cause the Commission to consider whether such failure adversely reflects on whether further products issued, managed and/or originated by such person, and/or offering documents and advertisements in relation to such products, should be granted authorization in the interest of the investing public (i.e. where there is a serious breach, the Commission may refuse to authorize new products issued, managed and/or originated by the person in breach and/or offering

documents and advertisements in relation to such products for a stated period); and

(e) may cause the Commission to impose additional authorization condition(s) which may include restricting the further offering of the product to the public.

Interpretation

1.7 Unless otherwise stated, the following words and expressions shall have the following meaning throughout Section I of the Handbook:

(a) "applicable product code" means the UT Code in the case of unit trusts/mutual funds, the ILAS Code in the case of ILAS or the SIP Code in the case of structured investment products;

(b) "Commission" or "SFC" means the Securities and Futures Commission referred to in section 3(1) of the SFO;

(c) "counterparties" means, where applicable, the other parties in the structure of a product including guarantors, other protection writers, swap counterparties, prime brokers and includes those bearing similar meaning within each of the applicable product codes;

(d) "Handbook" means the entire SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products including this Overarching Principles Section, the UT Code, the ILAS Code and the SIP Code;

(e) "ILAS" means investment-linked assurance schemes that are subject to the ILAS Code;

(f) "ILAS Code" means the Code on Investment-Linked Assurance Schemes administered by the Commission as set out in Section III of the Handbook;

(g) "investor(s)" shall include, for the purpose of reference only, investors in the case of unit trusts/mutual funds and structured investment products and scheme participants/prospective scheme participants in the case of ILAS;

(h) "offering document" means, as the case may be, the offering document as defined in the applicable product code in respect of the relevant products;

(i) "products" means any unit trusts/mutual funds, ILAS or structured investment products being offered to the Hong Kong public;

(j) "Product Provider(s)" means in their respective contexts, the issuer of a structured investment product; the management company of a unit trust/mutual fund and the unit trust/mutual fund itself and (where unit trust/mutual fund is in the nature of a mutual fund corporation) its board of directors; and the insurance company issuing an ILAS;

(k) "service providers" means persons which provide services in respect of the product including credit rating agencies, trustees/custodians, valuation agents, administrators, index sponsors and calculating agents;

(l) "SFO" means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong);

(m) "SIP Code" means the Code on Unlisted Structured Investment Products administered by the Commission as set out in Section IV of the Handbook;

(n) "Specified Entity" means a counterparty or service provider whose role and responsibilities with respect to a product have been specified in the applicable product code;

(o) "structured investment products" has the meaning ascribed to it in the SIP Code;

(p) "unit trust(s)/mutual fund(s)" means collective investment scheme(s) commonly regarded as unit trusts or mutual funds that are subject to the UT Code; and

(q) "UT Code" means the Code on Unit Trusts and Mutual Funds administered by the Commission as set out in Section II of the Handbook.

SFC's authorization

1.8 Nothing in the Handbook shall be interpreted in a manner that alters or imposes any restriction upon the exercise by the Commission of any power or discretion conferred upon it under the SFO.

1.9 The Commission may at any time pursuant to the SFO review its authorization and may modify, add to or withdraw any of the conditions of such authorization, or withdraw the authorization, as it considers appropriate.

1.10 Where a product is described as having been authorized by the Commission, it shall be stated that authorization does not imply official recommendation by adding a prominent note in the following terms to the offering document and advertisement and other invitations to invest in the product:

Note: SFC authorization is not a recommendation or endorsement of a product nor does it guarantee the commercial merits of a product or its performance. It does not mean the product is suitable for all investors nor is it an endorsement of its suitability for any particular investor or class of investors.

1.11 The SFC takes no responsibility for the contents of any offering documents or advertisements authorized by it. Product Providers are reminded that in granting authorization, the SFC relies on the representations made and information provided by the Product Provider and/or its representatives or agents in support of the authorization application. The making of any false or misleading representation and/or the provision of any false or misleading information by such person may amount to an offence under the SFO.

1.12 Product Providers are also reminded that SFC authorization does not imply that the SFO, or any other legal or regulatory requirements, have been complied with. Nothing in respect of an authorization may be taken as preventing the SFC from taking any action against any parties for breach of the SFO, or any other legal or regulatory requirements.

1.13 It is the SFC's policy intent that products offered to the public in Hong Kong are subject to the prior authorization of the SFC unless an exemption applies to their offering

documents or advertisements. Given an unauthorized product is not required to comply with the requirements set out in the Handbook, the SFC would not generally consider it appropriate to authorize any advertisement, invitation or document in respect of such unauthorized product under section 105 of the SFO.

1.14 Authorization of a product under the SFO would normally be granted together with the authorization of its offering document(s) under section 105 of the SFO. It is the general policy of the Commission not to consider authorizing a product under the SFO alone without a concurrent authorization of its offering document(s).

Note: For the avoidance of doubt, references to "authorization of products" or terms to the same effect in the Handbook are applicable to products which may be authorized by the SFC under Part IV of the SFO. Upon the legislative amendments pursuant to the consultation on the "Possible Reforms to the Prospectus Regime in the Companies Ordinance and the Offers of Investments Regime in the Securities and Futures Ordinance" issued by the SFC in October 2009 becoming effective, such products shall include structured investment products.

1.15 The Commission may modify or relax the application of a requirement in this Overarching Principles Section if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.

Chapter 2: Administrative arrangements

Products Advisory Committee

2.1 According to section 8 of the SFO, the Commission is empowered to set up committees whether for advisory or other purposes. The Commission will establish a Products Advisory Committee for the purpose of consultation and advice on matters that may relate to the Handbook. The remit of the Products Advisory Committee and its membership shall be laid down in its terms of reference.

2.2 For the avoidance of doubt, the function of the Products Advisory Committee will be purely advisory in nature. It will not be vested with any of the powers exercisable by the SFC under the applicable sections of the SFO for authorization of products and their offering documents and advertisements.

Data privacy

2.3 The information requested under the Handbook may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organisations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in sections 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. Persons who have supplied data to the Commission under the Handbook may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries shall be directed to the Data Privacy Officer at the SFC.

Chapter 3: General principles

3.1 In formulating the principles in Section I of the Handbook, the Commission has taken into account principles developed by the International Organisation of Securities Commissions and other principles that the Commission believes to be fundamental for the regulation of products generally offered to the public covered under the Handbook.

3.2 Product Providers shall comply with the spirit of these principles in administering, managing or dealing with any matters relating to the issue, advertising and operation of products.

GP1. Acting fairly

3.3 Product Providers shall act honestly, fairly and professionally.

GP2. Disclosure

3.4 Disclosure shall be complete, accurate and fair, and be written and presented in a clear, concise and effective manner and in such manner as to be readily understood by the investing public. Information provided shall not be false or misleading nor be presented in a deceptive or unfair manner. Where ongoing disclosure is required, the relevant information shall be disseminated in a timely and efficient manner.

GP3. Proper protection of assets

3.5 Where assets are specifically required by the applicable product code to be held for the benefit of investors, all such assets shall be properly protected.

GP4. Avoidance of conflicts of interest

3.6 Product Providers, counterparties and service providers shall avoid being placed in a conflicts of interest position that may undermine the interests of the investors of the relevant product.

GP5. Regulatory compliance

3.7 Product Providers shall ensure that all applicable legal and regulatory requirements are complied with and shall respond to requests and enquiries from the regulators in an open and co-operative manner.

GP6. Diligence

3.8 Product Providers shall discharge their functions with due skill, care and diligence.

GP7. Marketing

3.9 Advertisements for a product shall be clear, fair and present a balanced picture with adequate and prominent risk disclosures in compliance with all applicable regulations. Advertisements shall not be false, biased, misleading or deceptive.

Chapter 4: Product Providers

General duties and obligations

4.1 The Product Provider shall:

(a) comply with the applicable provisions of the Handbook;

(b) respond to any enquiries made by the Commission in relation to the relevant product and the associated matters promptly and in an open and co-operative manner;

(c) inform the Commission promptly should there be any material breach of the Handbook; and

(d) use its best endeavours to take appropriate remedial action to rectify any breach of the Handbook promptly.

Note: The main purpose of such remedial action is to ensure that investors are not being put in a disadvantageous position as a result of the breach and to maintain market integrity.

Conflicts of interest

4.2 The Product Provider shall avoid situations where conflicts of interest may arise including any actual or potential conflicts that may arise between different parties in respect of a product. Where such a conflict cannot be avoided, and provided that investors' interests can be sufficiently protected, the conflict shall be managed and minimized by appropriate safeguards, measures and product structure and these measures and safeguards shall be properly disclosed to investors.

Chapter 5: General requirements

Name of product

5.1 A product's name shall not be undesirable or misleading.

Notes: *Issuers should consider the following factors before selecting the name for a product:*

(i) whether it is inconsistent with the nature of the product or the investment objectives or policy of the product;

(ii) whether the name of the product would give investors a sense of assurance or security not justified by the underlying features of the product;

(iii) whether it might lead investors into thinking or create the impression that persons other than the Product Provider are responsible for the product; and

(iv) whether it might lead investors into thinking or create the impression that the Product Provider is not responsible for the product.

5.2 Where the name of a product includes the word "guaranteed", "principal protected", "capital protected" or words with similar meanings, it shall accurately reflect the nature and extent of the guarantee or the capital/principal protection taking into account the impression that such description might give to the investing public.

Selection of distributors

5.3 The Product Provider shall exercise reasonable care and diligence in the selection and appointment of distributors for a product, in particular, having regard to whether such distributor is suitably qualified and competent to discharge its obligations properly.

Engagement of counterparties and appointment of service providers

5.4 The Product Provider shall exercise reasonable care and diligence in the selection of counterparties and service providers.

5.5 The Product Provider shall satisfy itself, having made due enquiries, that each of the key counterparties and service providers engaged or appointed in respect of the product is competent and has resources to:

(a) duly discharge its obligations under its terms of engagement or appointment; and

(b) comply with all relevant requirements set out in applicable product code specifically applicable to such counterparties/service providers.

Language

5.6 Without prejudice to any requirement under applicable laws, all offering documents shall be written in both the Chinese and English languages, unless this requirement is otherwise waived by the Commission.

Note: In the case of advertisements, issuer of advertisements may choose to issue advertisement in just one language, having in mind the target audience groups.

Chapter 6: Disclosure requirements

General obligations

6.1 Disclosure shall be clear and effective and readily understood by the investing public.

6.2 Where comparative information is presented, the comparison shall be meaningful and presented in a fair and balanced way. The source of information used for comparison shall be specified, and the key facts and assumptions used to make the comparison shall be included.

6.3 Disclosure shall be legible.

Offering documents

6.4 The offering documents shall contain the information necessary for investors to be able to make an informed judgement of the investment and, in particular, shall meet the disclosure requirements required under the applicable product code.

Notes: (1) All key features and risks of the product shall be highlighted for investors prominently in a succinct manner.

(2) Where a product is being offered on a continuous basis, its offering documents shall be updated in accordance with the requirements set out in the applicable product code.

Product Key Facts Statements

6.5 Product summaries in the form of a Product Key Facts Statement shall be prepared for all products. Save as otherwise provided in the applicable product codes, the Product Key Facts Statement shall be a part of the offering document of the product. Product Key Facts Statements shall be clear, concise and shall be capable of being easily understood by investors.

6.6 Product Key Facts Statements shall be prepared in accordance with the principles set out in this chapter.

6.7 A Product Key Facts Statement shall highlight key information in respect of the product to investors in a clear, concise and effective manner. A Product Key Facts Statement shall be fairly presented and shall not contain any false or misleading information.

Notes: (1) A Product Key Facts Statement should contain information that enables investors to comprehend the key features and risks of the product.

(2) Product Key Facts Statements shall be concise and kept at a minimal length. As a matter of best practice, it is expected that Product Key Facts Statements should not be more than 4 pages.

(3) Product Key Facts Statements shall be prepared in plain, concise and easily-understood language. Legal or financial jargon should be avoided.



(4) Use of simple examples, charts, tables, diagrams and graphics for illustration purposes in a Product Key Facts Statement is encouraged. Use of bold headings and white space should also be considered as this may make the document easier to read and navigate. Information should not be densely packed.

(5) Information in a Product Key Facts Statement shall be presented in a font that is easy to read and highly legible. The font size adopted shall also be reasonably legible taking into account the language used.

(6) Product Key Facts Statements shall be prepared in a format that facilitates comparison with other products.

6.8 All Product Key Facts Statements shall carry a prominent upfront warning statement on their first page to warn investors that the Product Key Facts Statement is a part of the offering document (where applicable) and they should not invest in the product based on the Product Key Facts Statement alone.

Advertisements

6.9 All advertisements for a product shall comply with the applicable advertising guidelines.

6.10 Advertisements for a product shall:

(a) not be false, biased, misleading or deceptive;

(b) be clear, fair and present a balanced picture of the product with adequate and prominent risk disclosures; and

(c) contain information that is timely and consistent with its offering document.

Notes: (1) Whilst advertisements are by nature promotional materials to arouse investors' interests in a product, it is essential that advertisements present a balanced picture and are not false or misleading.

(2) If visual images are used, they should not divert or mislead investors' focus from the proper consideration of the product.

(3) Where the benefits/rewards of a product are stressed, there shall be a balance so that the possible downside is also explained.

6.11 Advertisements shall not carry any slogan that is exaggerated or unwarranted or slogan that is inconsistent with or unrelated to the nature and risk and return profile of the product.

Use of disclaimers

6.12 Disclaimers may be only used where it is permitted under the applicable product code and any disclaimer used shall be reasonable. Use of disclaimers to exclude or limit the relevant party's obligations towards investors which are otherwise imposed on it at law and/or under other applicable rules, codes or guidelines shall be avoided.

Chapter 7: Ongoing monitoring of the product and information to investors

Ongoing disclosure

7.1 Where the applicable product code imposes an ongoing obligation on the Product Provider to keep investors informed of matters affecting investors or to disseminate product-related information on a regular basis, then the Product Provider shall ensure that:

(a) effective measures are in place for timely dissemination of such information; and

(b) it monitors closely those matters required for notification.

Issue of advertisements

7.2 Issuers of advertisements shall ensure that prior to its issue, each advertisement in relation to a product shall be subject to a due review process conducted by a competent delegate designated by the senior management of the issuer of the advertisement to ensure that the advertisement complies with the applicable product code. Such delegate shall be duly authorized to issue the advertisement on behalf of the issuer of the advertisement.

Investor education

7.3 As a matter of best practice, the Product Provider is encouraged to provide investor education, especially where they are launching products that are new or novel in the Hong Kong market.

Enquiries and complaints handling

7.4 Product Providers should provide in their offering documents information regarding how investors' enquiries and complaints will be handled.

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Section II:
Code on Unit Trusts and Mutual Funds

Explanatory Notes:

(a) The Securities and Futures Commission is empowered under section 104(1) of the Securities and Futures Ordinance ("SFO") to authorize collective investment schemes. By virtue of section 104(1), the authorization may be granted subject to such conditions as the Commission considers appropriate. This Code on Unit Trusts and Mutual Funds ("UT Code"), which forms part of the Handbook, establishes guidelines for the authorization of collective investment schemes in the nature of mutual fund corporations or unit trusts, and codifies practices established in relation to the former Code on Unit Trusts and Mutual Funds published pursuant to the SFO. Any change or amendment to this UT Code will be made known to the industry and transitional periods for compliance will be allowed where necessary.

(b) The Commission may review its authorization at any time and may modify, add to or withdraw such authorization as it deems fit.

(c) The issue of an advertisement or invitation to the public in Hong Kong to invest in an unauthorized collective investment scheme may amount to an offence under section 103 of the SFO.

(d) This UT Code is made under section 399 of the SFO.

(e) This UT Code does not have the force of law.

(f) The Commission may modify or relax the application of a requirement in this UT Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.

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Part I: General matters

Chapter 1: Authorization procedures

Schemes established in Hong Kong or elsewhere

1.1 Schemes to be established in Hong Kong or elsewhere are normally expected to comply with the applicable provisions of the Handbook, including without limitation, all of the applicable provisions of this UT Code in order to be authorized in Hong Kong by the SFC pursuant to section 104 of the SFO.

Applications for authorization which seek waivers of any of these provisions must give detailed reasons why waivers are sought.

Scheme established in recognized jurisdictions

1.2 This UT Code accepts that some schemes already comply with certain provisions of this UT Code by virtue of prior authorization in a regulated jurisdiction. It therefore recognizes the types of scheme in jurisdictions set out in the list of recognized jurisdictions published on the Commission's website. Applications for authorization of recognized jurisdiction schemes will generally be reviewed on the basis that the scheme's structural and operational requirements, and core investment restrictions, already comply in substance with this UT Code. Applicants should note however that the SFC expects a scheme to comply in all material respects with this UT Code and reserves the right to require such compliance as a condition of authorization.

Documents to be supplied to the Commission

1.3 An applicant for authorization of a scheme must submit a completed Application Form and an Information Checklist as set out on the Commission's website. The application must also be accompanied by the following and such other documents as may be required by the Commission from time to time:

(a) the scheme's offering and constitutive documents, including its Hong Kong Offering Document and Product KFS [see 3.6, 3.9 and 3.11B];

(b) [deleted]

(c) [deleted]

(d) [deleted]

(e) [deleted]

(f) application fee; and

Note: The current fee schedule is available on the Commission's website.

(g) the letter nominating an individual to be approved by the Commission as an approved person [see 1.5] containing the individual's name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address.

In addition to the above, applicants for authorization of a non Hong Kong-based scheme must supply the following:

(h) A written undertaking from the Hong Kong Representative [see 9.7].

(i) [deleted]

Amendments to documents

1.4 In cases where it may not be suitable to amend documentation to comply with a requirement of the Handbook or this UT Code, the Commission may accept a written undertaking from the relevant party that they will comply with the requirement, together with disclosure in the Hong Kong Offering Document regarding compliance.

Nomination of an individual as approved person

1.5 According to sections 104(2) and 105(2) of the SFO, an individual must be approved for the purposes of being served by the Commission with notices and decisions for, respectively, the scheme and the issue of any related advertisement, invitation or document. An applicant for authorization is, therefore, required to nominate an individual for approval by the Commission as an approved person.

1.6 An approved person should:

(a) have his/her ordinary residence in Hong Kong;

(b) inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;

(c) be capable of being contacted by the Commission during business hours;

(d) inform the Commission of any change in his/her contact details within 14 days after the change takes place; and

(e) comply with any other requirements as the Commission considers appropriate.

1.7 An individual approved by the Commission as an approved person for a scheme shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that scheme.

Chapter 2: Administrative arrangements

Product advisory committee

2.1 According to section 8 of the SFO, the Commission is empowered to set up committees, whether for advisory or other purposes. The Commission will establish a Products Advisory Committee for the purpose of consultation and advice on matters which may relate to collective investment schemes within the scope of this UT Code of the Handbook. The remit of the Products Advisory Committee and its membership will be set out in its Terms of Reference.

2.2 [deleted]

2.3 [deleted]

2.4 [deleted]

2.5 [deleted]

Data privacy

2.6 The information requested under this UT Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in section 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries should be directed to the Data Privacy Officer at the SFC.

Chapter 3: Interpretation

Unless otherwise defined, words and expressions used in this UT Code are as defined in the SFO.

3.1A "Advertising Guidelines" means the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.

3.1B [deleted]

3.2 "Collective investment scheme" or "scheme" means collective investment schemes commonly regarded as mutual funds (whether they appear in the legal forms of contractual model, companies with variable capital or otherwise) and unit trusts as are contemplated in this UT Code.

3.3 "Commission" or "SFC" means the Securities and Futures Commission referred to in section 3(1) of the SFO.

3.4 [deleted]

3.5 "Connected person" in relation to a company means:

(a) any person or company beneficially owning, directly or indirectly, 20% or more of the ordinary share capital of that company or able to exercise directly or indirectly, 20% or more of the total votes in that company; or

(b) any person or company controlled by a person who or which meets one or both of the descriptions given in (a); or

(c) any member of the group of which that company forms part; or

(d) any director or officer of that company or of any of its connected persons as defined in (a), (b) or (c).

3.6 "Constitutive documents" means the principal documents governing the formation of the scheme, and includes the trust deed in the case of a unit trust and the articles of association of a mutual fund corporation and all material agreements.

3.7 [deleted]

3.7A "Financial derivative instruments" refers to financial instruments which derive their value from the value and characteristics of one or more underlying assets.

3.8 "Holder" in relation to a unit or share in a scheme means the person who is entered in the register as the holder of that unit or share.

3.8A "Hong Kong Representative" or "Representative" means the Hong Kong representative appointed pursuant to 9.1 of this UT Code.

3.9 "Hong Kong Offering Document" means an offering document for distribution in Hong Kong containing the information required by Appendix C of this UT Code, and any other information necessary for investors to make an informed judgement about the scheme.

3.9A "Investment delegate" means an entity that has been delegated the investment management function of a scheme.

3.9B "Management company" means the entity appointed pursuant to 5.1 of this UT Code.

3.10 "Offering document" means that document, or documents issued together, containing information on a scheme to invite offers by the public to buy units/shares in the scheme.

3.10A "Reverse repurchase transactions" means transactions whereby a scheme purchases securities from a counterparty of sale and repurchase transactions and agrees to sell such securities back at an agreed price in the future.

3.10B "Sale and repurchase transactions" means transactions whereby a scheme sells its securities to a counterparty of reverse repurchase transactions and agrees to buy such securities back at an agreed price with a financing cost in the future.

3.10C "Securities financing transactions" has the meaning ascribed to it in 7.32 of this UT Code.

3.10D "Securities lending transactions" means transactions whereby a scheme lends its securities to a security-borrowing counterparty for an agreed fee.

3.11 "SFO" means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong).

3.11A "Product Code" means any of the following codes administered by the Commission:

(a) Code on Unit Trusts and Mutual Funds
(b) Code on Investment-Linked Assurance Schemes
(c) Code on Pooled Retirement Funds
(d) SFC Code on MPF Products

3.11B "Product KFS" means the Product Key Facts Statement which is the statement required pursuant to 6.2A.

3.12 "Recognized jurisdiction scheme" means a scheme authorized pursuant to overseas laws as listed in the list of recognized jurisdiction schemes which is published on the Commission's website as amended from time to time.

3.12A "Registered person" means a "registered institution" and, except where the context otherwise requires, includes a "relevant individual" as defined in section 20(10) of the Banking Ordinance (Chapter 155 of Laws of Hong Kong).

3.13 "Substantial financial institution" means an authorized institution as defined in section 2(1) of the Banking Ordinance (Chapter 155 of Laws of Hong Kong) or a financial institution which is on an ongoing basis subject to prudential regulation and supervision, with a minimum net asset value of HK$2 billion or its equivalent in foreign currency.

3.14 "Trustee/custodian", "trustee" or "custodian" means the entity appointed pursuant to 4.1 of this UT Code and, for the avoidance of doubt, refers to the trustee of a scheme in the case of a unit trust and the custodian of a scheme in the case of a mutual fund corporation.

3.15 [deleted]

Part II: Authorization requirements

Chapter 4: Trustee/Custodian

Appointment of trustee/custodian

4.1 Every collective investment scheme for which authorization is requested must appoint a trustee (in the case of a unit trust) or a custodian (in the case of a mutual fund corporation) that is acceptable to the Commission and shall comply with this Chapter on an ongoing basis.

Notes (1): Schemes established under trust must have a trustee and mutual fund corporations must have a custodian. In this context, this chapter lists the general obligations applicable equally to both trustee and custodian, whichever is appointed. The constitutive documents [see Appendix D] of the scheme must conform in substance to the intended operative effect of the provisions in this Chapter 4. Trustees are expected to fulfill the duties imposed on them by the general law of trusts. In the case of a mutual fund corporation, the responsibilities of a custodian under Chapter 4 may be reflected in the custodian agreement and/or the management agreement instead of the articles of association, where appropriate.

(2): An acceptable trustee/custodian should be subject to prudential regulation and supervision on an ongoing basis.

4.2 A trustee/custodian must be:

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) a banking institution incorporated outside Hong Kong which is subject to prudential regulation and supervision on an ongoing basis, or an entity which is authorized to act as trustee/custodian of a scheme and prudentially regulated and supervised by an overseas supervisory authority acceptable to the Commission; or

(e) a depositary licensed or registered to carry on Type 13 regulated activity under Part V of the SFO.

4.3 A trustee/custodian must be independently audited to ensure that the applicable statutory and regulatory requirements on financial resources are complied with.

4.4 A trustee/custodian must have minimum paid-up share capital and non-distributable capital reserves of HK$10 million or its equivalent in foreign currency. Notwithstanding this, the trustee/custodian's paid-up share capital and non-distributable capital reserves may be less than HK$10 million if the trustee/custodian is a wholly-owned subsidiary of a substantial financial institution (the holding company); and

(a) the holding company issues a standing commitment to subscribe sufficient additional capital up to the required amount, if so required by the Commission; or

(b) the holding company undertakes that it would not let its wholly-owned subsidiary default and would not, without prior approval of the Commission, voluntarily dispose of, or permit the disposal or issue of any share capital of the trustee/custodian such that it ceases to be a wholly-owned subsidiary of the holding company.

Note: 4.4 is not applicable to a trustee/custodian that is licensed or registered to carry on Type 13 regulated activity under Part V of the SFO, which shall comply with the applicable statutory requirements on financial resources.

General obligations of trustee/custodian

4.5 The trustee/custodian must:

(a)

(i) take into its custody or under its control all the property of the scheme and hold it in trust for the holders (in the case of a unit trust) or the scheme (in the case of a mutual fund corporation) in accordance with the provisions of the constitutive documents;

Note: With respect to property of the scheme which by nature cannot be held in custody, the trustee/custodian shall maintain a proper record of such property in its books under the name of the scheme.

(ii) register cash and registrable assets in the name of or to the order of the trustee/custodian;

(iii) be liable for the acts and omissions of nominees, agents and delegates in relation to assets forming part of the property of the scheme;

Note: Nominees, agents and delegates that are appointed for the custody and/or safekeeping of the property of the scheme shall be subject to prudential regulation and supervision, unless otherwise accepted by the Commission. The Commission must be satisfied with the overall custodial/safekeeping arrangement put in place to provide proper and adequate safeguards for the property of the scheme, having taken into account, among others, applicable local legal and regulatory requirements.

(iv) segregate the property of the scheme from the property of:

(1) the management company, investment delegates and their respective connected persons;

(2) the trustee/custodian and any nominees, agents or delegates throughout the custody chain; and

(3) other clients of the trustee/custodian and nominees, agents or delegates throughout the custody chain, unless held in an omnibus account with adequate safeguards in line with international standards and best practices to ensure that the property of the scheme is properly recorded with frequent and appropriate reconciliations being performed; and

(v) put in place appropriate measures to verify ownership of the property of the scheme;

(b) take reasonable care to ensure that the sale, issue, repurchase, redemption and cancellation of units/shares effected by a scheme are carried out in accordance with the provisions of the constitutive documents;

(c) take reasonable care to ensure that the methods adopted by the management company in calculating the value of units/shares are adequate to ensure that the sale, issue, repurchase, redemption and cancellation prices are calculated in accordance with the provisions of the constitutive documents;

(d) carry out the instructions of the management company in respect of investments unless they are in conflict with the provisions of the offering or constitutive documents or this UT Code;

(e) take reasonable care to ensure that the investment and borrowing limitations set out in the constitutive documents and the conditions under which the scheme was authorized are complied with;

(f) issue a report to the holders to be included in the annual report on whether in the trustee/custodian's opinion, the management company has in all material respects managed the scheme in accordance with the provisions of the constitutive documents; if the management company has not done so, the respects in which it has not done so and the steps which the trustee/custodian has taken in respect thereof;

(g) where applicable, take reasonable care to ensure that unit/share certificates are not issued until subscription moneys have been paid;

(h) take reasonable care to ensure that the cash flows of the scheme are properly monitored;

(i) exercise reasonable care, skill and diligence in the selection, appointment and ongoing monitoring of nominees, agents and delegates which are appointed for the custody and/or safekeeping of scheme's property [see 4.5(a)(iii)]; and be satisfied that the nominees, agents and delegates retained remain suitably qualified and competent on an ongoing basis to provide the relevant services;

(j) fulfil such other duties and requirements imposed on it as set out in this UT Code; and exercise due skill, care and diligence in discharging its obligations and duties appropriate to the nature, scale and complexity of the scheme; and

Note: [deleted]

(k) establish clear and comprehensive escalation mechanisms to deal with potential breaches detected in the course of discharging its obligations and report material breaches to the Commission in a timely manner.

Note: The trustee/custodian is expected to (i) update the management company and report to the Commission (either directly or via the management company) any material issues or changes that may impact its eligibility/capacity to act as trustee/custodian of a scheme and (ii) inform the Commission promptly of any material breach of this UT Code and applicable provisions of the Handbook with respect to the scheme that has come to its knowledge, which has not been otherwise reported to the Commission by the management company.

Retirement of trustee/custodian

4.6 The trustee/custodian may not retire except upon the appointment of a new trustee/custodian and subject to the prior approval of the Commission [see 11.1]. The retirement of the trustee/custodian should take effect at the same time as the new trustee/custodian takes up office.

Independence of trustee/custodian and the management company

4.7 The trustee/custodian and the management company must be persons who are independent of each other.

4.8 Notwithstanding 4.7, if the trustee/custodian and the management company are both bodies corporate having the same ultimate holding company, whether incorporated in Hong Kong or outside Hong Kong, the trustee/custodian and the management company are deemed to be independent of each other if:

(a)

(i) [deleted]

(ii) neither the trustee/custodian nor the management company is a subsidiary of the other;

(iii) no person is a director of both the trustee/custodian and the management company; and

(iv) both the trustee/custodian and the management company sign an undertaking that they will act independently of each other in their dealings with the scheme.

Note: Among other things, there should be systems and controls in place to ensure that persons fulfilling the custodial function / safekeeping of the scheme's assets are functionally independent from persons fulfilling the scheme's management functions, for example, with an independent board, separate governance structure / lines of reporting to the management of the trustee/custodian and separate operational teams within the same corporate group.

(b) [deleted]

Chapter 5: Management company and auditor

Appointment of the management company

5.1 Every collective investment scheme for which authorization is requested must appoint a management company acceptable to the Commission and shall comply with this Chapter on an ongoing basis.

Note: The management company or the investment delegate (who has been delegated the investment management function of a scheme) should either be licensed or registered in Hong Kong [see 5.6] or based in a jurisdiction with an inspection regime acceptable to the Commission. A list of acceptable inspection regimes is published on the Commission's website. The Commission will consider other jurisdictions on their merits and may accept an undertaking from the management company that the books and records in relation to its management of a scheme will be made available for inspection by the Commission on request.

5.2 A management company must:

(a) be engaged primarily in the business of fund management;

(b) have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it must have minimum paid-up share capital and non-distributable capital reserves of HK$10 million or its equivalent in foreign currency;

(c) not lend to a material extent; and

(d) maintain at all times a positive net asset position.

5.3 Indebtedness owed by the management company to its parent company will be considered as part of capital for the purpose of 5.2(b) in the following circumstances:

(a) the indebtedness must not be settled without the prior written consent of the Commission; and

(b) the indebtedness must be subordinated to all other liabilities of the management company, both in terms of its entitlement to income and its rights in a liquidation.

Qualifications of directors

5.4 The directors of the management company must be of good repute and in the opinion of the Commission possess the necessary experience for the performance of their duties. In determining the acceptability of the management company, the Commission may consider the qualifications and experience of persons employed by the management company and any appointed investment delegate.

Criteria for acceptability of management company

5.5 The acceptability of the management company will be assessed on the following criteria:

(a) The management company should have relevant investment management experience and it must have sufficient human and technical resources to manage public funds and should not rely solely on an individual's expertise.

(i) With respect to a management company and an investment delegate belonging to a well-established fund management group (e.g. a fund management group of at least five years of establishment in managing public funds and with good regulatory records), this requirement may be satisfied where on a group wide basis the management company and the investment delegate possess(es) the requisite experience and resources as well as having in place the appropriate oversight, monitoring and supervision systems to administer public funds.

Notes: (1) The Commission will take into account various factors in assessing the fund management group's relevant overall experience, resources and capabilities, including, without limitations, types of assets and funds under management, the amount of assets under management attributable to public funds, the group-wide internal controls and risk management systems in place in connection with the management of public funds, and the jurisdiction(s) where the related investment management function(s) and operation(s) of the group is/are based in.

(2) The Commission may require evidence of the experience in managing public funds and the track record of the management company or the investment delegate (as the case may be) and its group companies, where applicable.

(ii) In other cases, there must be at least two key personnel designated for the management company or the investment delegate (as the case may be) in managing the scheme seeking authorization. Designated key personnel must dedicate sufficient time and attention to the management of a scheme and are expected to possess at least five years of investment experience in managing public funds with reputable institutions which should be in the same or similar type of investments as those proposed for the scheme seeking authorization.

Note: The management company should maintain proper up-to-date records regarding the key personnel of the scheme from time to time and such records must be made available to the Commission upon request.

(b) [deleted]

(c) [deleted]

(d) The Commission must be satisfied with the overall integrity of the applicant management company. Reasonable assurance must be secured of the adequacy of internal controls and the existence of written procedures, which should be regularly monitored by its senior management for up-to-dateness and compliance. Conflicts of interests must be properly addressed to safeguard investors' interests.

Note: The Commission may on a case-by-case basis require independent review on the internal controls and systems [see 5.10(f)] of the management company which does not have demonstrable relevant management experience and track record in managing public funds with the same or similar type of investments as those proposed for the schemes seeking authorization.

(e) Where the investment management functions are delegated to third parties, there should be ongoing supervision and regular monitoring of the competence of the delegates by the management company to ensure that the management company's accountability to investors is not diminished. Although the investment management role of the management company may be sub-contracted to third parties, the responsibilities and obligations of the management company may not be delegated.

Licensing requirement

5.6 The type of licence required depends on the functions performed by the management company in Hong Kong. A management company should be properly licensed or registered under Part V of the SFO to carry on its regulated activities.

Self-managed schemes

5.7 Notwithstanding 5.1, a scheme could be managed by its own board of directors who perform the functions of a management company where the scheme's investment management function is delegated at all times to a qualified investment delegate in compliance with this Chapter. In this case, references in this UT Code to the directors of a management company are deemed to be references to the directors of a self-managed scheme.

5.8 The directors of a self-managed scheme are prohibited from dealing with the scheme as principals.

5.9 The regulations of a self-managed scheme must contain the following provisions:

(a) that holders could convene a meeting and, by way of an ordinary resolution, remove any of the directors considered no longer fit and proper to manage the scheme's assets; and

(b) that the directors' fees and remuneration should be fixed by the holders at a general meeting.

General obligations of a management company

5.10 A management company must:

(a) manage the scheme in accordance with the scheme's constitutive documents and in the best interests of the holders. It is also expected to fulfill the duties imposed on it by the general law;

(b) maintain or cause to be maintained the books and records of the scheme and prepare the scheme's financial reports. These reports must be prepared and made available to all registered holders and filed with the Commission in a manner in accordance with 11.6, 11.6A and 11.8;

(c) ensure that the constitutive documents are made available for inspection by the public in Hong Kong, free of charge at all times during normal office hours at its place of business or that of its Hong Kong Representative and make copies of such documents available upon the payment of a reasonable fee;

(d) take reasonable care to ensure that the trustee/custodian is properly qualified for the performance of its duties and functions and discharging its obligations in respect of custody of a scheme's property, having regard to the requirements as set out in Chapter 4;

Note: For the avoidance of doubt, the management company should:

(1) comply with all applicable legal and regulatory requirements in respect of custody of the scheme's property; and

(2) provide relevant information to the trustee/custodian to discharge its regulatory obligations, including those obligations pursuant to 4.5.

(e) at all times demonstrate that those representatives and agents appointed by it or engaged for the scheme possess sufficient know-how, expertise and experience in dealing with the underlying investments of the scheme;

(f) put in place proper risk management and control systems to effectively monitor and measure the risks of the positions of the scheme and their contribution to the overall risk profile of the scheme's portfolio;

Notes: Among others, the management company must:

(1) put in place suitable and adequate risk management and control systems to monitor, measure, and manage all relevant risks (including risks associated with financial derivative investment activities) in relation to the scheme. The risk management and control systems must (i) be commensurate with the nature and scale of the transactions and investment activities (including those related to financial derivative instruments) that are undertaken for the scheme, bearing in mind the retail nature and risk profile of the scheme and (ii) be able to deal with normal and exceptional circumstances including extreme market conditions. The management company must maintain at all times effective risk management and control systems;

(2) *at all times be adequately and suitably resourced (including having sufficient human resources) in order to properly implement its risk management policy and procedures;*

(3) *maintain and implement effective liquidity risk management policies and procedures in accordance with the requirements and guidance issued by the Commission published on the Commission's website which may be updated from time to time (including adopting and using a broad range of quantitative-based and anti-dilution liquidity management tools and measures, stress testing, where applicable) to monitor the liquidity risk of the scheme and mitigate material investor dilution, taking into account factors including the investment strategy and objectives, investor base, liquidity profile, underlying obligations and redemption policy of the scheme;*

(4) *maintain and implement effective internal policies and procedures in assessing the credit risk of securities or instruments invested by the scheme. External ratings shall only be one of the factors to take into consideration in assessing the credit quality of an instrument. Mechanistic reliance on external ratings should be avoided; and*

(5) *comply with all applicable legal and regulatory requirements concerning the risk management of a scheme.*

(g) ensure the scheme is designed fairly, and operated according to such product design on an ongoing basis, including, among others, managing the scheme in a cost-efficient manner taking into account the size of the scheme and the level of fees and expenses, and ensuring that the scheme's investment strategy and the liquidity of its assets are consistent with the terms and conditions governing subscriptions and redemptions, etc.; and

Notes: Among others, the management company should ensure that:

(1) *the redemption terms that the scheme offers to investors should be based on the liquidity of its asset holdings in normal and stressed market conditions;*

(2) *a scheme that invests mainly in less liquid assets and offers daily dealing should implement and use anti-dilution liquidity management tools to mitigate material investor dilution to ensure that investors bear the costs of liquidity associated with fund subscriptions and redemptions. Such tools should be used consistently and should impose on subscribing and redeeming investors the explicit and implicit costs of subscriptions and redemptions, including any significant market impact estimated on a best-effort basis; and*

(3) *a scheme that allocates a significant proportion of its assets under management to illiquid assets should redeem shares at a lower frequency than daily and/or require appropriate notice or settlement periods.*

(h) provide adequate disclosure of information (as well as any material changes to the information) of the scheme which is necessary for holders to make an informed judgement of their investment in the scheme.

Retirement of a management company

5.11 The management company must be subject to removal by notice in writing from the trustee or the directors of a mutual fund corporation in any of the following events:

(a) the management company goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or

(b) for good and sufficient reason, the trustee or the directors of a mutual fund corporation state in writing that a change in management company is desirable in the interests of the holders; or

(c) in the case of a unit trust, holders representing at least 50% in value of the units outstanding, deliver to the trustee a written request to dismiss the management company.

5.12 In addition, the management company must retire:

(a) in all other cases provided for in the constitutive documents; or

(b) when the Commission withdraws its approval of the management company.

5.13 The Commission must be informed by the trustee or the directors of a mutual fund corporation of any decision to remove the management company.

5.14 Upon the retirement or dismissal of the management company, the trustee or the directors of a mutual fund corporation must appoint a new management company as soon as possible, subject to the approval of the Commission.

Appointment of the auditor

5.15 The management company or the directors of a mutual fund corporation must, at the outset and upon any vacancy, appoint an auditor for the scheme.

5.16 The auditor must be independent of the management company, the trustee/custodian, and, in the case of a mutual fund corporation, the directors.

5.17 The management company must cause the scheme's annual report to be audited by the auditor, and such report should contain the information in Appendix E.

Chapter 6: Operational requirements

Scheme documentation

Matters to be disclosed in offering document

6.1 Authorized schemes must issue an up-to-date offering document, which should contain the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and in particular should contain the information listed in Appendix C.

Note: Provided that the Commission is satisfied that the overall disclosure of required information is clear, a scheme may supplement an overseas offering document with a Hong Kong Covering Document. The Commission however specifically encourages the use of a short, clearly written Hong Kong Offering Document.

English and Chinese offering documents

6.2 Except as provided herein, the information required in Appendix C must be provided in the English and Chinese languages. The Commission may waive the requirement that the information be provided in both languages on a case by case basis where the management company satisfies the Commission that the scheme will only be offered to persons who are fully conversant in the language in which it is intended to publish the information.

Product KFS

6.2A An authorized scheme must issue a Product KFS. Such statement shall be deemed to form a part of the offering document and shall contain information that enables investors to comprehend the key features and risks of the scheme.

Notes: (1) The Commission may, on an exceptional basis, allow the Product KFS not to be deemed to form a part of the offering documents of certain foreign schemes, on the basis of overriding legal requirements of the home jurisdiction.

(2) Illustrative templates of the Product KFS are available on the Commission's website.

Accompaniment to offering document

6.3 The offering document must be accompanied by the scheme's most recent audited annual report together with its interim report if published after the annual report.

Application form

6.4 No application form may be provided to any member of the public unless it is accompanied by the offering document.

Inclusion of performance data

6.5 If performance data or estimated yield is quoted, the Commission may require supporting documentation. No forecast of the scheme's performance may be made. The publication of a prospective yield does not constitute a forecast of performance.

Contents of constitutive documents

6.6 The constitutive documents of a scheme should contain the information listed in Appendix D. Nothing in the constitutive documents may provide that the trustee/custodian, management company or directors of the scheme can be exempted from any liability to holders imposed under Hong Kong law or the law of the scheme's place of domicile or breaches of trust through fraud or negligence, nor may they be indemnified against such liability by holders or at holders' expense.

Changes to scheme documentation

6.7 The constitutive documents may be altered by the management company and trustee/custodian, without consulting holders, provided that the trustee/custodian certifies in writing that in its opinion the proposed alteration:

(a) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements; or

(b) does not materially prejudice holders' interests, does not to any material extent release the trustee/custodian, management company or any other person from any liability to holders and does not increase the costs and charges payable from the scheme property; or

(c) is necessary to correct a manifest error.

In all other cases involving any material changes, no alteration may be made except by a special or extraordinary resolution of holders or the approval of the Commission.

Member register

6.8 The scheme, or in the case of a unit trust, the trustee or the person so appointed by the trustee must maintain a register of holders. The Commission must be advised on request of the address(es) where the register is kept.

6.9 [deleted]

Pricing, issue and redemption of units/shares

Initial offers

6.10 If an initial offer is made, no investment of subscription money can be made until the conclusion of the first issue of units/shares at the initial price.

Valuation and pricing

6.11 Offer and redemption prices should be calculated on the basis of the scheme's net asset value divided by the number of units/shares outstanding. Such prices should fairly reflect the value of a scheme's assets and may be adjusted by fees and charges, provided the amount or method of calculating such fees and charges is clearly disclosed in the offering document.

6.11A The management company should establish appropriate policies and procedures for independent valuation of each type of assets held by a scheme in consultation with the trustee/custodian. Such policies and procedures should seek to detect, prevent and correct pricing errors and be consistently applied. The management company should review the valuation policies and procedures on a periodic basis to ensure their continued appropriateness and effective implementation. The valuation policies, procedures and process should be reviewed (at least annually) by a competent and functionally-independent party such as a qualified independent third party or a person performing an independent audit function.

Notes: (1) Where fair value adjustments are necessary in view that market value of a scheme's assets is unavailable, or reasonably considered to be not reliable or reflective of an exit price upon current sale, the management company shall conduct such adjustments with due skill, care and diligence, and in good faith. The process and conduct of fair value adjustments should be done by the management company in consultation with the trustee/custodian.

(2) The management company must comply with all applicable legal and regulatory requirements in respect of the valuation of a scheme's assets.

(3) For the purpose of satisfying the requirement on independent review of valuation policies, procedures and process, the review should include testing the valuation procedures by which scheme assets are valued. The management company shall exercise due skill, care and diligence in the selection of a competent and functionally-independent party.

6.11B Assets of a scheme should be valued on a regular basis and in any event, on the days that the scheme's units/shares are offered or redeemed in accordance with the constitutive documents. Valuation frequency and the basis of valuation of a scheme's assets should be clearly disclosed in the offering document.

6.11C Where a third party is engaged in the valuation of a scheme, the management company shall exercise reasonable care, skill and diligence in the selection, appointment and ongoing monitoring of such third party in ensuring such entity possesses the appropriate level of knowledge, experience and resources that commensurate with the appropriate valuation policies and procedures for each scheme. The valuation activities of such third party should be subject to ongoing supervision and periodic review by the management company.

Valuation of unquoted securities

6.12 The value of investments not listed or quoted on a recognized market should be determined on a regular basis by a professional person approved by the trustee/custodian as qualified to value such investments. Such professional person may, with the approval of the trustee/custodian, be the management company.

Dealing

6.13 There must be at least one regular dealing day per month except for a closed-ended fund authorized pursuant to 8.11 of this UT Code. Any offer price which the management company or the distribution company quotes or publishes must be the maximum price payable on purchase and any redemption price must be the net price receivable on redemption.

Notes: (1) The management company should ensure that the scheme's investment strategy and the liquidity of its assets are consistent with the terms and conditions governing subscriptions and redemptions of units/shares in a scheme both at the time of designing the scheme and on an ongoing basis. When determining the dealing frequency for units/shares in the scheme, the management company should take into account its liquidity risk management process that enables effective processing of redemptions and other payment obligations. The redemption terms that the scheme offers to investors should be based on the liquidity of its assets in normal and stressed market conditions.

(2) Subscription or redemption of a scheme's units/shares must be effected on the basis of an unknown/forward price to ensure incoming, existing and outgoing investors are treated fairly and equitably.

6.14 The maximum interval between the receipt of a properly documented request for redemption of units/shares and the payment of the redemption money to the holder may not exceed one calendar month unless the market(s) in which a substantial portion of investments is made is subject to legal or regulatory requirements (such as foreign currency controls) thus rendering the payment of the redemption money within the aforesaid time period not practicable. In such case, the extended time frame for the payment of redemption money shall reflect the additional time needed in light of the specific circumstances in the relevant market(s).

Meetings

6.15 A scheme should arrange to conduct general meetings of holders as follows:

(a) Holders must be able to appoint proxies;

(b) Votes should be proportionate to the number of units/shares held or to the value of units/shares held where there are accumulation units/shares;

(c) The quorum for meetings at which a special or extraordinary resolution is to be considered should be the holders of 25% of the units or shares in issue and 10% if only an ordinary resolution is to be considered;

(d) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting should be adjourned for not less than 15 days. The quorum at an adjourned meeting will be those holders present at the adjourned meeting in person or by proxy;

(e) If the possibility exists of a conflict of interest between different classes of holders there should be provision for class meetings;

(f) A general meeting should be called for the following purposes:

(i) to modify, alter or add to the constitutive documents, except as provided in 6.7; or

(ii) to terminate the scheme (unless the means of termination of the scheme are set out in the constitutive documents, in which case termination must be effected as required) [see D17 of Appendix D];

(iii) [deleted]

(iv) [deleted]

(g) [deleted]

(h) The directors of the scheme, the trustee/custodian, the management company, investment delegate and any of their connected persons must be prohibited from voting their beneficially owned shares at, or counted in the quorum for, a meeting at which they have a material interest in the business to be contracted;

Note: For the purposes of 6.15(h), the management company and its connected persons are entitled to vote their beneficially owned units/shares on any resolution(s) to appoint or dismiss the management company and be counted for the purpose of passing such resolution(s) at the meeting.

(i) An ordinary resolution may be passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting; and

(j) A special or extraordinary resolution may only be passed by 75% or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting.

Note: For the avoidance of doubt, any general meeting at which a special resolution is to be proposed shall be convened on at least 21 days' prior notice and that any general meeting at which an ordinary resolution is to be proposed shall be convened on at least 14 days' prior notice.

Fees

6.16 The level/basis of calculation of all costs and charges payable from the scheme's property must be clearly stated, with percentages expressed on a per annum basis [see C14 of Appendix C]. The aggregate level of fees for investment management function should also be disclosed.

Note: Transaction fees payable to the management company or any of its connected persons may be disallowed as inconsistent with the management company's fiduciary responsibility.

6.17 If a performance fee is levied, clear disclosure of the calculation methodology must be set out in the offering document. Performance fee should be calculated in a manner that is objective, verifiable and unambiguous to enable investors to obtain a fair and proportionate share of the investment return of scheme. Performance fee can only be payable:

(a) no more frequently than annually; and

(b) if the net asset value per unit/share exceeds the net asset value per unit/share on which the performance fee was last calculated and paid (i.e. on a "high-on-high" basis). The basis of calculation of net asset value per unit/share used for performance fee calculation should be consistently applied.

Notes: (1) Notwithstanding 6.17(b), the performance fee may also be calculated with reference to the performance of a benchmark or an asset class and the performance fee is only payable upon outperformance of the net asset value per unit/share (net of all other fees and expenses charged) vis-à-vis that of the benchmark or asset class.

(2) Various methodologies may be used for the charging and accrual of performance fees based on the basic principle in 6.17. The Commission may require illustrative examples to be given in the offering document to demonstrate the charging method where it considers appropriate.

(3) Where a scheme intends to achieve equalisation for the calculation of performance fees, its offering document must disclose the mechanism adopted to achieve equalisation.

(4) Where a scheme does not intend to achieve equalisation of performance fees, its offering document must clearly disclose this fact and how the absence of equalisation may affect the amount of performance fees to be borne by investors.

6.18 The following fees, costs and charges must not be paid from the scheme's property:

(a) commissions payable to sales agents arising out of any dealing in units/shares of the scheme;

(b) expenses arising out of any advertising or promotional activities in connection with the scheme;

(c) expenses which are not ordinarily paid from the property of schemes authorized in Hong Kong; and

(d) expenses which have not been disclosed in the constitutive documents as required by D10 of Appendix D.

Note: Deviation of the fee structure of a scheme from the requirements under 6.18 (a) or (b) may be considered by the Commission on a case-by-case basis supported with proper justification by the management company.

Chapter 7: Investment: core requirements

This Chapter sets out the core requirements of the investment limitations and prohibitions of a scheme. A specialized scheme under Chapter 8 shall also comply with the core requirements in this Chapter subject to any modifications, exemptions or additions as set out in Chapter 8.

Investments held by a scheme shall be liquid which do not impair the scheme's ability to satisfy its redemption and other payment obligations. As a general principle, investments of a scheme shall be readily converted into cash at limited cost in an adequately short timeframe taking into account these obligations.

Spread of investments

7.1 The aggregate value of a scheme's investments in, or exposure to, any single entity through the following may not exceed 10% of its total net asset value:

(a) investments in securities issued by that entity;

(b) exposure to that entity through underlying assets of financial derivative instruments [see 7.27]; and

(c) net counterparty exposure to that entity arising from transactions of over-the-counter financial derivative instruments [see 7.28(c)].

Notes: (1) [deleted]

(2) [deleted]

(3) For the avoidance of doubt, restrictions and limitations on counterparty as set out in 7.1, 7.1A and 7.28(c) will not apply to financial derivative instruments that are:

(a) transacted on an exchange where the clearing house performs a central counterparty role; and

(b) marked-to-market daily in the valuation of their financial derivative instrument positions and subject to margining requirements at least on a daily basis.

(4) 7.1 will also apply in the case of 7.36(e), 7.36(j) and Note to 7.39(a).

7.1A Subject to 7.1 and 7.28(c), the aggregate value of a scheme's investments in, or exposure to, entities within the same group through the following may not exceed 20% of its total net asset value:

(a) investments in securities issued by those entities;

(b) exposure to those entities through underlying assets of financial derivative instruments [see 7.27]; and

(c) net counterparty exposure to those entities arising from transactions of over-the-counter financial derivative instruments [see 7.28(c)].

Notes: (1) For the purposes of 7.1A and 7.1B, entities which are included in the same group for the purposes of consolidated financial statements prepared in accordance with internationally recognized accounting standards are generally regarded as "entities within the same group".

(2) 7.1A will also apply in the case of 7.36(e), 7.36(j) and Note to 7.39(a).

7.1B The value of a scheme's cash deposits made with the same entity or entities within the same group [see Note(1) to 7.1A] may not exceed 20% of its total net asset value.

Notes: (1) For the purposes of 7.1B, cash deposits generally refer to those that are repayable on demand or have the right to be withdrawn by the scheme and not referable to provision of property or services.

(2) The cash deposits made with the same entity or entities within the same group may exceed the prescribed 20% limit in the following circumstances:

(a) cash held before the launch of a scheme and for a reasonable period thereafter prior to the initial subscription proceeds being fully invested; or

(b) cash proceeds from liquidation of investments prior to the merger or termination of a scheme, whereby the placing of cash deposits with various financial institutions would not be in the best interests of investors; or

(c) cash proceeds received from subscriptions pending investments and cash held for the settlement of redemption and other payment obligations, whereby the placing of cash deposits with various financial institutions be unduly burdensome and the cash deposits arrangement would not compromise investors' interests.

7.2 A scheme may not hold more than 10% of any ordinary shares issued by any single entity.

7.3 The value of a scheme's investments in securities and other financial products or instruments that are neither listed, quoted nor dealt in on a market may not exceed 15% of its total net asset value.

Note: Market means any stock exchange, over-the-counter market or other organized securities market that is open to the international public and on which such securities are regularly traded.

7.3A Notwithstanding 7.1, 7.1A, 7.2, and 7.3, where direct investment by a scheme in a market is not in the best interests of investors, a scheme may invest through a wholly-owned subsidiary company established solely for the purpose of making direct investments in such market. In this case:

(a) the underlying investments of the subsidiary, together with the direct investments made by the scheme, must in aggregate comply with the requirements of this Chapter;

(b) any increase in the overall fees and charges directly or indirectly borne by the holders or the scheme as a result must be clearly disclosed in the offering document; and

(c) the scheme must produce the reports required by 5.10(b) in a consolidated form to include the assets (including investment portfolio) and liabilities of the subsidiary company as part of those of the scheme.

Government and other public securities

7.4 Notwithstanding 7.1, 7.1A and 7.2, up to 30% of a scheme's total net asset value may be invested in Government and other public securities of the same issue.

7.5 Subject to 7.4, a scheme may invest all of its assets in Government and other public securities in at least six different issues.

Notes: (1) "Government and other public securities" means any investment issued by, or the payment of principal and interest on, which is guaranteed by a government, or any fixed-interest investment issued by its public or local authorities or other multilateral agencies.

(2) Government and other public securities will be regarded as being of a different issue if, even though they are issued by the same person, they are issued on different terms whether as to repayment dates, interest rates, the identity of the guarantor, or otherwise.

7.6 [deleted]

7.7 [deleted]

7.8 [deleted]

Commodities

7.9 [deleted]

7.10 A scheme may not invest in physical commodities unless otherwise approved by the Commission on a case-by-case basis taking into account the liquidity of the physical commodities concerned and availability of sufficient and appropriate additional safeguards where necessary.

Notes: (1) [deleted]

(2) [deleted]

Investment in other schemes

The following provisions govern the spread of investments in other collective investment schemes. 7.1, 7.1A, 7.2 and 7.3 are not applicable to such investments, unless otherwise stated.

Note: For the avoidance of doubt, exchange traded funds that are:

(i) authorized by the Commission under 8.6 or 8.10 of this UT Code; or

(ii) listed and regularly traded on internationally recognized stock exchanges open to the public (nominal listing not accepted) and:

- *the principal objective of which is to track, replicate or correspond to a financial index or benchmark, which complies with the applicable requirements under 8.6 of this UT Code; or*

- *the investment objective, policy, underlying investments and product features of which are substantially in line with or comparable with those set out under 8.10 of this UT Code,*

may either be considered and treated as (a) listed securities for the purposes of and subject to the requirements in 7.1, 7.1A and 7.2; or (b) collective investment schemes for the purposes of and subject to the requirements in 7.11, 7.11A and 7.11B. The relevant investment limits in exchange traded funds by a scheme should be consistently applied and clearly disclosed in the offering document of a scheme.

7.11 The value of a scheme's investment in units or shares in other collective investment schemes (namely, "underlying schemes") which are non-eligible schemes [see Note to 7.11A] and not authorized by the Commission may not in aggregate exceed 10% of its total net asset value.

7.11A A scheme may invest in one or more underlying schemes which are either authorized by the Commission or eligible schemes. The value of a scheme's investment in units or shares in each such underlying scheme may not exceed 30% of its total net asset value, unless the underlying scheme is authorized by the Commission, and the name and key investment information of the underlying scheme are disclosed in the offering document of the scheme.

Note: The Commission has set out the eligible schemes for investment pursuant to 7.11A in the list of recognized jurisdictions.

7.11B In addition, each underlying scheme's objective may not be to invest primarily in any investment prohibited by this Chapter, and where such scheme's objective is to invest primarily in investments restricted by this Chapter, such investments may not be in contravention of the relevant limitation.

Notes: (1) [deleted]

(2) The Commission generally does not require the management company to adopt a "see-through" approach in their investments in underlying schemes, except in the case where the underlying schemes are managed by the same management company as that of the scheme that invests in them, or by other companies within the same group that the management company belongs to, then 7.1, 7.1A, 7.2 and 7.3 are also applicable to investments of the underlying schemes.

(3) *For the avoidance of doubt, a scheme may invest in scheme(s) authorized by the Commission under Chapter 8 (except for hedge funds under 8.7 of this UT Code), and exchange traded funds satisfying the requirements in the Note under "Investment in other schemes" of this Chapter in compliance with 7.11 and 7.11A.*

(4) *An underlying scheme's objective may not be to invest primarily in other collective investment scheme(s).*

Limitation on charges

7.11C Where a scheme invests in any underlying scheme(s) managed by the same management company or its connected persons, all initial charges and redemption charges on the underlying scheme(s) must be waived.

7.11D The management company of a scheme or any person acting on behalf of the scheme or the management company may not obtain a rebate on any fees or charges levied by an underlying scheme or its management company, or any quantifiable monetary benefits in connection with investments in any underlying scheme.

Feeder fund

7.12 A scheme may invest 90% or more of its total net asset value in a single collective investment scheme and will be authorized as a feeder fund. In this case:

(a) the underlying scheme ("master fund") must be approved by the Commission to ensure it is regulated in a manner generally comparable with the requirements of this UT Code and acceptable to the Commission;

Notes: (1) Where the master fund is not authorized by the Commission, the following key requirements must be met, at a minimum:

(a) *the master fund must be a scheme with safeguards and measures in place to provide substantially comparable investor protection as a scheme authorized under the UT Code, taking into account its underlying assets, investment strategy, applicable rules and regulations in its home jurisdiction; and*

(b) the master fund, together with its management company and trustee/custodian, must have a good compliance record with the rules and regulations of its home jurisdiction and (in the case of listed funds) the listing venue.

(2) Where the master fund is not authorized by the Commission, the management company of the scheme should:

(a) report to the Commission as soon as practicable if the master fund ceases to comply with the requirements set out in this UT Code and take appropriate remedial action to promptly rectify the situation;

(b) put in place appropriate arrangements to inform Hong Kong investors of any material changes to, or events that have significant adverse impact on, the master fund in a timely manner; and

(c) comply with such other requirements as may be imposed by the Commission.

(b) the offering document must state that:

(i) the scheme is a feeder fund into the master fund;

(ii) [deleted]

(iii) the feeder fund's annual report must include the investment portfolio of the master fund as at the financial year end date; and

(iv) the aggregate amount of all the fees and charges of the feeder fund and its master fund must be clearly disclosed;

(c) [deleted]

(d) no increase in the overall total of initial charges, redemption charges, management company's annual fee, or any other costs and charges payable to the management company or any of its connected persons borne by the holders or by the feeder fund may result, if the master fund in which the feeder fund invests is managed by the same management company or by a connected person of that company; and

Note: The SFC may consider on a case-by-case basis allowing additional fees to be payable to the management company or its connected persons in respect of additional or different services and expertise provided by the management company or its connected persons for the benefit of the scheme.

(e) notwithstanding Note(4) to 7.11B, the master fund may invest in other collective investment scheme(s) subject to the investment restrictions as set out in 7.11, 7.11A and 7.11B.

7.13 [deleted]

Prohibition on real estate investments

7.14 A scheme may not invest in any type of real estate (including buildings) or interests in real estate (including options or rights, but excluding shares in real estate companies and interests in real estate investment trusts (REITs)).

Note: In the case of investments in such shares and REITs, they shall comply with the investment limits as set out in 7.1, 7.1A, 7.2, 7.3 and 7.11, where applicable. For the avoidance of doubt, where investments are made in listed REITs, 7.1, 7.1A and 7.2 apply and where investments are made in unlisted REITs, which are either companies or collective investment schemes, then 7.3 and 7.11 apply respectively.

Short selling limitations

7.15 No short sale may be made which will result in the scheme's liability to deliver securities exceeding 10% of its total net asset value.

Note: For the avoidance of doubt, a scheme is prohibited to carry out any naked or uncovered short sale of securities and short selling should be carried out in accordance with all applicable laws and regulations.

7.16 The security which is to be sold short must be actively traded on a market where short selling activity is permitted [see Note to 7.3].

Limitations on making loans

7.17 Subject to 7.3, a scheme may not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person.

Note: For the avoidance of doubt, reverse repurchase transactions in compliance with the requirements as set out in 7.32 to 7.35 are not subject to the limitations in 7.17.

Unlimited liability

7.18 A scheme may not acquire any asset or engage in any transaction which involves the assumption of any liability which is unlimited.

Limited liability

7.18A The liability of holders must be limited to their investments in the scheme.

Limitations on securities in which directors/officers have interests

7.19 A scheme may not invest in any security of any class in any company or body if any director or officer of the management company individually owns more than 0.5% of the total nominal amount of all the issued securities of that class, or, collectively the directors and officers of the management company own more than 5% of those securities.

Limitations on nil-paid/partly paid securities

7.20 The portfolio of a scheme may not include any security where a call is to be made for any sum unpaid on that security unless that call could be met in full out of cash or near cash by the scheme's portfolio whereby such amount of cash or near cash has not been segregated to cover a future or contingent commitment arising from transaction in financial derivative instruments for the purposes of 7.29 and 7.30.

Limitations on borrowing

7.21 The maximum borrowing of a scheme may not exceed 10% of its total net asset value. For the purposes of 7.21, back-to-back loans do not count as borrowing.

Note: For the avoidance of doubt, securities lending transactions and sale and repurchase transactions in compliance with the requirements as set out in 7.32 to 7.35 are not subject to the limitations in 7.21.

7.22 [restated in 7.40]

7.23 [restated in 7.41]

7.24 [amended and restated in 7.42]

Financial derivative instruments

7.25 A scheme may acquire financial derivative instruments for hedging purposes.

Notes: (1) For the purposes of 7.25, financial derivative instruments are generally considered as being acquired for hedging purposes if they meet all the following criteria:

(a) they are not aimed at generating any investment return;

(b) they are solely intended for the purpose of limiting, offsetting or eliminating the probability of loss or risks arising from the investments being hedged;

(c) although they may not necessarily reference to the same underlying assets, they should relate to the same asset class with high correlation in terms of risks and return, and involve taking opposite positions, in respect of the investments being hedged; and

(d) they exhibit price movements with high negative correlation with the investments being hedged under normal market conditions.

(2) Hedging arrangement should be adjusted or re-positioned, where necessary and with due consideration on the fees, expenses and costs, to enable the scheme to meet its hedging objective in stressed or extreme market conditions.

7.26 A scheme may also acquire financial derivative instruments for non-hedging purposes ("investment purposes") subject to the limit that the scheme's net exposure relating to these financial derivative instruments ("net derivative exposure") does not exceed 50% of its total net asset value.

Notes: (1) For the purpose of calculating net derivative exposure, the positions of financial derivative instruments acquired by a scheme for investment purposes are converted into the equivalent position in the underlying assets of the financial derivative instruments, taking into account the prevailing market value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

(2) The net derivative exposure should be calculated in accordance with the requirements and guidance issued by the Commission which may be updated from time to time.

(3) For the avoidance of doubt, financial derivative instruments acquired for hedging purposes under 7.25 will not be counted towards the 50% limit referred to in 7.26 so long as there is no residual derivative exposure arising from such hedging arrangement.

(4) The Commission may accept Value-at-Risk (VaR) which is a risk management approach, as an alternative to net derivative exposure limit on a case-by-case basis, subject to guidance issued by the Commission which may be updated from time to time.

7.27 Subject to 7.26 and 7.28, a scheme may invest in financial derivative instruments provided that the exposure to the underlying assets of the financial derivative instruments, together with the other investments of the scheme, may not in aggregate exceed the corresponding investment restrictions or limitations applicable to such underlying assets and investments as set out in 7.1, 7.1A, 7.1B, 7.4, 7.5, 7.11, 7.11A, 7.11B and 7.14.

7.28 The financial derivative instruments invested by a scheme should be either listed/quoted on a stock exchange or dealt in over-the-counter market and comply with the following provisions:

(a) the underlying assets consist solely of shares in companies, debt securities, money market instruments, units/shares of collective investment schemes, deposits with substantial financial institutions, Government and other public securities, highly-liquid physical commodities, financial indices, interest rates, foreign exchange rates, currencies, or other asset classes acceptable to the Commission, in which the scheme may invest according to its investment objectives and policies;

Notes: (1) "Highly-liquid physical commodities" includes gold, silver, platinum and crude oil.

(2) *Where a scheme invests in index-based financial derivative instruments, the underlying assets of such financial derivative instruments are not required to be aggregated for the purposes of the investment restrictions or limitations set out in 7.1, 7.1A, 7.1B and 7.4 provided that the index is in compliance with 8.6(e) of this UT Code.*

(b) the counterparties to transactions of over-the-counter financial derivative instruments or their guarantors are substantial financial institutions;

Note: The Commission may consider to accept other entity falling outside the definition of "substantial financial institution" on a case-by-case basis taking into account factors such as the regulatory status of the entity or the group to which it belongs and the net asset value of the entity.

(c) subject to 7.1 and 7.1A, the scheme's net counterparty exposure to a single entity arising from transactions of over-the-counter financial derivative instruments may not exceed 10% of the net asset value of the scheme [see 7.36]; and

Note: Exposure to a counterparty of over-the-counter financial derivative instruments may be lowered by the collateral received (if applicable) and should be calculated with reference to the value of collateral and positive mark to market value of the over-the-counter financial derivative instruments with that counterparty, if applicable.

(d) the valuation of the financial derivative instruments is marked-to-market daily, subject to regular, reliable and verifiable valuation conducted by the management company or the trustee/custodian or their nominee(s), agent(s) or delegate(s) independent of the issuer of the financial derivative instruments through measures such as the establishment of a valuation committee or engagement of third party services. The financial derivative instruments can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the scheme's initiative. Further, calculation agent/fund administrator should be adequately equipped with the necessary resources to conduct independent marked-to-market valuation and to verify the valuation of the financial derivative instruments on a regular basis.

Cover

7.29 A scheme should at all times be capable of meeting all its payment and delivery obligations incurred under transactions in financial derivative instruments (whether for hedging or for investment purposes). The management company should, as part of its risk management process, monitor to ensure that the transactions in financial derivative instruments are adequately covered on an ongoing basis.

Note: For the purposes of 7.29, assets that are used to cover the scheme's payment and delivery obligations incurred under transactions in financial derivative instruments should be free from any liens and encumbrances, exclude any cash or near cash for the purpose of meeting a call on any sum unpaid on a security [see 7.20], and cannot be applied for any other purposes.

7.30 Subject to 7.29, a transaction in financial derivative instruments which gives rise to a future commitment or contingent commitment of a scheme should be covered as follows:

(a) in the case of financial derivative instruments transactions which will, or may at the scheme's discretion, be cash settled, the scheme should at all times hold sufficient assets that can be liquidated within a short timeframe to meet the payment obligation; and

(b) in the case of financial derivative instruments transactions which will, or may at the counterparty's discretion, require physical delivery of the underlying assets, the scheme should hold the underlying assets in sufficient quantity at all times to meet the delivery obligation. If the management company considers the underlying assets to be liquid and tradable, the scheme may hold other alternative assets in sufficient quantity as cover, provided that such assets may be readily converted into the underlying assets at any time to meet the delivery obligation.

Note: In the case of holding alternative assets as cover, the scheme should apply safeguard measures such as to apply haircut where appropriate to ensure that such alternative assets held are sufficient to meet its future obligations.

Embedded financial derivatives

7.31 Where a financial instrument embeds a financial derivative, 7.25 to 7.30 will also apply to the embedded financial derivative.

Note: An embedded financial derivative is a financial derivative instrument that is embedded in another security, namely the host contract.

Securities financing transactions

7.32 A scheme may engage in securities lending, sale and repurchase and reverse repurchase transactions (collectively, "securities financing transactions"), provided that they are in the best interests of holders to do so and the associated risks have been properly mitigated and addressed.

Note: The counterparties to securities financing transactions should be financial institutions which are subject to ongoing prudential regulation and supervision.

7.33 A scheme should have at least 100% collateralization in respect of the securities financing transaction(s) into which it enters to ensure there is no uncollateralized counterparty risk exposure arising from these transactions [see 7.36].

Note: In the case of sale and repurchase transactions, a scheme may receive cash (as collateral) for an amount which equals the market value (after haircut) of the securities sold to the counterparty by the scheme, provided that the haircut imposed by the counterparty is fair and reasonable, and in line with the current market practices and standards.

7.34 All the revenues arising from securities financing transactions, net of direct and indirect expenses as reasonable and normal compensation for the services rendered in the context of the securities financing transactions, should be returned to the scheme.

7.35 A scheme should ensure that it is able at any time to recall the securities or the full amount of cash (as the case may be) subject to the securities financing transaction(s) or terminate the securities financing transaction(s) into which it has entered.

Collateral

The following provisions apply to the collateral held by a scheme.

Note: For the avoidance of doubt, the invested assets under an unfunded swap structure should be treated as collateral and subject to the requirements in 7.36 to 7.38.

7.36 To limit the exposure to each counterparty as set out in 7.28(c) and 7.33, a scheme may receive collateral from such counterparty, provided that the collateral complies with the requirements set out below:

(a) Liquidity – collateral must be sufficiently liquid and tradable in order that it can be sold quickly at a robust price that is close to pre-sale valuation. Collateral should normally trade in a deep and liquid marketplace with transparent pricing;

(b) Valuation – collateral should be marked-to-market daily by using independent pricing source;

(c) Credit quality – asset used as collateral must be of high credit quality and should be replaced immediately as soon as the credit quality of the collateral or the issuer of the asset being used as collateral has deteriorated to such a degree that it would undermine the effectiveness of the collateral;

(d) Haircut – collateral should be subject to prudent haircut policy;

Note: Haircuts should be based on the market risks of the assets used as collateral in order to cover potential maximum expected decline in collateral values during liquidation before a transaction can be closed out with due consideration on stress period and volatile markets. The price volatility of the asset used as collateral should be taken into account when devising the haircut policy. Other specific characteristics of the collateral, including, among others, asset types, issuer creditworthiness, residual maturity, price sensitivity, optionality, expected liquidity in stressed period, impact from foreign exchange, and correlation between securities accepted as collateral and the securities involved in the transactions, should also be considered where appropriate.

(e) Diversification – collateral must be appropriately diversified so as to avoid concentrated exposure to any single entity and/or entities within the same group. The scheme's exposure to the issuer(s) of the collateral should be taken into account in compliance with the investment restrictions and limitations set out in 7.1, 7.1A, 7.1B, 7.4, 7.5, 7.11, 7.11A, 7.11B and 7.14;

Note: By way of illustration, the value of collateral and the scheme's other investments in, or exposure to, any single entity or entities within the same group may not exceed 10% or 20% of the scheme's net asset value respectively [see 7.1 and 7.1A]. Where the collateral is in the form of (i) cash; (ii) Government and other public securities; (iii) collective investment schemes [see 7.36(l)]; and (iv) REITs, the applicable investment limitations and restrictions under (i) 7.1B; (ii) 7.4 and 7.5; (iii) 7.11, 7.11A and 7.11B; and (iv) 7.14 apply respectively, together with the scheme's other investments or exposure.

(f) Correlation – the value of the collateral should not have any significant correlation with the creditworthiness of the counterparty or the issuer of the financial derivative instruments, or the counterparty of securities financing transactions in such a way that would undermine the effectiveness of the collateral. As such, securities issued by the counterparty or the issuer of the financial derivative instruments, or the counterparty of securities financing transactions or any of their related entities should not be used as collateral;

(g) Management of operational and legal risks – the management company must have appropriate systems, operational capabilities and legal expertise for proper collateral management;

(h) Independent custody – collateral must be held by the trustee/custodian of the scheme or its nominees, agents and delegates [see 4.5(a)(iii)];

(i) Enforceability – collateral must be readily accessible/enforceable by the trustee/custodian of the scheme without further recourse to the issuer of the financial derivative instruments, or the counterparty of the securities financing transactions;

(j) Re-investment of collateral – cash collateral received may only be reinvested in short-term deposits, high quality money market instruments and money market funds authorized under 8.2 of this UT Code or regulated in a manner generally comparable with the requirements of the Commission and acceptable to the Commission, and subject to corresponding investment restrictions or limitations applicable to such investments or exposure as set out in this Chapter [see 7.36(e)]. Non-cash collateral received may not be sold, re-invested or pledged;

Notes: (1) Money market instruments refer to securities normally dealt in on the money markets, for example, government bills, certificates of deposit, commercial papers, short-term notes and bankers' acceptances, etc. In assessing whether a money market instrument is of high quality, at a minimum, the credit quality and the liquidity profile of the money market instruments must be taken into account.

(2) The portfolio of assets from re-investment of cash collateral shall comply with the requirements as set out in 8.2(f) and 8.2(n).

(3) *Cash collateral received is not allowed to be further engaged in any securities financing transactions.*

(4) *When the cash collateral received is reinvested into other investment(s), such investment(s) is/are not allowed to be engaged in any securities financing transactions.*

(k) Collateral should be free of prior encumbrances; and

(l) Collateral generally should not include (i) structured products whose payouts rely on embedded financial derivatives or synthetic instruments; (ii) securities issued by special purpose vehicles, special investment vehicles or similar entities; (iii) securitized products; or (iv) unlisted collective investment schemes.

7.37 A scheme should disclose the information relating to its collateral policy as required under Appendix C.

7.38 A scheme shall disclose in the scheme's interim and annual reports a description of collateral holdings as required under Appendix E.

Guaranteed features

7.39 The following requirements apply to a scheme which contains a structure whereby a guaranteed amount will be paid to investors who invest in units/shares in the scheme at a specified date in the future (with or without conditions):

(a) The guarantor must be:

(i) a substantial financial institution; or

(ii) an authorized insurer authorized under the Insurance Ordinance (Chapter 41 of Laws of Hong Kong).

Note: A scheme's net single counterparty exposure to the guarantor should be taken into account in compliance with the limits on single entity and/or entities within the same group under 7.1 and 7.1A respectively. In addition, the scheme's net single counterparty exposure to the guarantor may not exceed 10% of its net asset value at all times.

(b) Apart from the standard contents requirements in Appendix C, the offering document of the scheme must contain:

(i) Information about the guarantor

(1) its name;

(2) nature of its business; and

(3) information on its financial position, including paid-up share capital, total net assets or shareholders' funds, and where applicable, credit rating and any other relevant information.

(ii) Information about the guarantee

(1) the terms of the guarantee, including the scope and validity of the guarantee and the circumstances under which the guarantee may be terminated; and

Note: The offering document should contain a summary of the key terms and features of the guarantee.

(2) an illustration or description to clearly demonstrate the guarantee mechanism and how potential returns in excess of the guaranteed amount are calculated.

Notes: (1) Where an indicative participation rate is shown, the illustration should use the quoted indicative rate as the basis for calculation.

(2) Assumptions used in the illustration should be clearly stated. It should be stated that the rates of return shown are for illustrative purpose only and that the actual return may be different.

(iii) A detailed description of the nature of the underlying investments, including:

(1) the proposed percentage, or an estimate thereof, of the scheme to be invested in fixed-interest securities and that in other investments at the time of publication of the offering document;

(2) the issuers/counterparties of the underlying investments, or the criteria for the selection of such parties;

(3) the valuation methodology of the underlying investments;

(4) the liquidation mechanism of the underlying investments to meet redemption requests; and

(5) where relevant, the participation rate or an estimate thereof at the time of publication of the offering document. It should be stated that the actual participation rate may be different from the indicative rate. An analysis of the factors that will impact on the final determination of such rate should also be given.

Note: Where applicable, it should be stated when the actual participation rate will be determined and how such information will be communicated to investors.

(iv) Risk warnings, which should include, but not limited to:

(1) a statement to the effect that due to the guarantee structure, there will be a dilution of performance;

(2) a statement to the effect that potential returns in excess of the guaranteed amount are subject to investment risk and are not guaranteed;

(3) a statement to the effect that the scheme is subject to the credit risk of the guarantor and the issuers of the underlying investments;

(4) a statement to the effect that the scheme is subject to the liquidity risk of the underlying investments;

(5) risks, if any, associated with conflicts of interest that may arise amongst different operating parties;

(6) a warning statement that the scope or validity of the guarantee may be affected under certain circumstances including, where relevant, the condition that the guarantee only applies to investors who hold their investments until the date specified in the guarantee and that dealings before such date are fully exposed to fluctuations in the value of the scheme's assets; and

(7) where applicable, the mechanism of any up-front charging fee structure and the cost implications to investors.

(c) Nothing in the deed of guarantee may exclude the jurisdiction of the courts of Hong Kong to entertain an action concerning the scheme or the guarantee.

(d) The name of the scheme should accurately reflect the nature of the guarantee.

(e) The management company of the scheme should report to the Commission as soon as practicable if it becomes aware of any events which may affect the guarantee or undermine the ability of the guarantor to act as such.

Note: Where the guarantor of a scheme is neither a licensed banking institution authorized under the Banking Ordinance (Chapter 155 of Laws of Hong Kong) nor an authorized insurer authorized under the Insurance Ordinance (Chapter 41 of Laws of Hong Kong), the management company of the scheme must notify the Commission on an annual basis the regulatory status of the guarantor.

(f) Any advertisement or marketing material must contain the following:

(i) the name of the guarantor;

(ii) where relevant, a statement that certain fees are charged up-front and the aggregate amount thereof;

(iii) where an indicative participation rate is quoted, the date of reference should be stated and there should be a warning that the actual participation rate may be different from the indicative rate;

(iv) the statement in 7.39(b)(iv)(6); and

(v) a statement directing investors to read the offering document for further details of the guarantee.

Applicability of restrictions to umbrella funds

7.40 The provisions of this Chapter apply to each sub-fund of the umbrella fund as if each sub-fund were a single scheme, except for 7.2, where the total collective investment by the sub-funds in any ordinary shares issued by any single entity may not exceed 10%.

Breach of investment limits

7.41 If the investment limits in Chapter 7 and 8 are breached, the management company should take as a priority objective all steps as are necessary within a reasonable period of time to remedy the situation, taking due account of the interests of the holders.

Name of scheme

7.42 If the name of the scheme indicates a particular objective, investment strategy, geographic region or market, the scheme should, under normal market circumstances, invest at least 70% of its total net asset value in securities and other investments to reflect the particular objective, investment strategy or geographic region or market which the scheme represents.

Chapter 8: Specialized schemes

This Chapter sets out the requirements for various types of specialized schemes. A specialized scheme means any scheme whose primary objective is not investment in equities and/or bonds, any scheme falling under the categories in this Chapter, or which otherwise does not meet the relevant requirements of Chapter 7 associated with any particular or special feature(s) of the scheme.

For any scheme that has features falling within the scope of one or more specialized scheme(s) under this Chapter, the scheme shall comply with the relevant requirements under this Chapter where applicable, in addition to the requirements under Chapter 7 with modifications, exemptions or additions as set out in this Chapter.

In addition to the specialized schemes mentioned in this Chapter, application may be made for other specialized schemes pursuant to this Chapter. Each such scheme will be considered by the Commission on a case-by-case basis, taking into account the applicable requirements set out in this Chapter and Chapter 7, or pending the issue, if appropriate, of further guidelines.

8.1 [deleted]

8.2 Money market funds

(a) A money market fund means a scheme which invests in short-term and high quality money market investments and seeks to offer returns in line with money market rates.

Note: Collective investment schemes which present the characteristics of a money market fund or which are presented to investors or potential investors as having similar investment objectives (e.g. funds named as "liquid funds" or "cash funds") should also be subject to the requirements under 8.2 of this UT Code, notwithstanding that such schemes are not marketed as "money market fund".

Offering document

(b) The offering document must clearly highlight that the purchase of a unit/share in a scheme is not the same as placing funds on deposit with a bank or deposit-taking company, that the management company has no obligation to redeem units/shares at the offer value and that the scheme is not subject to the supervision of the Hong Kong Monetary Authority.

Name of scheme

(c) In addition to 7.42, the scheme's name must not appear to draw a parallel between the scheme and the placement of cash on deposit.

Filing requirement

(d) The scheme must file with the Commission within seven days from the last working day of each month details of the total funds subscribed to the scheme that month, and details of the total funds under management at the end of that month.

Investment limitations

The core requirements on investments as set out in Chapter 7 will apply with the following modifications, exemptions or additional requirements:

(e) Subject to the provisions below, a scheme may only invest in short-term deposits and high quality money market instruments [see Note(1) to 7.36(j)], and money market funds that are authorized by the Commission under 8.2 of this UT Code or regulated in a manner generally comparable with the requirements of the Commission and acceptable to the Commission.

Notes: (1) Subject to 8.2(j), money market instruments may include asset-backed securities such as asset-backed commercial papers.

(2) Management company should have a prudent credit risk assessment and monitoring procedure as to whether or not a money market instrument invested by the scheme is of high quality, having regard to multiple factors, including liquidity and credit quality but without over-reliance on external credit ratings. A scheme is generally not expected to invest in unrated or low-investment-grade money market instruments. In this regard, high quality money market instruments generally refer to money market instruments (or their respective issuers in case of unrated instruments) with one of the two highest short-term credit ratings provided by an internationally recognised credit rating agency (or equivalent) or money market instruments issued by a substantial financial institution with comparable credit quality.

(3) Short-term deposits are generally expected to be repayable on demand or able to be withdrawn by the scheme at any time, subject to the use of anti-dilution liquidity management tools when meeting redemption requests under normal or anticipated stressed market conditions, while considering pertinent factors such as penalties or other costs associated with the early withdrawal of deposits.

(f) A scheme must maintain a portfolio with weighted average maturity not exceeding 60 days and a weighted average life not exceeding 120 days and must not purchase an instrument with a remaining maturity of more than 397 days, or two years in the case of Government and other public securities [see Notes(1) and (2) to 7.5].

Notes: (1) Weighted average maturity is a measure of the average length of time to maturity of all the underlying securities in the scheme weighted to reflect the relative holdings in each instrument; and is used to measure the sensitivity of a scheme to changing money market interest rates.

(2) Weighted average life is the weighted average of the remaining life of each security held in a scheme; and is used to measure the credit risk, as well as the liquidity risk.

(3) The use of interest rate resets in variable-notes or variable-rate notes generally should not be permitted to shorten the maturity of a security for the purpose of calculating weighted average life, but may be permitted for the purpose of calculating weighted average maturity.

(g) Notwithstanding 7.1 and 7.1B, the aggregate value of a scheme's holding of instruments and deposits issued by a single entity may not exceed 10% of the total net asset value of the scheme except:

(i) where the entity is a substantial financial institution and the total amount does not exceed 10% of the entity's share capital and non-distributable capital reserves, the limit may be increased to 25%; or

(ii) in the case of Government and other public securities, up to 30% may be invested in the same issue; or

(iii) in respect of any deposit of less than US$ 1,000,000 or its equivalent in the base currency of the scheme, where a scheme cannot otherwise diversify as a result of its size.

(g)(a) Notwithstanding 7.1A and 7.1B, the aggregate value of a scheme's investments in entities within the same group [see Note(1) to 7.1A] through instruments and deposits may not exceed 20% of its total net asset value.

Notes: (1) 8.2(g)(a) will not apply in respect of cash deposit of less than US$ 1,000,000 or its equivalent in the base currency of the scheme, where a scheme cannot otherwise diversify as a result of its size.

(2) where the entity is a substantial financial institution and the total amount does not exceed 10% of the entity's share capital and non-distributable capital reserves, the limit may be increased to 25%.

Limitations on borrowing

(h) Notwithstanding 7.21, a scheme may borrow up to 10% of its total net asset value but only on a temporary basis for the purpose of meeting redemption requests or defraying operating expenses.

Underlying assets requirements

(i) The value of a scheme's holding of money market funds that are authorized by the Commission under 8.2 of this UT Code or regulated in a manner generally comparable with the requirements of the Commission and acceptable to the Commission may not in aggregate exceed 10% of its total net asset value.

(j) The value of a scheme's holding of investments in the form of asset-backed securities may not exceed 15% of its total net asset value.

(k) Subject to 7.32 to 7.38, a scheme may engage in sale and repurchase, and reverse repurchase transactions in compliance with the following additional requirements:

(i) the amount of cash received by a scheme under sale and repurchase transactions may not in aggregate exceed 10% of its total net asset value;

(ii) the aggregate amount of cash provided to the same counterparty in reverse repurchase agreements may not exceed 15% of the net asset value of the scheme;

(iii) collateral received may only be cash, high quality money market instruments [see Note(1) to 7.36(j)] and may also include, in the case of reverse repurchase transactions, government securities receiving a favourable assessment on credit quality [see Note(4) to 5.10(f)]; and

(iv) the holding of collateral, together with other investments of the scheme, must not contravene the investment limitations and requirements set out in 8.2 of this UT Code.

(l) A scheme may use financial derivative instruments for hedging purposes only [see Notes(1) and (2) to 7.25].

(m) The currency risk of a scheme should be appropriately managed. In particular, any material currency risk should be appropriately hedged where a scheme invests in assets that are not denominated in the base currency of the scheme.

(n) A scheme must hold at least 7.5% of its total net asset value in daily liquid assets and at least 15% of its total net asset value in weekly liquid assets.

Notes: (1) Daily liquid assets refers to (i) cash; (ii) instruments or securities convertible into cash (whether by maturity or through exercise of a demand feature) within one working day; and (iii) amount receivable and due unconditionally within one working day on pending sales of portfolio securities.

(2) Weekly liquid assets refers to (i) cash; (ii) instruments or securities convertible into cash (whether by maturity or through exercise of a demand feature) within five working days; and (iii) amount receivable and due unconditionally within five working days on pending sales of portfolio securities.

(3) *In addition, it is expected that (i) periodic stress testing to be carried out by the management company in monitoring the scheme's liquidity and (ii) daily and weekly liquid assets held by a scheme to be increased pursuant to prevailing market conditions and anticipated redemptions.*

(o) A scheme that offers a stable or constant net asset value or which adopts an amortized cost accounting for valuation of its assets may only be considered by the Commission on a case-by-case basis.

Notes: (1) Among others, the Commission must be satisfied with the overall measures and safeguards put in place by the scheme to properly address relevant risks associated with these features, having taken into account applicable international regulatory standards and requirements. Non-exhaustive examples of safeguards may include setting out clear and reasonable criteria for the types of instruments and the circumstances under which a scheme may use amortized cost accounting, ongoing monitoring of the difference between the amortized cost of an instrument and its market value or the difference between the constant net asset value of the scheme and its marked-to-market net asset value (as the case may be), procedures in place to ensure appropriate actions are to be taken promptly in the interests of the investors when such difference exceeds a pre-determined threshold, enhanced measures to satisfy redemption requests including holding higher level(s) of daily and/or weekly liquid assets.

(2) A scheme that seeks to maintain an unchanging net asset value per unit or share (i.e. a constant / stable net asset value money market fund) will be subject to the following requirements:

(a) The scheme must invest at least 99.5% of its net asset value in liquid and high quality money market instruments issued or guaranteed by a government, its public or local authorities or other multilateral agencies, reverse repurchase transactions secured by these money market instruments and in cash (including short-term deposits [see Note (3) to 8.2(e)]);

(b) The scheme must hold at least 15% of its total net asset value in daily liquid assets and at least 50% of its total net asset value in weekly liquid assets [see Note to 8.2(n)];

(c) The difference between the unchanging net asset value per unit or share and the net asset value per unit or share calculated using latest market value must be monitored and published daily in an appropriate manner [see Note to 11.7];

(d) The management company must act in the best interests of investors at all times, including taking appropriate steps and actions to ensure that the scheme's net asset value fairly reflects the latest market value subject to, among others, the use of anti-dilution liquidity management tools; and

(e) Such other requirements as may be imposed by the Commission.

Liquidity risk management tools

(p) A scheme should have at least one anti-dilution liquidity management tool which allocates redemption costs to redeeming investors to mitigate material investor dilution and ensure all investors are treated fairly. Management companies should calibrate and set thresholds to enable dynamic activation of the anti-dilution liquidity management tool taking into account all relevant circumstances in the best interests of investors.

8.3 [deleted]

8.4 [deleted]

8.4A [deleted]

8.5 [deleted]

8.6 Unlisted index funds and index tracking exchange traded funds

General

(a) An "unlisted index fund" is a scheme, the principal objective of which is to track, replicate or correspond to a financial index or benchmark, with an aim of providing or achieving investment results or returns that closely match or correspond to the performance of the index. Such unlisted index fund authorized by the Commission will be referred to as "index fund" in this UT Code.

(a)(a) An index tracking exchange traded fund means an index fund as defined in 8.6(a) the units/shares of which are listed and traded on a securities exchange. Such index tracking exchange traded fund authorized by the Commission will be referred to as "passive ETF" in this UT Code.

(a)(b) The term "index" used in 8.6 of this UT Code shall mean an index or a benchmark as the context requires.

(a)(c) Subject to consultation with the SFC, a scheme under 8.6 of this UT Code may have unlisted and/or listed unit/share classes. The unlisted class and listed class shall comply with the requirements on index fund and passive ETF in 8.6 of this UT Code respectively.

Index funds

The provisions set out in 8.6(b) to 8.6(m) apply to index funds.

(b) An index fund may seek to track an index by one or a combination of the following strategies:

(i) full replication by investing all or substantially all of its assets in the constituents of the underlying index, broadly in proportion to the respective weightings of the constituents;

(ii) a representative sampling by investing in a portfolio featuring a high correlation with the underlying index; and

Note: The use of sampling where certain securities in the portfolio are not the constituent securities of the index is acceptable if the portfolio matches the characteristics of the index.

(iii) synthetic replication through the use of financial derivative instruments to replicate the index performance.

(c) In achieving its investment objective, an index fund may invest in other appropriate investment instruments, such as financial derivative instruments permitted under this UT Code or otherwise accepted by the Commission, in accordance with the index fund's disclosed investment strategies and restrictions.

(c)(a) An index fund must also comply with the requirements in 8.8 of this UT Code if the index fund's net derivative exposure exceeds 50% of its total net asset value or, where an alternative approach is accepted by the Commission, has substantial exposure to financial derivative instruments [see Notes to 7.26].

(d) In general, the Commission will consider authorizing an index fund only if the underlying index is acceptable to the Commission. Such acceptance does not imply official approval or endorsement of the index. The Commission reserves the right to withdraw the authorization if the index is no longer considered acceptable.

Note: The management company should immediately consult the Commission if for any reasons the index might likely cease or has ceased to be acceptable. The management company should as a priority objective propose remedial actions or alternatives that are acceptable to the Commission.

Acceptable indices

(e) The acceptability of an index will be assessed on the following criteria:

(i) The index should have a clearly defined objective and/or the market or sector it aims to represent should be clear;

Notes: (1) The Commission must be satisfied that the index appropriately reflects the characteristics of the market or sector. The index should be able to, where applicable, reflect the price movements in its underlying constituents and change the composition and weightings of these constituents to reflect changes in the underlying market or sector. The Commission may, where relevant, request information on the market capitalisation of the constituent securities in relation to the total value of the market or sector that an index purports to represent.

(2) *Where the index relates to a single commodity or interest rate for money market, it should be well-recognized and representative of the relevant market or sector.*

(ii) The index should in general be broadly based;

Note: An index with a single constituent security weighing more than 20% (or 35% where that proves to be justified by exceptional conditions in markets where certain securities are highly dominant and provided that each remaining constituent security does not exceed 20%) or having few constituent securities would generally be considered too concentrated. Exceptions may be made on a case by case basis, particularly where the constituent securities are Government or other public securities, or the index relates to a single commodity or interest rate for money market.

(iii) The index should be investible, where applicable;

Note: The Commission expects that the constituent securities should be sufficiently liquid (taking into account their respective weightings and trading volume), and may be readily acquired or disposed of under normal market circumstances and in the absence of trading restrictions.

(iv) The index should be transparent and published in an appropriate manner; and

Notes: (1) The last closing index level and other important news should be either published in Hong Kong daily newspapers or conveniently accessible by investors (for example, by enquiring of the Hong Kong Representative or through relevant websites). The Commission may also consider whether the index is easily accessible through market data vendors.

(2) The Commission expects that the index constituents together with their respective weightings should be easily accessible, free of charge, by investors (for example, via the internet). This information should be published after each index rebalancing on a retrospective basis and in advance of the next rebalancing.

(v) The index should be objectively calculated and rules-based. The index provider is expected to possess the necessary expertise and technical resources to construct, maintain and review the methodology/rules of the index. The methodology/rules should be well documented, consistent and transparent.

Notes: (1) The Commission may request the submission of the methodology/rules of the index.

(2) Where the index provider is the management company of the index fund (or its connected persons), effective arrangements for management of conflicts of interests should be put in place.

Reporting requirements

(f) The Commission should be consulted on any events that may affect the acceptability of the index. Significant events relating to the index should be notified to the holders as soon as practicable. These may include a change in the methodology/rules for compiling or calculating the index, or a change in the objective or characteristics of the index.

Investment restrictions

(g) The core requirements in Chapter 7 will apply with the modifications or exceptions as set out in 8.6(h) to 8.6(i).

(h) Notwithstanding 7.1, more than 10% of the net asset value of an index fund may be invested in constituent securities issued by a single entity provided that:

(i) it is limited to any constituent securities that each accounts for more than 10% of the weighting of the index; and

(ii) the index fund's holding of any such constituent securities may not exceed their respective weightings in the index, except where weightings are exceeded as a result of changes in the composition of the index and the excess is only transitional and temporary in nature.

(h)(a) Investment restrictions in 8.6(h)(i) and (ii) do not apply if:

(i) an index fund adopts a representative sampling strategy which does not involve the full replication of the constituent securities of the underlying index in the exact weightings of such index;

(ii) the strategy is clearly disclosed in the offering document of the index fund;

(iii) the excess of the weightings of the constituent securities held by the index fund over the weightings in the index is caused by the implementation of the representative sampling strategy;

(iv) any excess weightings of the index fund’s holdings over the weightings in the index must be subject to a maximum limit reasonably determined by the index fund after consultation with the Commission. In determining this limit, the index fund must consider the characteristics of the underlying constituent securities, their weightings and the investment objectives of the index and any other suitable factors;

(v) limits laid down by the index fund pursuant to 8.6(h)(a)(iv) must be disclosed in the offering document; and

(vi) disclosure must be made in the index fund's interim and annual reports as to whether the limits imposed by the index fund itself pursuant to 8.6(h)(a)(iv) have been complied with in full. If there is non-compliance with the said limits during the relevant reporting period, this must be reported to the Commission on a timely basis and an account for such non-compliance should be stated in the report relating to the period in which the non-compliance occurs or otherwise notified to investors.

(h)(b) Due to its index tracking nature, the Commission may, upon sufficient justification, consider not requiring index fund to strictly comply with the investment restrictions in 7.1A and 7.1B on a case-by-case basis.

(i) Subject to the approval of the Commission, the 30% limit in 7.4 may be exceeded, and an index fund may invest all of its assets in Government and other public securities in any number of different issues despite 7.5.

Disclosure

(j) In addition to the requirements under Appendix C, the offering document of an index fund must make the following disclosure and warnings:

(i) a description of the market or sector the index aims to represent;

(ii) the characteristics and general composition of the index and, where applicable, concentration in any economic sectors and/or issuers;

(iii) a publicly accessible website where the constituents of the index together with their respective weightings are published;

(iv) where necessary, a statement to the effect that the investment of the index fund may be concentrated in the securities of a single issuer or several issuers;

(v) a warning of lack of discretion to adapt to market changes due to the inherent investment nature of index funds and that falls in the index are expected to result in corresponding falls in the value of the index fund;

(vi) a statement to the effect that there is no guarantee or assurance of exact or identical replication at any time of the performance of the index;

(vii) circumstances that may lead to tracking errors and the related risks, and strategies employed in minimising such errors;

(viii) a brief description of the index methodology/rules and/or the means by which investors may obtain such information (for example, by providing the website address of the index provider);

(ix) the means by which investors may obtain the latest index information and other important news of the index;

(x) a warning that index composition may change and securities may be delisted;

(xi) any circumstances that may affect the accuracy and completeness in the calculation of the index;

(xii) a warning in relation to any licensing conditions (including indemnity given to the index provider, if any) for using the index, and the contingency plan in the event of cessation of the availability of the index;

(xiii) a statement on whether the index provider and the management company of the index fund (or its connected persons) are independent of each other. If not, the means by which possible conflicts of interests may be addressed;

(xiv) the Commission reserves the right to withdraw the authorization of the index fund if the index is no longer considered acceptable; and

(xv) any other information which is relevant and material for investors to make an informed investment decision.

Replacement of the underlying index

(k) Following the authorization of the index fund, a replacement of the underlying index may only be made in accordance with the provisions of its offering and constitutive documents and with the prior approval of the Commission.

Note: A replacement of the underlying index may be necessary under circumstances including where the index is no longer available or considered acceptable.

(l) [deleted]

Name of index fund

(m) The name of the index fund must reflect the nature of an index fund.

Note: Except with the approval of the Commission, the words "index", "tracking" and/or "tracker" are expected to appear in the name of the index fund.

Passive ETFs

The provisions set out in 8.6(n) to 8.6(y) apply to passive ETFs:

(n) Passive ETFs must comply with the requirements in this UT Code not otherwise modified below. In particular, the requirements on index funds in 8.6 of this UT Code are broadly applicable to passive ETFs.

(o) It is a condition for authorizing a passive ETF that it must be listed and traded on The Stock Exchange of Hong Kong Limited (the "SEHK").

(p) The management company of a passive ETF is generally expected to use its best endeavours to put in place arrangements so that there is at least one market maker for the units/shares (traded in each counter) of the passive ETF and at least one market maker for (each counter of) the passive ETF will give not less than three months' notice prior to terminating the market making arrangement. The appointed market maker shall observe the applicable requirements concerning market making activities issued by the SEHK.

(q) The management company of a passive ETF shall inform the Commission and holders by way of public announcement, in the manner as may be required by the Commission, and publish as soon as reasonably practicable any information or transaction concerning the passive ETF which:

(i) is necessary to enable holders to appraise the position of the passive ETF; or

(ii) is necessary to avoid a false market in the units/shares of the passive ETF; or

(iii) might be reasonably expected to materially affect market activity in the passive ETF or affect the price of the units/shares of the passive ETF.

(r) Name of a passive ETF under note to 8.6(m) – The note to 8.6(m) is amended to the effect that except with the approval of the Commission, the words "index", "tracking", "tracker" and/or "ETF" are expected to appear in the name of a passive ETF.

(s) The notification requirements under 10.7 and 11.1A are modified to the following extent:

(i) Suspension of dealing in 10.7 – The management company must immediately notify the Commission as soon as practicable if dealing in units/shares on the SEHK ceases or is suspended.

(ii) Increase in fees and charges in 11.1A – Any increase in fees and charges from the current level up to the permitted maximum level as disclosed in the Hong Kong Offering Document is subject to at least one week's prior notice to holders.

(iii) All notices and public announcements made by passive ETFs in accordance with this UT Code must be prepared in both English and Chinese.

Note: For avoidance of doubt, nothing in 8.6(s) shall exempt a passive ETF from compliance with 11.1, 11.4 and 11.5.

(t) Where a passive ETF ceases trading on the SEHK as a result of proposed termination and/or deauthorization and delisting, the requirements in 6.1, 8.6(u)(i) and (ii), 10.7 and 11.1B may be modified and/or not be applicable depending on the specific circumstances of each case and subject to such conditions and requirements as may be imposed by the Commission.

(u) In addition to information commonly available for stocks during the trading hours of the SEHK (e.g. bid/ask prices and queuing displays), a passive ETF must, except with the approval of the Commission, provide the following trading information to the public through the passive ETF's own website or such other channels as the Commission considers appropriate:

(i) real time or near-real time indicative net asset value per unit/share (updated at least every 15 seconds during trading hours);

(ii) last net asset value per unit/share and last net asset value of the passive ETF (updated on a daily basis); and

(iii) full holdings of the passive ETF (updated on a monthly basis within one month of the end of each month).

Notes: (1) Indicative net asset value per unit/share means a measure of the intraday value of the net asset value per unit/share of a passive ETF based on the most up-to-date information.

(2) For a passive ETF with multiple trading counters, the relevant information shall be provided for each counter.

(3) The offering document shall disclose the policy regarding disclosure of holdings of the passive ETF.

(4) The offering document shall direct investors to the website or other channels where the above information is published.

(5) Where the full holdings of the passive ETF is provided to the public on a more frequent basis (e.g. daily), the passive ETF is not required to comply with 8.6(u)(iii).

(v) If a passive ETF's net derivative exposure exceeds 50% of its total net asset value or, where an alternative approach is accepted by the Commission, has substantial exposure to financial derivative instruments [see Notes to 7.26], the passive ETF shall make available, through the passive ETF's own website or other acceptable channels, the information on financial derivative instruments acquired by the passive ETF (such as counterparty exposure and collateral information) to investors on an ongoing basis. The offering document should direct investors to the website or other channels where this information is published.

(w) Where securities financing transactions undertaken by a passive ETF exceed 50% of its total net asset value, the passive ETF should make available, through the passive ETF's own website or other acceptable channels, the information on securities financing transactions undertaken by the passive ETF (such as counterparty exposure and collateral information) to investors on an ongoing basis. The offering document should direct investors to the website or other channels where this information is published.

(x) A passive ETF must ensure that the following documents are made readily available to investors through any of the passive ETF's own website or such other channels as the Commission considers appropriate:

(i) offering document (including Product KFS);

(ii) latest version of the interim and annual reports of the passive ETF; and

(iii) all notices and public announcements (including notices for suspension and resumption of trading) issued by the passive ETF in Hong Kong.

Note: Where a passive ETF is listed and traded on the SEHK, it may, but is not required to, make available the abovementioned documents to investors by way of hyperlinks to the website of Hong Kong Exchanges and Clearing Limited.

(y) The Commission may enter into mutual recognition arrangements with other jurisdictions from time to time to facilitate cross-listing and offering of exchange traded funds in each other's market. Please refer to the relevant circulars published on the Commission's website at www.sfc.hk for the specific relief granted to overseas exchange traded funds under relevant mutual recognition arrangements.

8.7 Hedge funds

Foreword

The following criteria apply to collective investment schemes that are commonly known as hedge funds (or alternative investment funds). Hedge funds are generally regarded as funds that possess different characteristics and utilize different investment strategies from traditional funds. In considering an application for authorization, the Commission will, among other things, consider the following:

(i) the choice of asset class; and

(ii) the use of advanced investment strategies which may involve financial instruments which are not liquid, financial derivatives, concentration of investments, leverage, short selling or other speculative strategies that are not often used by traditional funds.

Due to the wide array of schemes that may fall under this category, the Commission will exercise its discretion in imposing additional conditions to each scheme on a case-by-case basis as appropriate.

Where a scheme invests all its non-cash assets in other hedge funds, it may be authorized as a fund of hedge funds (FoHFs).

The management company

(a) The management company of a scheme must satisfy the requirements set out in Chapter 5 unless otherwise specified in this Chapter. For the avoidance of doubt, the Commission will consider, among others, the following factors when assessing the acceptability of the management company:

(i) The management company must have the requisite competence, expertise and appropriate risk management and internal controls systems. It must also be adequately and suitably staffed in order to properly manage the risks and operational issues in connection with its hedge funds business;

(ii) the experience of the key personnel of the management company and those of the investment delegate (where the latter has been delegated the investment management function) in managing hedge funds;

Note: The key personnel of the management company of either a single hedge fund[1] or a FoHFs must be dedicated full-time staff with a demonstrable track record in the management of hedge funds.

The Commission will take into account various factors in assessing the acceptability of the key personnel for a scheme. These factors may vary from a single hedge fund to a FoHFs having regard to the different strategies and operational differences of these funds.

There must be at least two key personnel in the management company each having at least five years' relevant experience. The management company must demonstrate that out of these five years' relevant experience, the two key personnel must each have at least two years' specific experience:

(a) In the case of a single hedge fund manager, the Commission will normally consider it acceptable if each of the two key personnel has at least two years' specific investment management experience in the same strategy as that of the scheme.

[1] "Single hedge fund" in the context of 8.7 means hedge funds that are not in the form of FoHFs.

(b) In the case of a FoHFs manager, the Commission will normally consider it acceptable if each of the two key personnel has at least two years' specific investment management experience as a FoHFs manager.

A key personnel may satisfy this five years' relevant experience by a combination of both his specific experience mentioned above and general experience relating to hedge funds. With respect to general experience, the Commission will normally consider the following types of experience acceptable:

(1) proprietary trading experience in securities, financial derivative instruments or other investment instruments which are of a similar nature to those contemplated by the scheme; or
(2) carrying out investment strategies in the context of investment management or securities dealing business in similar nature to the one contemplated for the scheme; or
(3) prior experience in evaluating or selecting hedge funds for investment purposes.

General experience acquired through academic research, sales or marketing or back-office administration of hedge funds is unlikely to be considered acceptable for meeting the requirement in 8.7(a).

For the avoidance of doubt, to the extent that 5.5(a) requires the key personnel to possess specific public funds experience, this requirement may be satisfied if the management company on a firm-wide basis is able to demonstrate that it possesses the requisite experience and resources to administer public funds.

The Commission may require independent substantiation of the management experience and track record of the key personnel, the management company and the group companies (where appropriate).

The experience requirement of the investment personnel of the underlying funds of a FoHFs is set out in the "Fund of Hedge Funds" section below.

(iii) amount of assets under management;

Note: The Commission would generally expect at least US$100 million for the total amount of assets under management that follow hedge fund strategies. While assets under management may include proprietary funds, the Commission will generally look for experience in managing third-party funds.

(iv) the risk management profile and internal control systems of the management company; and

Note: The management company must have in place suitable internal controls and risk management systems commensurate with the company's business and risk profile, including a clear risk management policy and written control procedures.

It must continuously deploy such necessary resources and be vigilant to ensure that all the relevant risks in connection with the management of the scheme are properly monitored and controlled in accordance with the investment strategy of the scheme.

The management company must demonstrate that those representatives and agents (including for example, administrators, custodian, brokers, valuation agents) appointed by it possess sufficient know-how and experience in dealing with hedge funds.

In the case of the management of a FoHFs, the management company must:

(a) have in place a due diligence process for the selection of the underlying funds and ongoing monitoring of their activities;

(b) demonstrate its ability to assess and monitor the performance of the managers of the underlying funds, and the ability to replace the underlying funds whenever necessary to protect the interests of holders; and

(c) submit a plan to explain its due diligence and ongoing monitoring processes (containing, among others, the frequency of reporting and evaluation of the underlying funds, and measures adopted by the management company to ensure investment and operational risks of the underlying funds are analysed and controlled) and include a summary of the plan in the offering document of the scheme.

The management company must ensure that its risk management process is able to deal with normal and exceptional circumstances including extreme market conditions.

The management company must take all reasonable care in the selection of its distribution agents engaged in the selling of hedge funds and provide all necessary information and training to these agents for the purpose of selling the scheme.

(v) the investment management operations of the scheme must be based in a jurisdiction with an inspection regime acceptable to the Commission.

Note: Whilst reference would be made to the list of acceptable inspection regimes published on the Commission's website, it is noted that the regulation of offshore hedge funds vs. onshore funds may be different in some jurisdictions. The acceptability of an inspection regime in the context of a scheme that is subject to such regime and is seeking SFC authorization may need to be considered on a case-by-case basis.

Prime broker

(b) Where a scheme appoints a prime broker, the following shall apply:

(i) the prime broker must be a substantial financial institution;

(ii) where assets of the scheme are charged to the prime broker for financing purpose, such assets must not, at any time, exceed the level of the scheme's indebtedness to the prime broker;

Note: Where assets of the scheme may be used as collateral or security for financing to be provided by the prime broker, disclosure must be made in the offering document of the risks associated with the collateralisation, for example, foreclosure or re-hypothecation of these assets by the prime broker and any consequential impact to the scheme and its investors.

(iii) the assets charged to the prime broker must remain in a segregated custody account, in the name or held to the order of the trustee/custodian; and

(iv) the scheme's offering document must disclose the profile of the prime broker and its relationship with the scheme.

Note: Before a prime broker is appointed by the scheme, the scheme or the management company (as the case may be) must conduct due diligence on the prime broker and be reasonably satisfied with the prime broker's suitability and competence.

Apart from disclosing the profile of the prime broker, the offering document must disclose the role(s) of the prime broker in relation to the hedge fund, whether the prime broker is subject to any prudential regulatory supervision, and if so, a brief description of its licensing status in the relevant jurisdiction. Where appropriate, disclosure of the risks relating to any conflicts of interest between the prime broker and the scheme has to be made in the offering document.

Minimum subscription

(c) The minimum level of initial subscription by each investor in a scheme must not be less than US$50,000*, except for FoHFs, where the minimum initial subscription must not be less than US$10,000*. No minimum subscription level will apply to a scheme which provides at least 100% capital guarantee.

(*) or the currency equivalent

Limited liability

(d) The liability of holders must be limited to their investment in the scheme and this must be clearly stated in the offering document.

(e) Where the scheme is a sub-fund of an umbrella fund, the scheme will be required to demonstrate to the Commission that there are legally enforceable provisions to ring-fence the scheme assets from the liabilities of other sub-funds. A brief description of such ring-fencing arrangement must be made in the offering document.

Note: The Commission may require an independent legal opinion or regulatory confirmation regarding the enforceability of the ring-fencing provisions.

Investment and borrowing restrictions

(f) The scheme must have a set of clearly defined investment and borrowing parameters in its constitutive and offering documents. The offering document must clearly explain the types of financial instruments in which the scheme will invest; the extent of diversification or concentration of investments or strategies; the extent and basis of leverage (including the maximum level of leverage); and the related risk implications of the investment and borrowing parameters.

(g) The core requirements in Chapter 7 will not apply except for 7.12(a), (b), (c) and (d), 7.14, 7.17, 7.18, 7.40 and 7.41.

Name of scheme

(h) If the name of the scheme indicates a particular objective, investment strategy, geographic region or market, the scheme must, under normal market circumstances, utilize at least 70% of its total net asset value for the purposes of pursuing the particular objective, investment strategy or geographic region or market which the scheme represents.

Performance fees

(i) If a performance fee is levied, the scheme must comply with 6.17. Full and clear disclosure of the calculation methodology must be set out in its offering document.

6.17 does not apply to the underlying funds of a FoHFs. For FoHFs, the offering document of the scheme must disclose whether a performance fee is levied at both the scheme level and the underlying funds level. It must also summarize the bases of how performance fees are calculated and paid by the underlying funds. Appropriate warnings must be made in the offering document about the possibility of charging performance fees at various levels within a FoHFs and the implications to investors.

Note: The Commission notes that various methodologies may be used for the charging and accrual of performance fees based on the basic principle in 6.17.

The Commission may require illustrative examples to be given in the offering document to demonstrate the charging method where it considers appropriate.

Where a scheme intends to achieve equalisation for the calculation of performance fees, its offering document must disclose the mechanisms adopted to achieve equalisation.

Where the scheme does not intend to achieve equalisation of performance fees, its offering document must clearly disclose this fact and how the absence of equalisation may affect the amount of performance fees to be borne by investors.

Fund of hedge funds

(j) The FoHFs must comply with the following:

(i) a FoHFs must invest not more than 30% of its total net asset value in any one underlying fund; and

Note: One of the underlying assumptions of a FoHFs is that it can achieve diversification through investing in a range of funds that employ different investment strategies and/or utilise the skills of different fund managers.

Any scheme applying for authorization as a FoHFs should clearly explain its diversification strategy in the offering document.

A FoHFs authorized pursuant to this UT Code is expected to achieve investment return through the performance of its underlying funds rather than direct investments in securities, futures, options, financial derivative instruments, currency or other investments through proprietary trading or "managed accounts". It is therefore generally not acceptable for a FoHF to carry out proprietary trading directly or through the use of "managed accounts".

(ii) a FoHFs may not invest in another FoHFs.

(k) The management company of the FoHFs must ensure that:

(i) each of the key personnel of the management company of an underlying fund possesses at least two years' experience in the relevant hedge fund investment strategy, provided however that up to 10% of the net asset value of the FoHFs may comprise of underlying funds managed by investment personnel with less experience;

(ii) there is an independent trustee/custodian to safe keep the assets of the underlying funds;

(iii) where a FoHFs invests in underlying funds managed by the same management company or its connected persons, all initial charges and redemption charges on such underlying funds are waived;

(iv) neither the management company of the FoHFs nor its connected persons retain a rebate (whether in cash or in kind) on any fees or charges levied by such underlying funds, their management company or any of their connected persons;

(v) the offering document of the FoHFs clearly discloses the aggregate amount or give an indicative range of all the fees and charges of the FoHFs and each of its underlying funds; and

(vi) where the FoHFs invests in hedge funds not authorized by the SFC, such fact is disclosed in the offering document of the FoHFs. A warning must be included to the effect that some or all of the underlying funds of the

FoHFs and their fund managers are not subject to the regulation of the Commission and that such funds may not be subject to rules similar to those of the Commission that are designed to protect investors.

Dealing

(l) There must be at least one regular dealing day per month except for a closed-ended fund authorized pursuant to 8.11 of this UT Code. The management company should ensure that the terms and conditions governing subscriptions and redemptions of units/shares in a scheme are consistent with the scheme's investment strategies and the liquidity of its assets both at the time of designing the scheme and on an ongoing basis.

(m) The maximum interval between the lodgement of a properly documented redemption request for redemption of units/shares (whether a notice period is required or not) and the payment of redemption money to the holder may not exceed 90 calendar days.

Note: A scheme may only effect redemption in specie with the prior consent of individual redeeming holder. The offering document must disclose the possibility of redemption in specie and the need to obtain prior consent from an individual holder for making such redemption.

A scheme may not effect compulsory redemption except where the management company is reasonably satisfied that it is in the overall benefit of the scheme to do so. Examples where the management may effect compulsory redemption include the circumstances where the continuous holding of the scheme's interest by a particular holder will cause the scheme to be in breach of any laws or regulations governing the scheme, or result in adverse financial consequences to the scheme such as tax penalties.

Subject to the foregoing, the offering document must disclose the circumstances under which compulsory redemption may be effected and the length of notice for such redemption.

(n) The offering document of the scheme must include a warning to the effect that the redemption price may be affected by the fluctuations in value of the underlying investments during the period between the lodgement of the redemption request and the date when the redemption price is calculated.

Valuation

(o) The investments of the scheme must be independently and fairly valued on a regular basis. Where appropriate, internationally recognized accounting standards and industry's best practices should be applied on a consistent basis.

Note: It is incumbent upon the management company to demonstrate that the scheme's investments will be independently and fairly valued.

In considering whether the management company is able to demonstrate that a scheme's investments are independently valued, the Commission may take into account a number of factors including the following:

a) The duties and functions of the party carrying out the valuation (the "valuation agent") is expected to be segregated from those of

the party carrying out the investment management function for the scheme e.g. the appointment of an independent administrator. Disclosure of how the segregation is achieved must be made in the offering document;

b) There should be checks and balances to ensure that the valuation process and policy is consistently followed;

c) The pricing data should be gathered from reliable sources;

d) Where necessary, safeguarding measures should be implemented for the valuation to be carried out independently; and

e) The selection of the valuation agent by the management company is based on due process.

Disclosure must be made of (1) the selection criteria of the valuation agent and the relationship between the management company, its group of companies and the valuation agent; and (2) any limitations and constraints of the valuation policies and methodologies.

The above factors are not exhaustive and the Commission may take into account other relevant factors in assessing the compliance with the independence requirement.

(p) Full particulars of the valuation frequency, the valuation methods of the scheme's investments, the identity and qualifications of the valuation agent(s), the experience of the valuation agent(s) in evaluating hedge fund assets and the relationship of the agent(s) with the scheme's management company or its group of companies and, where applicable, with the prime broker must be disclosed in the offering document.

(q) The offering document of the scheme must include a warning to the effect that some of the underlying investments of the scheme may not be actively traded and there may be uncertainties involved in the valuation of such investments. Potential investors must be warned that under such circumstances, the net asset value of the scheme may be adversely affected.

Disclosure

(r) The front cover of the offering document must display prominently the following warning statements:

(i) the scheme uses alternative investment strategies and the risks inherent in the scheme are not typically encountered in traditional funds;

(ii) the scheme undertakes special risks which may lead to substantial or total loss of investment and is not suitable for investors who cannot afford to take on such risks;

(iii) investors are advised to consider their own financial circumstances and the suitability of the scheme as part of their investment portfolio; and

(iv) investors are advised to read this offering document and should obtain professional advice before subscribing to the scheme.

Note: The text of the warning statements may be varied but the message must be clear and not disguised.

(s) For the purpose of 6.1, the offering document must disclose all relevant matters relating to the investment operations and risk management aspects of the scheme and give lucid explanations of the investment strategy of the scheme and the risks inherent in the scheme.

Note: For example, explanations should be given on the nature of the scheme; the markets covered; the instruments used; the risk and reward characteristics of the strategy; the circumstances under which the scheme would work best and the circumstances hostile to the performance of the scheme; the risk management and internal control mechanism, including the setting of investment and borrowing parameters to control the risks; the terms of the offering; the ongoing monitoring of the scheme's investment and asset allocation process and the performance of the scheme; the ongoing monitoring of the standards of the services provided by key service providers, for example, prime brokers and administrators and the replacement process of these service providers and the responsibilities of each of the relevant parties.

The offering document should be written in plain language. The Commission specifically encourages the use of a glossary to explain technical terms.

Details of unauthorized funds must not be shown in the offering document. Where names of such funds are mentioned, these must be clearly marked as unauthorized and not available to the public in Hong Kong.

(t) The management company must disclose the measures and safeguards put in place for the management of conflicts of interest in relation to the operation of the scheme.

(u) All advertisements must prominently display the warning statements referred to in 8.7(r).

Application form

(v) All application forms of the scheme must state prominently that the scheme is a hedge fund and there are special risks involved with investment in the scheme, and direct investors to read the offering document.

Financial reports

(w) The management company must issue regular reports to holders on the scheme activities at least on a quarterly basis. Reports must be prepared and distributed in accordance with the Guidelines on Hedge Funds Reporting Requirements [see Appendix H].

8.8 Structured funds and other complex funds

The following general criteria shall apply to schemes, which seek to achieve their investment objectives primarily through investment in financial derivative instruments exceeding the permitted limits under 7.26 of this UT Code and/or other complex investment strategies. A structured fund usually tracks the performance of an index [see 8.6(e)] and/or offers structured pay-outs when certain pre-determined conditions relating to its underlying asset(s) are met. A complex fund generally refers to a fund whose terms, features and risks are not reasonably likely to be understood by a retail investor. The core requirements in Chapter 7 will apply with the modifications, exemptions or additional requirements as set out under 8.8 of this UT Code.

Notes: (1) [deleted]

(2) An unlisted fund or an ETF must also comply with the requirements in 8.8 of this UT Code if it is a structured fund or a complex fund.

(a) The management company of a structured fund or a complex fund and the issuer of financial derivative instruments shall be independent of each other.

Notes: (1) The management company cannot also act as the issuer of financial derivative instruments.

(2) The index adopted by the scheme (if any) shall be objectively calculated, measurable and transparent to the public, for instance, the index is rules-based with minimal or no discretion exercisable by the issuer of the financial derivative instruments, and the index level or its calculation formula is accessible by the public. Where such index is provided for the use of the structured fund or complex fund only, this would raise questions as to the propriety of the fund seeking exposure to such index.

(b) Where the scheme is a mutual fund company, the majority of the board of directors of the scheme shall be independent directors (for example, persons who are not employees or officers of the financial derivative instruments counterparty).

(c) [deleted]

(d) Notwithstanding 7.28(c), a structured fund should maintain full collateralization and there should be no net exposure to any single counterparty of over-the-counter financial derivative instruments [see Note to 7.28(c)].

Note: The management company shall demonstrate, where appropriate, with proper legal opinion in support, the collateral is held by the trustee/custodian of the scheme and must be readily accessible / enforceable by it without further recourse to the issuer of the financial derivative instruments.

(e) [deleted]

(f) The management company has to put in place detailed contingency plans regarding credit events like significant downgrading of credit rating and the collapse of the issuer of financial derivative instruments.

(g) [deleted]

Disclosure

(h) In addition to the information in Appendix C, the offering document must contain the following:

(i) disclosure of the structure of the scheme, in plain language and supplemented by visual aids and diagrams (where appropriate);

(ii) description of any potential conflicts of interest and the related risks arising from the same entity or entities within the same group acting in different capacities in relation to the scheme;

(iii) description of any other relevant risks (legal or otherwise) arising from the structure of the scheme;

(iv) in the case of structured funds, clear disclosure of the costs associated with investing into the swap or market access products or similar arrangements with the counterparty (including costs entering into the instrument and brokerage commission), and the maximum amount of redemption or unwinding fee;

(v) in the case of structured funds, in respect of the asset portfolio of a scheme investing in unfunded swap, the selection criteria and nature of the asset portfolio [see C2A of Appendix C]; and

(vi) in respect of the valuation of financial derivative instruments, the entity responsible for valuation and frequency of such valuation, the entity responsible for verification of valuation and frequency of such verification and any costs embedded in the valuation of the financial derivative instruments.

8.9 [deleted]

8.10 Listed open-ended funds (also known as active ETFs)

(a) A listed open-ended fund/active ETF is a scheme that is listed and traded on the SEHK other than passive ETFs and closed-ended funds under 8.6 and 8.11 of this UT Code respectively.

(b) A listed open-ended fund shall also comply with provisions in Chapter 7 unless otherwise modified below. If it is also a specialized scheme falling under the categories in Chapter 8, it shall comply with the relevant requirements under Chapter 8, in addition to the requirements in Chapter 7 with modifications, exemptions or additions as set out in Chapter 8.

(c) Subject to consultation with the SFC, a scheme under Chapter 7 or 8.10 of this UT Code may have unlisted and/or listed unit/share classes. The unlisted class and listed class shall comply with the relevant requirements in Chapter 7 and 8 of this UT Code.

(d) A listed open-ended fund, or a listed share class shall comply with the provisions as set out in 8.6(o) to (q), (s) to (u), (w) and (x).

(e) Where the performance of a listed open-ended fund makes reference to a benchmark, the relevant benchmark shall be disclosed in its offering document.

8.11 Closed-ended funds

The following criteria shall apply to a scheme which is commonly regarded as a closed-ended fund. A closed-ended fund seeking an authorization shall also comply with other applicable provisions in this UT Code including the relevant investment restrictions under Chapter 7 and/or Chapter 8.

Notes: (1) Closed-ended funds are generally subject to redemption restrictions.

(2) For the avoidance of doubt, 8.11 of this UT Code does not apply to a scheme falling within 8.6 and/or 8.10 of this UT Code notwithstanding its units/shares are traded on the SEHK.

(3) Some flexibility from strict compliance of the relevant investment restrictions in Chapter 7 and/or Chapter 8 (for example, the requirements regarding holding of illiquid investments) may be allowed where appropriate taking into account the fund's closed-end nature and investment strategy. An applicant should consult the SFC at the earliest possible time on any flexibility to be sought.

Listing and dealing

(a) The units/shares in the scheme must be listed and traded on the SEHK.

(b) The scheme must have procedure(s) and mechanism(s) in place for it to be widely held.

Note: The scheme is expected to have a broad base of holders having regard to the requirements under the Listing Rules including having adequate shareholder spread.

(c) The scheme must have in place measure(s) and mechanism(s) which are fair and equitable to holders to address any prolonged significant discount of its secondary trading price on the SEHK to its net asset value.

Note: This may include, for example, providing specified redemption window(s) to allow holders to redeem their units/shares at net asset value in a manner which is compliant with 8.11(i).

(d) The maximum interval between the lodgement of a properly documented redemption request for any redemption of units/shares (whether a notice period is required or not) and the payment of redemption money to holders may not exceed 90 calendar days unless the market(s) in which a substantial portion of investments is made is subject to legal or regulatory requirements (such as foreign currency controls) thus rendering the payment of the redemption money within the aforesaid time period not practicable. In such case, the extended time frame for the payment of redemption money shall reflect the additional time needed in light of the specific circumstances in the relevant market(s).

Matters requiring holders' approval

(e) Holders' prior approval will be required for the following matters:

(i) retirement or removal of the management company and appointment of the replacement management company;
(ii) material changes in investment objective, policy or restrictions of the scheme;
(iii) new issue of units/shares following listing at a price below net asset value per unit; and
(iv) request for delisting or de-authorization.

Disclosure

(f) The scheme's last closing net asset value must be published on the scheme's website at such times and in such manner as may be acceptable to the Commission taking into account the nature of the investments of the scheme.

(g) The potential risk factors regarding the closed-end nature of the scheme must be fully and prominently disclosed to investors.

(h) The scheme must disclose in its offering document the measures and mechanism referred in 8.11(c), and make appropriate disclosures by way of announcement(s) or notice(s) prior to and after each occasion where any such measures and mechanism are conducted.

Redemptions, takeovers and mergers

(i) Where a scheme proposes any form of redemption, takeover, merger, amalgamation or restructuring, the scheme's management company and the trustee/custodian shall as soon as practicable consult with the Commission on the manner in which such activities could be carried out so that it is fair and equitable to all holders.

Note: The management company and the trustee/custodian should seek to ensure there is fair and equality of treatment of holders; timely and adequate disclosure of information to enable holders to make an informed decision as to the merits of the transaction; and there is a fair and informed market in the units/shares of the schemes affected by such activities.

Chapter 9: Additional requirements for Non-Hong Kong based schemes

Appointment of representative

9.1 A scheme will be required to appoint a Representative in Hong Kong if its management company is not incorporated and does not have a place of business in Hong Kong.

9.2 If a Representative is appointed, the scheme has to maintain the Representative throughout the period it is authorized in Hong Kong.

Functions of a representative

9.3 The Representative is not required to take responsibility for the acts and omissions of the management company or, in the case of the scheme being a mutual fund corporation, the directors of the scheme. It must, however, be authorized on behalf of the scheme and the management company to:

(a) receive applications and money for units/shares from persons in Hong Kong;

(b) issue receipts in respect of the application moneys received in accordance with 9.3(a);

(c) issue contract notes to the applicants in accordance with the terms of the scheme;

(d) receive redemption notices, transfer instructions and conversion notices from holders for immediate transmission to the management company or the scheme;

(e) accept any notices or correspondence, including service of process, which holders may wish to serve on the scheme, trustee/custodian or the management company;

(f) notify the Commission immediately if redemption of units/shares ceases, or is suspended [see 10.7];

(g) make available for public inspection in Hong Kong, free of charge, and offer for sale at a reasonable price copies of all constitutive documents of the scheme;

(h) provide holders with information on the scheme including the scheme's financial reports and offering document, and relevant circulars, notices and announcements where applicable [see 11.7A];

(i) deliver to the Commission, if it requests, all accounts and records relating to the sale and redemption of units/shares of the scheme in Hong Kong; and

(j) represent the scheme and the management company in relation to all matters in which any holder normally resident in Hong Kong has a pecuniary interest or which relate to units/shares sold in Hong Kong.

Criteria for appointment

9.4 The management company is encouraged to appoint a Representative within the management group. The Representative must:

(a) be licensed or registered under the SFO; or

(b) be a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of the laws of Hong Kong) and such company is an affiliate of an authorized financial institution defined under the SFO and is acceptable to the Commission.

9.5 [deleted]

9.6 The Representative must be properly appointed to represent the scheme and the management company.

Written undertaking

9.7 The Representative must provide the Commission with a written undertaking that it will perform the duties required of a Representative under this UT Code.

Retirement and replacement of the representative

9.8 Should the Representative retire or be dismissed, it must be replaced as soon as possible, by another Representative whose appointment is subject to the approval of the Commission [see 11.1(b)].

9.9 [deleted]

Jurisdiction

9.10 Nothing in the constitutive documents may exclude the jurisdiction of the courts of Hong Kong to entertain an action concerning the scheme.

Part III: Post-authorization requirements

Chapter 10: Operational matters

Valuation and pricing

10.1 A scheme must be valued and priced in accordance with the provisions of its offering and constitutive documents and the provisions of Chapter 6.

Pricing errors

10.2 If an error is made in the pricing of units/shares, the error should be corrected as soon as possible and any necessary action should be taken to avoid further error. Trustee/custodian should be informed of any error in the pricing of units/shares in a timely manner.

10.2A If the error results in an incorrect price of 0.5% or more of a scheme's net asset value per unit/share, the trustee/custodian and the Commission must be informed immediately.

Note: For the avoidance of doubt, any error that accounts for less than 0.5% of the scheme's net asset value per unit/share or net asset value individually but amounts to 0.5% of the scheme's net asset value per unit/share or net asset value or more in aggregate for incidences that occur in a simultaneous or recurring manner, such errors should be reported to the Commission immediately.

10.2B For any error in the pricing of units/shares of a scheme referred to in 10.2A (and the Note), the affected investors (including former holders) and/or the scheme itself should be compensated for the loss incurred. In such a case, the affected investors and/or the scheme should be compensated as follows, unless determined otherwise by the trustee/custodian with justification to the Commission:

(a) where total loss to individual investors (either purchasing or redeeming) is more than HK$100 or such lesser amount as the management company may decide, investors should be compensated in such manner as the management company should determine with the approval of the trustee/custodian;

(b) where the loss is to the management company, no compensation should be paid; and

(c) where the loss is to the scheme, the scheme should be compensated in all circumstances referred to in 10.2A.

Note: In the event that the management company is to compensate one or more affected investors for errors not falling under 10.2A, compensation to all other affected investors should be made on the same basis.

10.3 [deleted]

10.4 [deleted]

10.5 [deleted]

Suspension and deferral of dealings

10.6 Suspension of dealings may be provided for by the management company in consultation with the trustee/custodian, having regard to the best interests of holders. The management company must regularly review any prolonged suspension of dealings and take all necessary steps to resume normal operations as soon as practicable.

10.7 The management company or the Representative [see 9.3(f)] must immediately notify the SFC if dealing in units/shares ceases or is suspended. The fact that dealing is suspended must be published immediately following such decision and at least once a month during the period of suspension in an appropriate manner.

10.8 Where redemption requests on any one dealing day exceed 10% of the total net asset value or total number of units/shares in issue, redemption requests in excess of 10% may be deferred to the next dealing day.

Note: The Commission may on a case-by-case basis accept a higher or lower threshold to trigger deferral of dealing as reasonably determined by the management company, taking into account the specific circumstances of the scheme, provided that such threshold is clearly disclosed in the offering document.

Transactions with connected persons

10.9 No person may be allowed to enter on behalf of the scheme into underwriting or sub-underwriting contracts without the prior consent of the trustee/custodian and unless the scheme or the management company provides in writing that all commissions and fees payable to the management company under such contracts, and all investments acquired pursuant to such contracts, will form part of the scheme's assets.

10.10 If cash forming part of the scheme's assets is deposited with the trustee/custodian, the management company, investment delegate or any of their connected persons (being an institution licensed to accept deposits), such cash deposit shall be maintained in a manner that is in the best interests of the holders, having regard to the prevailing commercial rate for a deposit of similar type, size and term negotiated at arm's length in accordance with ordinary and normal course of business.

10.11 All transactions carried out by or on behalf of the scheme must be executed at arm's length and in the best interests of the holders. In particular, any transactions between the scheme and the management company, investment delegate, directors of the scheme or any of their connected person(s) as principal may only be made with the prior written consent of the trustee/custodian. All such transactions must be disclosed in the scheme's annual report [see item 2 under Notes to the Financial Reports in Appendix E].

10.12 Neither the management company, investment delegate nor any of their connected persons may retain cash or other rebates from a broker or dealer in consideration of directing transactions in scheme property to the broker or dealer save that goods and services (soft dollars) may be retained if:

(a) the goods or services are of demonstrable benefit to the holders;

(b) transaction execution is consistent with best execution standards and brokerage rates are not in excess of customary institutional full-service brokerage rates;

(c) adequate prior disclosure is made in the scheme's offering document the terms of which the holder has consented to [see C15 of Appendix C];

(d) periodic disclosure is made in the scheme's annual report in the form of a statement describing the soft dollar policies and practices of the management company or investment delegate, including a description of the goods and services received by them [see item 3 under Notes to the Financial Reports in Appendix E]; and

(e) the availability of soft dollar arrangements is not the sole or primary purpose to perform or arrange transaction with such broker or dealer.

Note: Goods and services falling within 10.12(a) may include: research and advisory services; economic and political analysis; portfolio analysis, including valuation and performance measurement; market analysis, data and quotation services; computer hardware and software incidental to the above goods and services; clearing and custodian services and investment-related publications. Such goods and services may not include travel, accommodation, entertainment, general administrative goods or services, general office equipment or premises, membership fees, employee salaries, or direct money payments.

10.13 In transacting with brokers or dealers connected to the management company, investment delegate, directors of the scheme, trustee/custodian or any of their connected persons, the management company must ensure that it complies with the following obligations:

(a) such transactions should be on arm's length terms;

(b) it must use due care in the selection of brokers or dealers and ensure that they are suitably qualified in the circumstances;

(c) transaction execution must be consistent with applicable best execution standards;

(d) the fee or commission paid to any such broker or dealer in respect of a transaction must not be greater than that which is payable at the prevailing market rate for a transaction of that size and nature;

(e) the management company must monitor such transactions to ensure compliance with its obligations; and

(f) the nature of such transactions and the total commissions and other quantifiable benefits received by such broker or dealer shall be disclosed in the scheme's annual report.

Chapter 11: Scheme changes, notifications and reporting

Scheme changes, notifications and ongoing disclosures

11.1 The proposed changes to a scheme in respect of the following must be submitted to the Commission for prior approval:

(a) changes to constitutive documents (other than changes that have been certified by the trustee/custodian as provided under 6.7 or approved by holders or changes which do not require prior approval from the Commission);

(b) changes of the trustee/custodian, management company, investment delegates and Hong Kong Representative, and their regulatory status;

(c) (i) material changes in investment objectives, policies and restrictions of the scheme (including expansion in the purpose or extent of use of financial derivative instruments for investment purposes [see 7.26]);

(ii) introduction of new fees and charges, or increase in fees and charges payable out of the property of the scheme or by the investors (other than an increase within the permitted maximum level as disclosed in the Hong Kong Offering Document [see Note(3) to 11.1A]); and

(iii) material changes in dealing arrangements, pricing arrangements or distribution policy of the scheme; and

(d) any other changes that may have a material adverse impact on holders' rights or interests (including changes that may limit holders' ability in exercising their rights).

11.1A For changes to a scheme that require the Commission's prior approval pursuant to 11.1, the Commission will determine whether holders should be notified and the period of notice (if any) that should be applied before the changes are to take effect as provided in 11.2. The revised Hong Kong Offering Document as a result of such changes should be submitted to the Commission for prior authorization.

Notes: *(1)* *[deleted]*

(2) *[deleted]*

(3) *For any increase in fees and charges from the current level up to the permitted maximum level as disclosed in the Hong Kong Offering Document, prior approval from the Commission is not required, but no less than one month's prior notice must be given to holders.*

11.1B For changes to a scheme that do not require the Commission's prior approval pursuant to 11.1, the management company should provide holders with reasonable prior notice, or inform holders as soon as reasonably practicable of any information concerning the scheme which is necessary to enable holders to appraise the position of the scheme as provided in 11.2. The Hong Kong Offering Document may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously

authorized. The revised Hong Kong Offering Document must be filed with the Commission, together with a marked-up version against the previously filed version, within one week from the date of issuance.

Note: The management company should inform holders as soon as reasonably practicable of any material adverse change in the financial conditions or business of the key counterparties to a scheme that it is aware of. 'Key counterparties' include the management company, guarantor (where relevant), trustee/custodian and major counterparty of the fund for over-the-counter financial derivative instruments or securities financing transactions.

Notices to holders

11.2 Notification to holders must be made in the language(s) in which the scheme is offered to investors. Reasonable notice period(s) should be provided to the holders in order to enable them to appraise the position of the scheme and to make an informed judgement of their investments in the scheme, where applicable.

Notes: In determining the notice period for changes to a scheme falling under 11.1 or 11.1B, the following shall apply:

(1) normally, one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) is expected to be provided to holders unless as provided under Notes(2) or (3) to 11.2 or otherwise agreed by the Commission;

(2) a shorter prior notice period may be permitted where the proposed changes to the scheme are of demonstrable benefit to holders;

(3) unless otherwise specified by the Commission, holders should be informed as soon as reasonably practicable for changes to the scheme which are to provide clarification or relate to administrative matters; and

(4) in the case of schemes domiciled outside Hong Kong, notwithstanding the notice provisions of a scheme's home jurisdiction, the Commission may require additional notice to ensure that Hong Kong investors have sufficient time to consider and respond to the documentation. For example, any general meeting at which a special resolution is to be proposed shall be convened on at least 21 days' prior notice and that any general meeting at which an ordinary resolution is to be proposed shall be convened on at least 14 days' prior notice.

The management company is encouraged to consult the Commission in case of doubt.

11.2A Subject to 11.4 and 11.5, notices to holders need not be approved by the Commission prior to issuance, but are required to be filed with the Commission within one week from the date of issuance of the notice. The Commission, however, retains its power to require issuers to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 11.1 should be approved by the Commission prior to the distribution of the relevant notices to holders.

11.2B The management company has the responsibility to ensure that notices to holders are not misleading and contain accurate and adequate information to keep investors informed. All notices should contain Hong Kong contact details for investors to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of any changes falling under 11.1 and consequential changes made to the offering or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

11.3 (Repealed)

Withdrawal of authorization

11.4 Following the authorization of a scheme, an application for withdrawal of authorization of the scheme must be submitted to the Commission for prior approval. Subject to 11.5, at least three months' notice should be provided to holders of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain information which is necessary to enable holders to make an informed judgement of the proposed withdrawal of authorization by the management company (including the reasons for the withdrawal of authorization, consequences of the withdrawal, any proposed changes in the operation of the scheme and their effects on existing investors, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized scheme) and, where applicable, an estimate of any relevant expenses and who is expected to bear them).

Notes: (1) Subject to the scheme having served notice period for merger or termination under 11.5, the management company may apply for withdrawal of authorization of the scheme with immediate effect following the completion of the merger or termination (as the case may be).

(2) For an application for withdrawal of authorization in cases other than in connection with a merger or termination of a scheme, the management company must demonstrate to the satisfaction of the Commission that proper measures have been put in place to ensure that the interests of holders who may remain to be invested in the scheme will be safeguarded (e.g. for a scheme domiciled outside Hong Kong, the scheme will continue to be regulated or supervised in a jurisdiction acceptable to the Commission).

Merger or termination

11.5 If a scheme is to be merged or terminated, the management company should follow the procedures as set out in the scheme's constitutive documents or governing law. Notice should be given to investors as determined by the Commission. Such notice should be submitted to the Commission for prior approval and contain information necessary to enable holders to make an informed judgement of the proposed merger or termination by the management company (including the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger or termination, the consequences of the merger or termination and their effects on existing investors, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized scheme), the estimated costs of the merger or termination and who is expected to bear them).

Notes: (1) Normally, the Commission will expect that at least one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) to be provided to holders.

(2) A shorter notice period may be accepted by the Commission on a case-by-case basis for specific circumstances in the best interests of holders.

(3) In effecting a merger or termination, the management company must put in place proper measures to minimize the opportunity of any holders to benefit from more favourable or advantageous conditions of the scheme, taking due account of the interests of the holders.

Reporting requirements

Financial reports to holders

11.6 Financial reports of a scheme must be published in respect of its financial year. Annual reports containing the information provided in Appendix E must be published and distributed to holders within four months of the end of the scheme's financial year and interim reports containing information required in Appendix E must be published and distributed to holders within two months of the end of the period they cover.

As an alternative to the distribution of printed financial reports, holders may be notified of where such reports, in printed and electronic forms, can be obtained within the relevant time frame.

Notes: (1) Where a scheme does not issue bilingual annual and interim reports, the offering document of the scheme shall clearly disclose that annual and interim reports are available in English or Chinese language only, as the case may be.

(2) The Commission may accept the annual reports and interim reports to cover an extended reporting period in cases when the scheme is first launched or upon its termination.

11.6A The annual reports must be prepared in compliance with internationally recognized accounting standards and the interim reports must apply the same accounting policies and method of computation as are applied in the annual reports of the scheme.

Note: For the purposes of 11.6A, internationally recognized accounting standards may include Hong Kong Financial Reporting Standards (HKFRS) or International Financial Reporting Standards (IFRS) or such other accounting standards acceptable to the Commission.

Publication of prices of a scheme

11.7 The scheme's latest available offer and redemption prices or net asset value must be calculated and made public free of charge on every dealing day in an appropriate manner. If dealing is suspended, this must be published in accordance with 10.7.

Note: Means of dissemination may include newspapers, telephone hotlines and websites.

Maintenance of a website

11.7A A scheme should, as a matter of best practice, maintain a website for publication of its offering document, circulars, notices, announcements, financial reports and the latest available offer and redemption prices or net asset value of the scheme.

Reporting to Commission

11.8 Subsequent to the authorization of the scheme, all financial reports produced by or for the scheme must be filed with the Commission within the time frame specified in 11.6.

11.9 The management company or the Representative must supply to the Commission, upon request, all information relevant to the scheme's financial reports and accounts.

11.10 [deleted]

Advertising materials

11.11 Advertisements and other invitations to invest in a scheme, including but not limited to those issued by licensed or registered persons acting as the distributors of the scheme, must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the issuer must still ensure that the advertisement or invitation complies with the Advertising Guidelines.

11.12 Where authorization by the Commission is required, it is recommended that the issuer of advertisements nominate one person, such as the Approved Person, the Hong Kong Representative or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines.

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts that require authorization by the Commission, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

11.13 Issuers must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least 3 years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Mention of SFC authorization

11.14 Where a scheme is described as having been authorized by the Commission it must be stated that authorization does not imply official recommendation by adding a prominent note in the following terms to the offering document and advertisements and other invitations to invest in the scheme:

SFC authorization is not a recommendation or endorsement of a scheme nor does it guarantee the commercial merits of a scheme or its performance. It does not mean the scheme is suitable for all investors nor is it an endorsement of its suitability for any particular investor or class of investors.

Appendix A1

(deleted)

Appendix A2

(deleted)

Appendix B

(deleted)

Appendix C

Information to be disclosed in the offering document

This list is not intended to be exhaustive. The directors of the scheme (in the case of a mutual fund corporation) or the management company are obliged to disclose any information which may be necessary for investors to make an informed judgement. For the avoidance of doubt, the offering document should contain all applicable disclosure as required by this UT Code.

Constitution of the scheme

C1 Name, registered address and place and date of creation of the scheme, with an indication of its duration if limited.

Investment objectives and restrictions

C2 Details of investment objectives and policy, including a summary of investment and borrowing restrictions [see Chapter 7 and Chapter 8 (for specialized schemes) of this UT Code]. If the nature of the investment policy so dictates (such as schemes falling under 8.7 and 8.8 of this UT Code), a warning that investment in the scheme is subject to special risks, a description of the risks involved, and where appropriate, the risk management policy in place.

If applicable, details of securities financing transactions of the scheme including, at a minimum, the following:

(a) general description of the use of these transactions;

(b) treatment of all revenue generated from such transactions and all the direct and indirect expenses to be incurred. In particular, details and basis of the direct and indirect expenses to be borne by the scheme and paid to any operating party;

(c) criteria for selecting the counterparties, including legal and regulatory status, country of origin and minimum credit rating;

(d) form and nature of the collateral to be received by the scheme, including cash and non-cash assets;

(e) maximum and expected level of the scheme's assets available for these transactions expressed as proportion of the net asset value of the scheme, and the type of assets that can be subject to these transactions;

(f) involvement of any connected person(s) of the management company, investment delegate, or trustee/custodian in these transactions and details of the arrangement (such as securities lending agent);

(g) custody/safekeeping arrangement of assets subject to these transactions (such as with the trustee/custodian of the scheme); and

(h) risks associated with these transactions, such as operational, liquidity, counterparty, custody and legal risks.

Collateral policy and criteria

C2A Selection criteria, nature and policy of the collateral held by the scheme and description of the holdings of collateral, including:

(a) the nature and quality of the collateral, including asset type (e.g. cash, cash equivalents and money markets; government or corporate (whether investment grade / non-investment grade); and others), issuer, maturity and liquidity;

(b) criteria for selecting counterparties, including legal and regulatory status, country of origin and minimum credit rating;

(c) the source and basis of valuation of collateral, including marked-to-market arrangements;

(d) circumstances under which the collateral may be enforced and whether it will be subject to any net-off or set-off;

(e) description of haircut policy;

(f) collateral diversification and correlation policies;

(g) [deleted]

(h) policies on re-investment of cash collateral, including the maximum amount available for cash collateral re-investment;

(i) (applicable to hedge funds) maximum amount available for collateral re-use or re-hypothecation;

(j) custody / safekeeping arrangement (such as with the trustee/custodian of the scheme) of collateral received and provided; and

(k) risks associated with collateral management and, if applicable, re-investment of cash collateral.

Valuation of property and pricing

C2B A summary of the valuation policies and procedures of the scheme, including the basis and frequency of valuation for the assets to be held by the scheme, and the circumstances under which fair value adjustments may be employed and the relevant procedures to be undertaken (including consultation with trustee/custodian of the scheme) and the pricing policies, including the methods of pricing, methods of calculating the scheme's net asset value and issue and redemption prices and the circumstances under which they can change.

Liquidity risk management

C2C Details of liquidity risk management of the scheme, including:

(a) description of liquidity risks and the associated impact on the scheme and holders;

(b) summary of the liquidity risk management policy and process; and

(c) description of liquidity risk management tools that may be employed, including the circumstances in which the tools may be activated and the impact on the scheme and holders upon activation [see C11 of this Appendix].

Operators and principals

C3 The names and registered addresses of the following parties (where applicable):

(a) the directors of the scheme (in the case of mutual fund corporation), and the management company and its board of directors;
(b) the trustee/custodian;
(c) the investment delegate;
(d) the Hong Kong Representative;
(e) the Hong Kong distribution company, if different from C3(d) of this Appendix;
(f) the auditors; and
(g) the registrar.

Characteristics of units/shares

C4 Minimum investment and subsequent holding (if any).

C5 A description of the different types of units/shares, including their currency of denomination.

C6 Form of certification.

C7 Frequency of valuation and dealing, including dealing days.

Application and redemption procedures

C8 Dedicated channel(s) for dissemination of price information [see 11.7 of this UT Code].

C9 Procedure for subscribing/redeeming units/shares, and in the case of umbrella funds, conversion of units/shares.

C10 The maximum interval between the request for redemption and the despatch of the redemption proceeds [see 6.14 of this UT Code and D9 (b) of Appendix D].

C11 A summary of the circumstances in which dealing in units/shares may be deferred or suspended.

C12 Statement that no money should be paid to any intermediary in Hong Kong who is not licensed or registered to carry on Type 1 regulated activity under Part V of the SFO.

Distribution policy

C13 The distribution policy and the approximate dates on which dividends (if any) will be paid (if applicable).

Fees and charges

C14

(a) the level of all fees and charges payable by an investor [see 6.16 to 6.18 of this UT Code], including all charges levied on subscription, redemption and conversion (in the case of umbrella funds);

(b) the level of all fees and charges payable by the scheme, including management fees, performance fees (where applicable), trustee/custodian fees and start-up expenses; and

(c) the notice period for fee increases [see 11.1A, 11.1B and 11.2 of this UT Code].

Notes: (1) In the case of indeterminable fees and charges, the basis of calculation or the estimated ranges should be disclosed.

(2) Where performance fee is levied, the calculation methodology together with illustrative examples to demonstrate the charging method and the impact of the absence of equalization arrangement should be disclosed.

C15 Where the management company, investment delegate, or any of their connected persons receives goods or services from a broker or dealer [see 10.12 of this UT Code], a summary describing the presence of such policies and practices, the types of goods and services that may be acquired through soft dollar policies and practices, and the measures taken to manage and minimize conflict of interest should be disclosed. In addition, a nil statement regarding retention of cash rebates by any of these persons.

Taxation

C16 Details of Hong Kong and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to holders.

Financial reports

C17 The date of the scheme's financial year.

C18 Particulars of what reports will be sent or made available to registered holders and when [see 11.6 of this UT Code].

C18A A statement whether the annual and interim reports would be published in English and/or Chinese.

Warnings

C19 Statements/warnings must be prominently displayed in the offering document as follows:

(a) "Important - if you are in any doubt about the contents of this offering document, you should seek independent professional financial advice".

(b) other warnings as required by this UT Code.

Product KFS

C19A A Product KFS which is deemed to form a part of the offering document [see Notes to 6.2A of this UT Code].

General information

C20 A list of constitutive documents and an address in Hong Kong where they can be inspected free of charge or purchased at a reasonable price.

C21 The date of publication of the offering document.

C22 A statement that the management company or the directors of the scheme (in the case of a mutual fund corporation) accept full responsibility for the accuracy of the information contained in the offering document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement misleading.

C22A If available, website address of the scheme which contains publication of its offering document, circulars, notices, announcements, financial reports and the latest available offer and redemption prices or net asset value. A statement that such website has not been reviewed by the Commission, if applicable.

C23 Details of unauthorized schemes must not be shown in the offering document. Where names of such schemes are mentioned, these must be clearly marked as unauthorized and not available to the public in Hong Kong.

Termination of scheme

C24 A summary of the circumstances in which the scheme can be terminated.

C25 A summary of the arrangements in handling unclaimed proceeds of holders during the termination process, including the minimum period of which such proceeds must be maintained prior to any reallocation, and the procedures to be adopted upon the lapse of such minimum period.

Custody arrangements

C26 A summary of the custody arrangements in respect of the scheme's assets and the material risks associated with such arrangements (if any).

Appendix D

Contents of the constitutive documents

This Appendix intends to set out the core requirements with respect to the contents of the constitutive documents. For the avoidance of doubt, the constitutive documents, among others, must conform in substance to the intended operative effect of the provisions in Chapter 4 of this UT Code.

D1 Name of scheme

D2 Participating parties

A statement to specify the participating parties including the management company, the Hong Kong representative, trustee/custodian, and investment delegate (if any).

D3 Governing law

Note: See 6.6 and 9.10 of this UT Code.

D4 For unit trusts only:

(a) A statement that the deed is binding on each holder as if he had been a party to it and so to be bound by its provisions and authorizes and requires the trustee and the management company to do as required of them by the terms of the deed.

(b) A provision that a holder is not liable to make any further payment after he had paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.

(c) A declaration that the property of the scheme is held by the trustee on trust for the holders of the units pari passu according to the number of units held by each holder (This may be modified as appropriate for schemes offering income and accumulation units).

(d) A statement that the trustee will report to holders in accordance with 4.5(f) of this UT Code and to list out the obligations of the trustee as set out in 4.5 of this UT Code.

(e) A statement that the trustee should retire in the manner as stipulated in 4.6 of this UT Code.

D5 For mutual fund corporations only:

(a) A declaration that the property of the scheme is held by the custodian on trust for the scheme.

(b) A statement to list the obligations of the custodian as set out in 4.5 of this UT Code.

(c) A statement that the custodian should retire in the manner as set out in 4.6 of this UT Code.

Note: See Note(1) to 4.1 of this UT Code.

D6 Management company

(a) A statement to list the obligations of the management company as set out in 5.10 of this UT Code.

(b) A statement that the management company should retire as set out in 5.11 of this UT Code.

Note: See Note(1) to 4.1 of this UT Code.

D7 Investment and borrowing restrictions

A statement to list the restrictions on the investment and the maximum borrowing limit of the scheme. [see Chapter 7 and Chapter 8 (for specialized schemes) of this UT Code]

D8 Valuation of property and pricing

The following rules on valuation of property and pricing must be stipulated:–

(a) the method of determining the value of the assets and liabilities of the property of the scheme and the net asset value accordingly;

(b) the method of calculating the issue and redemption prices; and

(c) the method of pricing and the circumstances under which it can change.

D9 Suspension and deferral of dealing

The following must be stated:

(a) the circumstances under which the dealing of units/shares can be deferred or suspended; and

(b) the maximum interval between the receipt of a properly documented request for redemption of units/shares and the payment of the redemption money to the holder, which may not exceed one calendar month.

D10 Fees and charges

A statement to list out the fees and charges payable out of the property of the scheme.

(a) [deleted]

(b) [deleted]

(c) [deleted]

(d) [deleted]

(e) [deleted]

D11 Meetings

Provisions on the manner in which meetings are conducted in accordance with 6.15 of this UT Code.

D12 Transactions with connected persons

The following must be stated:

(a) cash forming part of the property of the scheme may be placed as deposits with the trustee/custodian, management company, investment delegate or any of their connected persons (being an institution licensed to accept deposits), so long as such cash deposit shall be maintained in a manner that is in the best interests of holders , having regard to the prevailing commercial rate for a deposit of similar type, size and term negotiated at arm's length in accordance with ordinary and normal course of business;

(b) money can be borrowed from the trustee/custodian, management company, investment delegate or any of their connected persons (being a bank) so long as that bank charges interest at no higher rate, and any fee for arranging or terminating the loan is of no greater amount than is in accordance with its normal banking practice, the commercial rate for a loan of the size and nature of the loan in question negotiated at arm's length;

(c) any transactions between the scheme and the management company, the investment delegate, directors of the scheme or any of their connected persons as principal may only be made with the prior written consent of the trustee/custodian; and

(d) all transactions carried out by or on behalf of the scheme must be at arm's length and executed on the best available terms.

D13 Distribution policy and date

Distribution policy and approximate date when income will be distributed (if applicable).

D14 Financial year

Calendar year date on which the financial year ends. In the case of an umbrella fund, the financial year should be the same for all constituent funds.

D15 Base currency

A statement of the base currency of the scheme.

D16 Modification of the constitutive documents

A statement of the means by which modifications to the constitutive documents can be effected [see 6.7 of this UT Code].

D17 Termination of scheme

A statement of the circumstances in which the scheme can be terminated.

Appendix E

Contents of financial reports

Introduction

Pursuant to 11.6 of this UT Code, financial reports of a scheme must be prepared and published in respect of its financial year.

Annual reports must be prepared in compliance with internationally recognized accounting standards pursuant to 11.6A of this UT Code, and contain all the information required in this Appendix and a report issued by the trustee/custodian to holders as required by 4.5(f) of this UT Code.

Interim reports must apply the same accounting policies and methods of computation as are applied in the annual reports of the scheme pursuant to 11.6A of this UT Code and disclose a statement to such effect or include a description of the nature and effect of any change in these policies and methods. Interim reports must at least contain the information/items listed under the Statement of Assets and Liabilities, Revenue Statement, Statement of Movement in Capital Account, Investment Portfolio and Holdings of Collateral. For the avoidance of doubt, if no annual report has been prepared and published pursuant to 11.6 of this UT Code for the relevant reporting period immediately preceding the publication of an interim report (e.g. in the case of a newly launched scheme), such interim report must disclose the accounting policies and methods of computation that are significant for holders to appraise the financial position and performance of a scheme. Where the scheme has paid or proposes to pay an interim dividend, the amount of dividend should be disclosed.

All financial reports must contain comparative figures for the previous period except for the Investment Portfolio and Holdings of Collateral.

The mention of any unauthorized schemes (including underlying schemes) in the financial reports must be indicated as “Not authorized in Hong Kong and not available to the public in Hong Kong”.

For all financial reports, the items listed under the Statement of Assets and Liabilities, Revenue Statement, Statement of Movements in Capital Account and the Notes to the Financial Reports, where applicable, must be disclosed separately. It is however, not mandatory to adopt the format as shown or to disclose the items in the same order and a scheme may use different titles for these statements.

While the SFC recognizes that financial reports of recognized jurisdiction schemes [see 1.2 of this UT Code] will vary in content, financial reports are expected to offer investors comparable disclosure as set out in this Appendix. Although financial reports of recognized jurisdiction schemes will generally be reviewed on the basis that they already comply in substance with this Appendix, disclosure must be made of transactions with connected persons and soft dollar arrangements [see items 2 and 3(a) under Notes to the Financial Reports in this Appendix]. The SFC reserves the right to require additional disclosure.

Statement of Assets and Liabilities

The following must be separately disclosed, where applicable:

1. Total value of investments
2. Bank balances
3. [deleted]
4. Dividends and other receivables
5. Amounts receivable on subscription
6. Bank loans and overdrafts or other forms of borrowings
7. Amounts payable on redemption
8. Distributions payable
9. Total value of all assets
10. Total value of all liabilities
11. Net asset value
12. [deleted]
13. [deleted]

Revenue Statement

1. Total investment income, broken down by category
2. Total other income, broken down by category
3. [deleted]
4. An itemized list of various costs which have been debited to the scheme including, where applicable:

    (a) fees paid to the management company (e.g. management fee and performance fee)
    (b) remuneration of the trustee/custodian
    (c) fees paid to investment delegate
    (d) respective amounts paid to any connected persons of the management company, investment delegate, directors of the scheme or trustee/custodian
    (e) formation costs
    (f) directors' fee and remuneration
    (g) safe custody and bank charges
    (h) auditors' remuneration
    (i) interest on borrowings
    (j) legal and other professional fees

(k) transaction costs
(l) any other expenses borne by the scheme

5. Taxes (including withholding tax)

6. Amounts transferred to and from the Statement of Movements in the Capital Account

7. Net income

Statement of Movements in Capital Account

1. Number of units/shares in issue and value of the scheme as at the beginning of the period

2. Number of units/shares issued and the amounts received upon such issuance (after equalization if applicable)

3. Number of units/shares redeemed and the amount paid on redemption (after equalization if applicable)

4. Any items resulting in an increase/decrease in value of the scheme not recognized in the Revenue Statement, including:
   (a) surplus/loss on sale of investments
   (b) exchange gain/loss
   (c) unrealized appreciation/diminution in value of investments
   (d) net income for the period less distribution

5. Amounts transferred to and from the Revenue Statement

6. Number of units/shares in issue and value of the scheme as at the end of the period

Notes to the Financial Reports

The following matters should be set out in the notes to the financial reports, where applicable:

1. Principal accounting policies

   State the principal accounting policies in preparing the financial reports for reporting the financial position and performance of a scheme, including the following:

   (a) the basis of valuation of the assets of the scheme including the basis of valuation of unquoted and unlisted securities

   (b) the revenue recognition policy regarding dividend income and other income

   (c) foreign currency translation

   (d) the basis of valuation of financial derivative instruments

   (e) [deleted]

   (f) taxation

   (g) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme

Any changes to the above accounting policies and their financial effects upon the accounts should also be disclosed.

2. Transactions with connected persons

The following should be disclosed:

(a) a description of the nature and the amounts of any transactions entered into during the period between the scheme and the management company, investment delegate, directors of the scheme, trustee/custodian or any of their connected persons, together with a statement confirming that these transactions have been entered into in the ordinary course of business and on normal commercial terms;

(b)

(i) the total aggregate value of the transactions of the scheme effected through a broker who is a connected person of the management company, investment delegate, directors of the scheme, or trustee/custodian;

(ii) the percentage of such transactions in value to the total transactions in value of the scheme during the year;

(iii) the total brokerage commission paid to such broker in relation to transactions effected through it; and

(iv) the average rate of commission effected through such broker;

(c) details of all transactions, including the nature and amounts, which are outside the ordinary course of business or not on normal commercial terms entered into during the period between the scheme and the management company, investment delegate, directors of the scheme, trustee/custodian or any of their connected persons;

(d) name of the management company, investment delegate, directors of the scheme, trustee/custodian or any of their connected persons if any of them becomes entitled to profits from transactions in units/shares or from management of the scheme, and the amount of profits to which each of them becomes entitled;

(e) where the scheme does not have any transactions with the management company, investment delegate, directors of the scheme, trustee/custodian or any of their connected persons during the period, a nil statement to that effect; and

(f) the basis of the fee charged for the management of the fund and the name of the management company and investment delegate. In addition, where a performance fee is charged to the scheme, the basis of calculation and amount of performance fee charged should be separately disclosed.

3. Soft dollar arrangements

(a) A statement on the existence of soft dollar arrangements relating to dealings in the property of the scheme, or a nil statement if no such arrangements exist during the period; and

(b) General description on soft dollar arrangements relating to dealings in the property of the scheme, including the amounts of transactions executed; the

related commissions that have been paid for the transactions; and description of goods and services received by the management company or investment delegate.

4. Borrowings

   State whether the borrowings are secured or unsecured and the duration of the borrowings.

5. Contingent liabilities and commitments

   Details of any contingent liabilities and commitments of the scheme.

6. If the free negotiability of any asset is restricted by statutory or contractual requirements, this must be stated.

7. Formation costs

   Accounting treatment of formation costs and the basis of amortization, including the amounts unamortized and the remaining amortization period.

8. Distribution

   Details of any distribution, including the following:

   (a) Amount brought forward at the beginning of the period;

   (b) Net income for the period;

   (c) Interim distribution per unit/share and date of distribution;

   (d) Final distribution per unit/share and date of distribution; and

   (e) Undistributed income carried forward.

9. Details on units/shares

   Number of units/shares in issue and the net asset value per unit/share as at the end of the period.

10. Transaction costs

    A description of the nature of transaction costs incurred during the period (e.g. brokerage, exchange and dealing fees etc.).

Contents of the auditors' report

The report of the Auditor should state:

1. Whether in the auditor's opinion, the financial reports prepared for that period have been properly prepared in accordance with the relevant provisions of the trust deed (in the case of a unit trust) or articles of association (in the case of a mutual fund) and this UT Code;

2. Without prejudice to the foregoing, whether in the auditor's opinion, a true and fair view is given of the disposition of the scheme at the end of the period and of the transactions of the scheme for the period then ended;

3. If the auditor is of the opinion that proper books and records have not been kept by the scheme and/or the financial reports prepared are not in agreement with the scheme's books and records, that fact; and

4. If the auditor has failed to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of the audit, that fact.

Investment Portfolio

1. Number or quantity of each holding together with the description and market value. Distinguish between listed and unlisted and categorize by asset class (such as equities, bonds and collective investment schemes etc.) and country.

2. The total investment stated at cost.

3. The value of each holding as a percentage of net asset value.

4. Statement of movements in portfolio holdings since the end of the preceding accounting period.

Notes: (1) The management company is expected to choose the most appropriate illustration of movement in the portfolio holdings taking into account the objective and nature of a scheme. Any one of the following methods may be considered acceptable to the Commission:

(a) detailed holdings in individual securities; or
(b) holdings in different sectors of a particular market; or
(c) holdings in different countries (in the case of, for example, a global equity fund); or
(d) holdings in various kinds of securities such as equities, bonds, warrants and options etc. (in the case of a diversified fund).

(2) Except for Note(1)(a) of item 4 under Investment Portfolio in this Appendix, movements in portfolio holdings can be expressed in percentages.

5. Details in respect of financial derivative instruments:

(a) the underlying assets of financial derivative instruments; and

(b) the identity of the issuer(s)/counterparty(ies) of these financial derivative instruments.

6. Details in respect of securities financing transactions and securities borrowing transactions:

(a) the type(s) of securities involved in each type of securities financing transactions and securities borrowing transactions;

(b) global data:

(i) amount of securities on loan as a proportion of the scheme's total lendable assets and of the scheme's total net asset value; and

(ii) respective absolute amounts of each type of securities financing transactions and as a proportion of the scheme's total net asset value;

(c) concentration data:

(i) top 10 largest collateral issuers across all securities financial transactions with details on the amounts of collateral received by the scheme; and

(ii) top 10 counterparties of each type of securities financing transactions, including name of counterparty and gross amounts of outstanding transactions;

(d) aggregate transaction data for each type of securities financing transactions and securities borrowing transactions:

(i) the amount (including the currency denomination);

(ii) maturity tenor, including open transactions;

(iii) identity and country of the counterparty(ies);

(iv) settlement and clearing means (e.g. tri-party, central counterparty, bilateral); and

(v) collateral received by the scheme to limit counterparty exposure with details required under items 1(a) and 1(e) of Holdings of Collateral in this Appendix;

(e) amount of revenue, and the direct and indirect expenses incurred relating to each type of securities financing transactions (e.g. the amount of revenue retained by the scheme and the amount of direct and indirect expenses borne by the scheme and paid to the management company, investment delegate, trustee/custodian or any of their connected persons or other parties);

(f) (i) details on re-investment of cash collateral required under item 1(f) of the Holdings of Collateral in this Appendix; and

(ii) (applicable to hedge funds) details on re-use or re-hypothecation of collateral required under item 1(g) of the Holdings of Collateral in this Appendix; and

(g) details on custody/safe-keeping arrangement of collateral under item 1(h) of the Holdings of Collateral in this Appendix.

7. For money market funds:

(a) the weighted average maturity and the weighted average life of the portfolio of the scheme; and

(b) amounts of daily liquid assets and weekly liquid assets and as a percentage of the scheme's total net asset value.

Holdings of Collateral

1. Description of holdings of collateral, including:

   (a) nature of the collateral, including asset types (e.g. cash, cash equivalents and money markets; government or corporate (whether investment grade / non-investment grade); and others) and currency denomination;

   (b) identity of counterparty providing the collateral;

   (c) value of the scheme (by percentage) secured/covered by collateral, with breakdown by asset class/nature and credit rating (if applicable);

   (d) credit rating of the collateral (if applicable);

   (e) maturity tenor of the collateral, including open transactions;

   (f) data on re-investment of cash collateral:

      (i) share of cash collateral received that is re-invested, compared to the maximum amount specified in the offering document; and

      (ii) returns from re-investment of cash collateral;

   (g) (applicable to hedge funds) data on re-use or re-hypothecation of collateral:

      (i) share of collateral received that is re-used or re-hypothecated, compared to the maximum amount specified in the offering document; and

      (ii) information on any restrictions on type of collateral received; and

   (h) custody/safe-keeping arrangement, including:

      (i) number and names of custodians and the amount of collateral received/held by each of the custodians for the scheme; and

      (ii) the proportion of collateral posted by the scheme which are held in segregated accounts, pooled accounts, or in any other accounts.

Performance table

1. A comparative table covering the last 3 financial years and including, for each financial year, at the end of the financial year:

   (a) the total net asset value; and

   (b) the net asset value per unit/share.

2. A performance record over the last 10 financial years; or if the scheme has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price and the lowest redemption price of the units/shares during each of those years.

Information on exposure arising from financial derivative instruments

1. The lowest, highest and average exposures arising from the use of financial derivative instruments during the period in respect of the following:

   (a) Gross exposure arising from the use of financial derivative instruments for any purposes, with reference to equivalent market value of the underlying assets of the financial derivative instruments, as a proportion to the scheme's total net asset value; and

   (b) Net derivative exposure [see Note to 7.26 of this UT Code] as a proportion to the scheme's total net asset value, where applicable.

Appendix F

(Deleted)

Appendix G

(Deleted)

Appendix H

Guidelines on hedge funds reporting requirements

Introduction

The Commission has published the Guidelines on Hedge Funds Reporting Requirements (the Guidelines). The Guidelines set out the minimum amount of information that is required to be disclosed in regular reporting to holders. The Commission advocates additional information to be disclosed if it is deemed to be appropriate and informative to holders, taking into account the objective and strategy of the scheme.

1. Pursuant to 5.17 and 11.6 of this UT Code, financial reports of authorized schemes are required to be published in respect of its financial year, of which the annual report must be audited by the auditor for the scheme. Pursuant to 8.7(w)-of this UT Code, authorized hedge funds are also required to publish quarterly reports for holders. The following scheme reports should be distributed to holders and filed with the Commission within the stipulated timeframe:

Nature of reports	No. of reports for each scheme financial year	Timeframe for filing and distribution to holders
Annual report	One	Within four months of the end of the relevant financial year, except for funds of hedge funds (FoHFs) where the timeframe for filing and distribution to holders is within six months of the end of the relevant financial year.
Interim report	One	Within two months of the end of the relevant period.
Quarterly reports	Four	Within one month of the end of the relevant period, except for FoHFs where the timeframe for filing and distribution to holders is within six weeks of the end of the relevant period.

Note: Where the management company wishes to report to holders via monthly reports, there is no need to prepare quarterly reports provided that the same requirements for quarterly reports are complied with in the monthly reports.

2. These Guidelines aim to provide further guidance to management companies regarding the ongoing reporting requirements of authorized hedge funds. *The Commission reserves the right to require additional disclosure to be made.*

3. For the ease of understanding by holders, where technical terms are used in the scheme reports, the management company is specifically encouraged to include a glossary to explain their meaning and their implications to investors. Where financial terms are used in the scheme reports, the management company must provide their calculation bases, definitions, and any underlying assumptions.

4. Where the provisions refer to the scheme in this Appendix, this means the authorized hedge fund.

A. Contents of financial reports

Requirements applicable to both annual and interim reports

5. Annual and interim reports of the scheme must contain the information as required by Appendix E of this UT Code, with the exceptions as provided in paragraph 6 of this Appendix.

6. The Commission encourages full disclosure of individual holdings of the scheme. Where the management company is satisfied that full disclosure of such information may be unduly burdensome, it may adopt alternative disclosures in lieu of the disclosure as required in the Investment Portfolio of Appendix E of this UT Code. In that case, the management company must choose the most appropriate and informative illustration of the scheme's holdings/exposures at the end of the relevant period, taking into account the objective and strategy of the scheme.

Note: The following will be regarded as minimum disclosures acceptable to the Commission. The Commission reserves the right to require disclosure of the full position of the scheme for the purposes of carrying out its regulatory functions. Such disclosures to the Commission will be subject to the Commission's preservation of secrecy provisions.

With respect to any scheme that is a FoHFs, the management company should disclose:

a. *Exposures (including cash and cash equivalent holdings*) for the scheme at the scheme level as of the reporting date (expressed in percentage terms of net asset value of the scheme) categorized by geographical region, industry, strategy, or some other basis that the management company considers the most appropriate, taking into account the objective and strategy of the scheme;*

b. *The names and percentage values (based on net asset value of the scheme) of the top five underlying funds held by the scheme as of the reporting date;*

c. *The number of underlying funds and the number of underlying fund managers included in the scheme as of the reporting date; and*

d. *(Where the scheme is a multi-strategy FoHFs) disclosure of the number of underlying funds and underlying fund managers under each hedge fund strategy.*

With respect to other schemes, the management company should disclose:

a. *Exposures (including cash and cash equivalent holdings*) for the scheme as of the reporting date (expressed in percentage terms of net asset value of the scheme) categorized by asset class, geographical region, industry, strategy, or some other basis that the management company considers the most appropriate, taking into account the objective and strategy of the scheme;*

b. *The names and amounts of the top five long positions and top five short positions held by the scheme on a gross basis as of the reporting date; and*

c. *The aggregated gross long and short positions held by the scheme as of the reporting date (expressed in percentage terms of the net asset value of the scheme).*

* *"Cash equivalent holdings" are defined as those assets with a maturity of less than one year and which are readily transactable in an arm's length transaction between willing and knowledgeable parties.*

Requirements specific to annual reports

7. Where performance fees were borne by the scheme during the financial year, the annual reports of the scheme must contain the amount of such performance fees payable at the scheme level expressed as a percentage of average net asset value of the scheme as at the end of the financial year and the calculation basis.

Note (1): A nil statement is required if no performance fees were borne by the scheme during the financial year.
(2): Where the scheme is a FoHFs, only performance fees at the FoHFs' level need to be disclosed.

B. Quarterly reports

Distribution of quarterly reports

8. The Commission requires that quarterly reports be distributed to holders to keep them informed of the scheme activities on a timely basis.

9. Quarterly reports are required to be filed with the SFC and distributed to holders within the stipulated timeframe under paragraph 1 of these Guidelines.

Note: Given the newness of these Guidelines to the market, measures would be taken to familiarise the management company with the reporting requirements and the disclosure standard expected of these reports. The first quarterly report of each scheme must obtain a "no objection" letter from the Commission before it is issued to persons in Hong Kong. In order to facilitate the vetting procedures, upon request from the management company, Commission staff may review and provide comments on the format of the first quarterly report of each scheme before its contents are ready.

10. Quarterly reports may not be distributed to non-holders unless accompanied by the offering document of the scheme.

Contents of quarterly reports

11. Quarterly reports must be provided in the English and Chinese languages, and must contain the following information regarding the scheme.

Management commentary

12. A statement to the effect that the directors of the scheme and/or the management company accept responsibility for the information contained in the quarterly reports as being accurate as at the date of publication.

(a) Performance review

A commentary by the management company that describes and explains the key factors impacting upon the scheme's financial performance and any style drifts in the scheme during the reporting period.

Note: Where the scheme is a FoHFs, the management company is expected to explain what has driven performance in terms of different strategies.

(b) Market outlook

A discussion of the management company's expectation of the primary risk factors to which the scheme is exposed to, and the outlook of the development of these factors as they relate to the scheme.

(c) Changes in key investment personnel

A discussion on the changes in composition of the key investment personnel (if any) at the scheme level and their impact on the scheme's overall strategy, risk profile or future performance.

(d) Lawsuits

Details of any lawsuits that may have a financial impact on the scheme during the reporting period.

Portfolio review

(e) Fund size and net asset value per unit/share

The scheme's total net asset value, net asset value per unit/share as at the end of the reporting period, and the percentage change in net asset value per unit/share since the last reporting period.

(f) Cash borrowings and other sources of leverage

The amount of cash borrowings and other sources of leverage at the scheme level and a summary of how leverage is calculated as at the end of the reporting period.

Note: The management company is expected to choose the most appropriate and informative illustration of the scheme's leverage, consistent with disclosures in the scheme's offering document, taking into account the objective and strategy of the scheme. Where the scheme is a FoHFs, disclosure is only required at the FoHFs' level.

(g) Performance and risk measures

Disclosure of performance and risk measures of the scheme in tabular form. A sample format with the required parameters and time frames is set out in the **Annex** to these Guidelines.

The management company is encouraged to disclose other appropriate performance and risk measures, taking into account the objective and strategy of the scheme (e.g.

Value at Risk (VaR), Alpha, Sortino ratio, additional Sharpe ratios using alternative risk free rates other than zero, aggregated risk/return statistics, full position disclosure of financial derivative instruments and their basis of calculation, time to recovery periods, % of down months, % of up months, delta equivalent of option positions etc.).

The management company must provide the calculation basis, definition and any underlying assumptions of each performance and risk measure either alongside the performance and risk measure or in a separate glossary.

(h) Amount of seed money

Disclosure of the amount of seed money expressed in percentage terms of the net asset value of the scheme contributed by the management company or its connected persons as at the end of the reporting period.

(i) Illiquid holdings

With respect to any scheme that is a FoHFs, the management company must disclose:

(i) The name(s) of any underlying fund(s) suspended during the reporting period;
(ii) The acquisition cost of such underlying funds; and
(iii) The latest status of such underlying funds as at the end of the reporting period.

With respect to other schemes, the management company must disclose the name(s) and acquisition costs of all illiquid holdings* held by the scheme as at the end of the reporting period, categorized by:

(i) financial derivative instruments ; and
(ii) Non-financial derivative instruments.

* *"Illiquid holdings" are defined as assets for which there are no readily available market values to be transacted between knowledgeable and willing parties in an arm's length transaction, or with no registered turnover in the last 30 days prior to and including the reporting date.*

(j) Concentrated exposures

With respect to any scheme that is a FoHFs, the management company should disclose:

(i) Exposures (including cash and cash equivalent holdings) for the scheme at the scheme level as of the reporting date (expressed in percentage terms of net asset value of the scheme) categorized by geographical region, industry, strategy, or some other basis that the management company considers the most appropriate, taking into account the objective and strategy of the scheme;

(ii) The number of underlying funds and the number of underlying fund managers included in the scheme as of the reporting date; and

(iii) (Where the scheme is a multi-strategy FoHFs) disclosure of the number of underlying funds and underlying fund managers under each hedge fund strategy.

With respect to other schemes, the management company should disclose:

(i) Exposures (including cash and cash equivalent holdings) for the scheme as of the reporting date (expressed in percentage terms of net asset value of the scheme) categorized by asset class, geographical region, industry, strategy, or some other basis that the management company considers the most appropriate, taking into account the objective and strategy of the scheme; and

(ii) The aggregated gross long and short positions held by the scheme as of the reporting date (expressed in percentage terms of the net asset value of the scheme).

Note (1): "Cash equivalent holdings" are defined as those assets with a maturity of less than one year and which are readily transactable in an arm's length transaction between willing and knowledgeable parties.

(2): The Commission reserves the right to require disclosure of the full position of the scheme for the purposes of carrying out its regulatory functions. Such disclosures to the Commission will be subject to the Commission's preservation of secrecy provisions.

Annex

Information to be Disclosed under paragraph B.12(g) of the Guidelines on Hedge Funds Reporting Requirements

Actual Monthly Returns in the Last Three Calendar Years (net of all fees and charges)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	YTD Actual
Year (T-2)													
Year (T-1)													
Year T													

Summary Data

	Year T[3] (annualised year to date)	**Year (T –1)**	**Year (T – 2)**	**Since Launch[4]** [*specify launch date*]
Performance Statistics				
Annual Return				
Annualized Standard Deviation[5]				
Sharpe Ratio[6]				
Fund Statistics				
Highest NAV per unit/share				
Lowest NAV per unit/share				
Maximum drawdown [7]				

[*Display prominent warning statements to the effect that:* "**Investment involves risk, please see the offering document for further details. Past performance figures shown are not indicative of future performance**."**]**

Notes:

(1) Calculations must be net of all fees and charges borne by the scheme, with the calculation basis clearly stated.
(2) As per paragraph 3 of the Guidelines, the management company should include a glossary of technical terms to explain their meaning and implications to investors (e.g. the higher the number, the riskier the scheme etc.).
(3) "Year T" denotes the current scheme financial year.
(4) Statistics since launch can only be shown if the scheme has been in existence for one year or longer.

(5) “Annualized standard deviation” is defined as the square root of the squared deviations of the actual returns from the simple average return based on the dealing days of the scheme, divided by the number of observations, shown on an annualised basis.
(6) “Sharpe ratio” is defined as annual return divided by the annualised standard deviation.
Note: For the sake of simplicity, a zero risk free rate is adopted in the calculation for “Sharpe Ratio”
(7) “Maximum drawdown” is the maximum amount of loss from an equity high until a new equity high, expressed as a percentage of the previous equity high.

Appendix I

(deleted)

SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Section III:
Code on Investment-Linked Assurance Schemes

Section III:
Code on Investment-Linked Assurance Schemes

Explanatory Notes:

(a) The Securities and Futures Commission is empowered under section 104(1) of the Securities and Futures Ordinance (Cap. 571) (the "SFO") to authorize any collective investment scheme. This Code on Investment-Linked Assurance Schemes ("ILAS Code"), which forms part of the Handbook, provides guidance in relation to the authorization of a collective investment scheme that is an investment-linked assurance scheme. Any change or amendment to this ILAS Code will be made known to the industry and transitional periods for compliance will be allowed where necessary.

(b) The Commission may review its authorization at any time and may modify, add to or withdraw such authorization, as it deems fit.

(c) The issue of any advertisement, invitation or document to the public in Hong Kong to participate in an unauthorized investment-linked assurance scheme may amount to an offence under section 103(1) of the SFO. The Commission is empowered under section 105(1) of the SFO to authorize any advertisement, invitation or document referred to in section 103(1) and to impose any corresponding authorization conditions as it considers appropriate.

(d) This ILAS Code is established having regard to the regulatory objectives of the Commission set out in section 4 of the SFO. The spirit of this ILAS Code should be observed.

(e) The Commission may modify or relax the application of a requirement in this ILAS Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.

(f) This ILAS Code is made under section 399 of the SFO.

(g) This ILAS Code does not have the force of law.

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Part I: General matters

Chapter 1: Authorization procedures

General

1.1 Investment-linked assurance schemes are insurance policies issued by an Authorized Insurer and they are normally expected to comply with the applicable provisions of the Handbook, including without limitation, all of the applicable provisions of this ILAS Code in order to be authorized in Hong Kong by the SFC pursuant to section 104 of the SFO.

1.2 Authorized Insurers are under the prudential regulation of the Insurance Authority. Therefore, issues such as how the Authorized Insurers operate, their financial conditions or their business conduct are not within the Commission's regulatory ambit. Insurance agents and brokers selling investment-linked assurance schemes are also subject to the regulation of the Insurance Authority in accordance with the Insurance Ordinance.

Note: The Insurance Authority regulates insurance intermediaries through overseeing self-regulatory organisations. At the final stage of the implementation of the Insurance Companies (Amendment) Ordinance 2015, the Insurance Authority will take over the regulation of insurance intermediaries from the self-regulatory organisations and administer a statutory licensing regime.

1.3 Applications for authorization which seek waivers of any of these provisions must give detailed reasons why waivers are sought.

Nomination of an individual as approved person

1.4 According to sections 104(2) and 105(2) of the SFO, an individual must be approved for the purposes of being served by the Commission with notices and decisions for, respectively, the scheme and the issue of any related advertisement, invitation or document. An applicant for authorization is, therefore, required to nominate an individual for approval by the Commission as an approved person.

1.5 An approved person should:

(a) have his/her ordinary residence in Hong Kong;

(b) inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;

(c) be capable of being contacted by the Commission during business hours;

(d) inform the Commission of any change in his/her contact details within 14 days after the change takes place; and

(e) comply with any other requirements as the Commission considers appropriate.

1.6 An individual approved by the Commission as an approved person for a scheme shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that scheme.

Documents to be supplied to the Commission

1.7 An applicant for authorization of a scheme must submit a completed Application Form and an Information Checklist as set out on the Commission's website. The application must also be accompanied by the following and such other documents as may be required by the Commission from time to time:

(a) the scheme's offering document and constitutive documents;

(b) [deleted]

(c) [deleted]

(d) application fee; and

Note: The current fee schedule is available on the Commission's website.

(e) the letter nominating an individual to be approved by the Commission as an approved person containing the individual's name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address.

Authorized Insurer

1.8 Insurers are required to obtain authorization to carry on Class C of Long Term Business under the Insurance Ordinance (Chapter 41 of the Laws of Hong Kong) before applying for authorization of its investment-linked assurance schemes.

Chapter 2: Administrative arrangements

Product Advisory Committee

2.1 According to section 8 of the SFO, the Commission is empowered to set up committees, whether for advisory or other purposes. The Commission will establish a Products Advisory Committee for the purpose of consultation and advice on matters which may relate to collective investment schemes within the scope of this ILAS Code of the Handbook. The remit of the Products Advisory Committee and its membership will be set out in its Terms of Reference.

Data privacy

2.2 The information requested under this ILAS Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in section 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries should be directed to the Data Privacy Officer at the SFC.

Chapter 3: Interpretation

Unless otherwise defined, words and expressions used in this ILAS Code are as defined in the SFO:

3.1 "Advertising Guidelines" means the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.

3.2 "applicant company" means the company which applies to the Commission, directly or through an authorized representative, to have its scheme authorized pursuant to this ILAS Code.

3.3 "approved person" has the meaning assigned to it by section 102(1) of the SFO.

3.4 "Authorized Insurer" means an insurance company authorized under the Insurance Ordinance to carry on a relevant class of insurance business in Hong Kong.

3.5 "collective investment scheme" has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the SFO.

3.6 "Commission" or "SFC" means the Securities and Futures Commission referred to in section 3(1) of the SFO.

3.7 "constitutive documents" means the documents which establish and govern the existence and operation of a scheme and includes the policy document in the case of a scheme established pursuant to an insurance contract.

3.8 "Handbook" means the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products.

3.8A "investment delegate" means an entity that has been delegated the investment management function of a scheme.

3.9 "investment-linked assurance scheme" means an insurance policy of the "linked long-term" class as defined in Part 2 of Schedule 1 to the Insurance Ordinance, other than a policy of which the predominant purpose is life assurance and not investment.

3.10 "investment options" means a range of investment choices which are available for scheme participants to choose and may include investment choices that are linked to SFC-authorized funds and/or other pools of assets internally managed on a discretionary basis by the Authorized Insurer, where the returns from the scheme are calculated with reference to the performance of investment choices selected by a scheme participant, whether or not an Authorized Insurer actually invests in the selected investment choices (and the Authorized Insurer does not have to) and notwithstanding scheme participants do not have any ownership or rights over the underlying funds/assets of the investment choices even where the Authorized Insurer has invested in the selected investment choice.

3.11 "offering document" means the principal brochure for distribution in Hong Kong containing the information required by Appendix A to this ILAS Code, and any other information necessary for prospective scheme participants to make an informed judgement about the scheme.

3.12 “Product Code” means any of the following codes administered by the Commission:

(a) Code on Unit Trusts and Mutual Funds

(b) Code on Investment-Linked Assurance Schemes

(c) Code on Pooled Retirement Funds

(d) SFC Code on MPF Products

3.13 “principal brochure” means that document, or documents issued together, issued by an applicant company, containing information on a scheme as stipulated in Appendix A.

3.14 “Product KFS” means the Product Key Facts Statement which is the statement required pursuant to 5.7.

3.15 “scheme participants” means the policy or contract owners and, upon the death of the owner, the beneficiaries appointed by him/her under the scheme.

3.16 “SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong).

3.17 “substantial financial institution” means an authorized institution as defined in section 2(1) of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong), or a financial institution which is on an ongoing basis subject to prudential regulation and supervision, with a minimum net asset value of HK$2 billion or its equivalent in foreign currency.

3.18 “UF-driven changes” means changes to an investment option falling within 7.1 of this ILAS Code that solely reflect changes made to the corresponding underlying SFC-authorized fund and such underlying fund changes have been approved, or are not required to be approved by the Commission pursuant to the Code on Unit Trusts and Mutual Funds.

Part II: Authorization requirements

Chapter 4: Applicant company

Regulatory status of applicant company

4.1 No investment-linked assurance scheme will be authorized pursuant to this ILAS Code unless the applicant company is an Authorized Insurer. If the applicant company ceases to be authorized by the Insurance Authority, any existing authorization of the scheme will normally lapse.

Responsibilities of applicant company

4.2 The applicant company will be responsible for observing all requirements of this ILAS Code and any conditions imposed by the Commission in granting authorization during the continued enjoyment of that authorization, except to the extent that the Commission grants waivers in writing.

4.3 The applicant company is responsible for whatever information is given to the Commission on its behalf and should use its best endeavours to ensure that statements of intention in printed matter are followed.

4.4 If a scheme contains a guaranteed investment option, such guarantee should be provided either by the applicant company or a substantial financial institution.

4.5 The applicant company shall:

(a) use its best endeavours to carry on and conduct its business in a proper and efficient manner and will ensure that any scheme to which the constitutive documents relate is conducted in a proper and efficient manner; and

(b) exercise best endeavours and due diligence to ensure that the marketing of the scheme is carried out professionally, honestly and fairly.

4.6 The applicant company must ensure the scheme is designed fairly, and operated according to such product design on an ongoing basis, including, among others, managing the scheme in a cost-efficient manner taking into account the size of the scheme and the level of fees and expenses etc.

4.7 The applicant company must provide adequate disclosure of information (as well as any material changes to the information) of the scheme which is necessary for scheme participants to make an informed judgement of their investment in the scheme.

Chapter 5: Operational requirements

Scheme documentation

Matters to be disclosed in the offering document

5.1 An authorized scheme must issue an up-to-date offering document, which should contain all information (including but not limited to product features and risks factors associated with the scheme) necessary for prospective scheme participants to be able to make an informed judgment of the investment proposed to them, and in particular should contain the information listed in Appendix A.

English and Chinese offering document

5.2 Except as provided herein, the offering document must be prepared in English and Chinese. The Commission may waive the requirement that the information be provided in both languages on a case-by-case basis where the applicant company satisfies the Commission that the scheme will only be offered to persons fully conversant in the language in which it is intended to publish the information.

Illustration document

5.3 An illustration document must be prepared by the Authorized Insurer in conjunction with each proposed investment by each prospective scheme participant. This document must be provided to the scheme participant for his review and signature prior to signing of the application form.

5.4 The minimum requirements for the information to be included in the illustration document are set out below. Subject to the approval of the Commission, the Authorized Insurer may customize the document to include additional information provided that such additional information is not misleading and does not otherwise detract from the information disclosed in the minimum requirements.

(a) Surrender values

The Authorized Insurer is required to illustrate, what the scheme participant would be expected to receive if he redeems at the end of each of the first 5 years of the contract, and for every fifth year thereafter until maturity, after deduction of all relevant charges. The computation of these surrender values shall not take into account any non-guaranteed returns, including, without limitation, any discretionary bonus, dividend payments, reimbursements of charges. These expected surrender values should be based on at least 2 different assumptions on the rate of return.

Note: For the avoidance of doubt, assumed rates of return may still be used in the illustration document and further guidance is available on the Commission's website.

(b) Prescribed statements

The following statements should appear in the illustration document:

THE ASSUMED RATES USED BELOW ARE FOR ILLUSTRATIVE PURPOSES. THEY ARE NEITHER GUARANTEED NOR BASED ON PAST PERFORMANCE. THE ACTUAL RETURN MAY BE DIFFERENT!

IMPORTANT:

THIS IS A SUMMARY ILLUSTRATION OF THE SURRENDER VALUES OF [Name of Product]. IT IS INTENDED TO SHOW THE IMPACT OF FEES AND CHARGES ON SURRENDER VALUES BASED ON THE ASSUMPTIONS STATED BELOW AND IN NO WAY AFFECTS THE TERMS OF CONDITIONS STATED IN THE POLICY DOCUMENT.

The following statements should be clearly disclosed before the scheme participant's signature:

Warning: You should only invest in this product if you intend to pay the premium for the whole of your chosen premium payment term. Should you terminate this product early, you may suffer a significant loss.

I confirm having read and understood the information provided in this illustration and received the principal brochure.

Note: A format for the illustration document is available on the Commission's website.

Application form

5.5 The entitlement of the scheme participant to the cooling-off period must be prominently displayed at the bottom of the application form immediately above the space for signature. The language for the cooling-off period should comply with the prevailing cooling off initiative applicable to an investment-linked assurance scheme from time to time.

5.6 No scheme application form may be provided to any member of the public unless it is accompanied by the offering document and the illustration document. To that end the application form should include a statement to the effect that it should only be issued in conjunction with the offering document and the illustration document.

Product KFS

5.7 An authorized scheme must issue a Product KFS. Such statement shall be deemed to form a part of the offering document and shall contain information that enables prospective scheme participant to comprehend the key features and risks of the product.

Note: An illustration template of the Product KFS is available on the Commission's website.

Inclusion of performance data

5.8 If performance data or estimated yield is quoted, the Commission may require supporting documentation. No forecast or illustration of the scheme's future

performance may be made in authorized scheme documents except for the illustration of surrender values or where an investment return at a certain rate is guaranteed.

Naming of unauthorized collective investment schemes

5.9 As a general principle any naming of collective investment schemes in authorized scheme documents should be restricted to those which are authorized by the Commission pursuant to section 104(1) of the SFO.

Contents of constitutive documents

5.10 The constitutive documents of a scheme should contain the information listed in Appendix B.

5.11 Nothing in the constitutive documents may provide for the parties thereto to be exempted from any liability to scheme participants arising out of any breach of trust through fraud or negligence or imposed on them under Hong Kong law or the law of the scheme's place of domicile, under any trust deed or under any contract entered into, nor to be indemnified against any such liability by scheme participants or at scheme participants' expense.

Cooling-off period

5.12 A scheme must allow a scheme participant to withdraw unconditionally within the cooling-off period, subject to a market value adjustment ("MVA") in accordance with the prevailing cooling off initiative applicable to an investment-linked assurance scheme from time to time.

5.13 Any such MVA must be calculated solely with reference to the loss the Authorized Insurer or contract issuer might make in realizing the value of any assets acquired through investment of the premiums made under the contract. It shall therefore not include any allowance for expenses or commissions in connection with the issuance of the contract.

Fees and charges

5.14 Where a scheme proposes to invest in collective investment schemes managed or distributed by the same company or group, all initial charges of the underlying funds must be waived but recurrent management fees and charges may be levied proportionate to the amount invested.

5.15 The level/basis of calculation of all costs and charges payable from the scheme's property must be clearly stated, with percentages expressed on a per annum basis, where applicable. The aggregate level of fees for investment management function should also be disclosed.

5.16 If a performance fee is levied, such fee shall not create an incentive for the Authorized Insurer or its delegates to take excessive risks in the hope of increasing its performance fee.

Various methodologies may be used for the charging and accrual of performance fees and normally, such methodologies shall ensure that cumulative gains are offset in

some way by cumulative losses (i.e. "high-on-high" basis or the scheme's excess performance as compared against a benchmark).

5.17 The performance fee can only be payable:

(a) no more frequently than annually; and

(b) if the net asset value per unit exceeds the net asset value per unit on which the performance fee was last calculated and paid (i.e. on a "high-on-high" basis).

Note: Notwithstanding 5.17(b), the performance fee may also be calculated with reference to the performance of a benchmark or an asset class and the performance fee is only payable upon outperformance of the net asset value per unit/share vis-à-vis that of the benchmark or asset class.

In the case where a scheme or the investment option(s) linked to the scheme is not unitized, a certificate from an actuary must be provided to the Commission on an annual basis to certify compliance with the foregoing except where:

(a) there exists a year-on-year guarantee on investment return where the deficiency, if any, between the guaranteed return and the actual return is credited into the scheme account not less frequently than annually; or

(b) the scheme is a deposit administration policy in which investment returns may be declared by a company, in its discretion, at or above a stated minimum rate not less frequently than annually.

Chapter 6: Guarantee and with-profits or similar features

Guarantee features

The following criteria shall apply to a scheme which contains a guarantee feature or an investment option in which a guaranteed amount will be paid to scheme participants at a specific date in the future.

Guarantor

6.1 If the guarantor is an entity other than the Authorized Insurer which issues the policy, it must be a substantial financial institution.

Disclosure

6.2 The principal brochure must contain:

(a) the name of the guarantor (if other than the Authorized Insurer which issues the policy) and the terms and conditions of the guarantee;

(b) where applicable, a warning statement in relation to all material conditions which affect the scope or validity of the guarantee including, where relevant, the condition that the guarantee only applies to scheme participants who hold their investment until the date specified in the guarantee and that termination or withdrawal before such date are fully exposed to fluctuations in the value of the investment option and/or subject to penalties; and

(c) an illustration or description to clearly demonstrate the guarantee mechanism.

Guarantee features and discretionary benefits features

6.3 In relation to an insurance arrangement, if it is stated that discretionary benefits will or may be paid to scheme participants in excess of the guaranteed amount, and the amounts of those benefits are determined at the discretion of the policy issuer, the principal brochure of the scheme must contain:

(a) a statement to the effect that the [name of policy issuer], at its sole discretion, has the right to retain investment income of the [name of investment option] in excess of that required to be set aside to meet the guaranteed benefits under the [name of investment option];

(b) a readily comprehensible description of the methods of determining the discretionary benefits, including the following information, to the extent applicable:

(I) the reporting date; and

(II) **(i) for a participating product where the policy holder has a right to participate in profits from the long term fund of the policy issuer or any part of that fund:**

(i) details of the fund or part fund to which the right relates;

(ii) the principles on which the distribution of profits among policy holders and shareholders is based and whether these principles are derived from the constitution of the policy issuer or otherwise;

(iii) the bonus rates declared immediately prior to the reporting date and for the four years previous; and

(iv) the proportion of total distributed profits that was distributed to shareholders immediately prior to the reporting date and for the four years previous;

(ii) for an investment-linked product:

(i) a description of the method which will be used to calculate unit prices from time to time; and

(ii) the percentage changes in unit prices for the five yearly intervals immediately preceding the reporting date;

(iii) for an investment account product:

(i) a description of the method which will be used to calculate the interest rate for each period; and

(ii) the rate of interest declared immediately prior to the reporting date and for the four years previous; and

(c) a statement that past performance should not be taken as an indication of future performance.

Note: For investment option with less than five years track record, figures for shorter periods may be shown, provided the date of commencement is shown.

With-profits or similar features

The following shall apply to a scheme with "with-profits" or similar features where the Authorized Insurer can impose a market value adjustment. Where such scheme or any investment option also has guarantee features and discretionary benefits features, the provisions in 6.1-6.3 shall also apply.

6.4 As regards a scheme or an investment option with with-profits or similar features where the Authorized Insurer invests in a mixture of assets, and retains the absolute discretion to declare a rate of return (commonly known as "bonus") determined by reference to the performance of the underlying assets and other factors and is promised on the basis that the ups and downs of the investment performance can be smoothed out over a period, and the Authorized Insurer may, amongst other things, reduce the rate of bonus and/or apply a market value adjustment to the policy value or withdrawal amount in respect of any withdrawals (whether or not this may be on a retrospective basis), the following must be disclosed in the offering document:

(a) a statement to the effect that scheme participants' withdrawal amount may be significantly reduced by the market value adjustments as a result of such with-profits or similar features;

(b) the extent to which the investment can be deducted by such market value adjustments;

(c) a statement as to whether the Authorized Insurer has the sole discretion to determine the market value adjustment level;

(d) a statement as to how the prevailing rate of market value adjustments is disclosed to scheme participants from time to time; and

(e) a statement as to whether any policy issued by the scheme is subject to any market value adjustments.

6.5 An Authorized Insurer must keep scheme participants informed of any exercise of the market value adjustment relating to a scheme having with-profits or similar features.

Part III: Post-authorization requirements

Chapter 7: Post-authorization requirements

Scheme changes

7.1 The proposed changes to a scheme (other than UF-driven changes) in respect of the following must be submitted to the Commission for prior approval:

(a) changes to constitutive documents (other than changes that have been certified by the Authorized Insurer as provided under 7.4 or changes which do not require prior approval from the Commission);

(b) changes of the applicant company / management company and investment delegates, and their regulatory status;

(c) (i) material changes in investment objectives, policies and restrictions of the scheme (including expansion in the purpose or extent of use of financial derivative instruments for investment purposes);

(ii) introduction of new fees and charges, or increase in fees and charges (other than an increase within the permitted maximum level as disclosed in the offering document); and

(iii) material changes in dealing arrangements, pricing arrangements or distribution policy of the scheme; and

(d) any other changes that may have a material adverse impact on scheme participants' rights or interests (including changes that may limit scheme participants' ability in exercising their rights).

7.2 For changes to a scheme that require the Commission's prior approval pursuant to 7.1, the Commission will determine whether scheme participants should be notified and the period of notice (if any) that should be applied before the changes are to take effect as provided under 7.11. The revised offering document as a result of such changes should be submitted to the Commission for prior authorization.

Notes: *(1) [deleted]*

(2) [deleted]

(3) For any increase in fees and charges from the current level up to the permitted maximum level as disclosed in the offering document, prior approval from the Commission is not required, but no less than one month's prior notice must be given to scheme participants. However, a shorter period of notice may be permitted if it is not practicable for the applicant to do so due to circumstances beyond its control.

7.3 For changes to a scheme that do not require the Commission's prior approval pursuant to 7.1, the applicant company should provide scheme participants with reasonable prior notice, or inform scheme participants as soon as reasonably practicable of any information concerning the scheme which is necessary to enable scheme participants

to appraise the position of the scheme as provided under 7.11. The offering document may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. The revised offering document must be filed with the Commission, together with a marked-up version against the previously filed version, within one week from the date of issuance.

Note: Without prejudice to the foregoing, the Authorized Insurer should inform scheme participants as soon as reasonably practicable of any material adverse change in the financial conditions or business of the key counterparties that it is aware of. 'Key counterparties' include but are not limited to the Authorized Insurers and guarantors (where relevant).

7.4 The constitutive documents may be altered by the Authorized Insurer without consulting scheme participants provided that the Authorized Insurer certifies in writing that in its opinion the proposed alteration:

(a) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements;

(b) does not materially prejudice scheme participants' interest, does not to any extent release the parties from any liability to participants and does not increase the costs and charges payable under the scheme; or

(c) is necessary to correct a manifest error.

In all other cases involving any material changes, no alteration may be made except by the approval of the Commission.

7.5 The Commission may accept undertakings from an applicant company to delay making a required amendment to a document until an opportune time, but in such cases the Commission may impose a reasonable time limit for carrying out the required amendment, and require a written undertaking from an applicant company to comply, in the interim period, with the substance of the requirement.

Withdrawal of authorization

7.6 Following the authorization of a scheme, an application for withdrawal of authorization of the scheme must be submitted to the Commission for prior approval. Subject to 7.7 below, at least three months' notice, or any shorter notice period as may be permitted if it is not practicable for the applicant company to do so due to circumstance beyond its control, should be provided to scheme participants of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain information necessary to enable scheme participants to make an informed judgement of the proposed withdrawal of authorization by the applicant company (including the reasons for the withdrawal of authorization, consequences of the withdrawal, any proposed changes in the operation of the scheme and their effects on existing scheme participants, the alternatives available to scheme participants (including, if possible, a right to switch without charge into another authorized scheme) and, where applicable, an estimate of any relevant expenses and who is expected to bear them).

Note: Subject to the scheme having served notice period for merger or termination under 7.7, the applicant company may apply for withdrawal of authorization of the scheme with immediate effect following the completion of the merger or termination (as the case may be).

Merger or termination

7.7 Where a scheme or an investment option linked to the scheme is to be merged or terminated, the applicant company should follow the procedures as set out in the constitutive documents or governing law. Notice should be given to scheme participants. Such notice should be submitted to the Commission for prior approval and contain information necessary to enable scheme participants to make an informed judgement of the proposed merger or termination by the applicant company (including the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger or termination, the consequences of the merger or termination and their effects on existing scheme participants, the alternatives available to scheme participants (including, if possible, a right to switch without charge into another authorized scheme or investment option), the estimated costs of the merger or termination and who is expected to bear them).

Notes: (1) Normally, the Commission will expect that at least one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) to be provided to scheme participants. However, a shorter period may be permitted if it is not practicable for the applicant company to do so due to circumstances beyond its control.

(2) In effecting a merger or termination, the applicant company must put in place proper measures to minimize the opportunity of any scheme participants to benefit from more favourable or advantageous conditions of the scheme, taking due account of the interests of the scheme participants.

Advertising materials

7.8 Advertisements and other invitations to invest in a scheme must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.

7.9 Where authorization by the Commission is required, it is recommended that the applicant company nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines.

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

7.10 The applicant company must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least three years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Notices to scheme participants

7.11 Notification to scheme participants must be made in the language(s) in which the scheme is offered to them. Reasonable notice period(s) should be provided to the scheme participants in order to enable them to appraise the position of the scheme and to make an informed judgement of their investments in the scheme, where applicable.

Notes: In determining the notice period for changes to a scheme falling under 7.1 or 7.3, the following shall apply:

(1) normally, one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) is expected to be provided to scheme participants unless as provided under Notes (2) or (3) to 7.11 or otherwise agreed by the Commission;

(2) a shorter prior notice period may be permitted where the proposed changes to the scheme are of demonstrable benefit to scheme participants or if it is not practicable for the applicant company to do so due to circumstances beyond its control; and

(3) unless otherwise specified by the Commission, scheme participants should be informed as soon as reasonably practicable for changes to the scheme which are to provide clarification or relate to administrative matters.

The applicant company is encouraged to consult the Commission in case of doubt.

7.12 Subject to 7.6 and 7.7 above, notices to scheme participants need not be approved by the Commission prior to issuance but are required to be filed with the Commission within one week from the date of issuance of the notice. The Commission, however, retains its power to require the applicant company to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 7.1 above should be approved by the Commission prior to the distribution of the relevant notices to scheme participants.

7.13 The applicant company has the responsibility to ensure that the notices to scheme participants are not misleading and contain accurate and adequate information to keep them informed. All notices should contain Hong Kong contact details for scheme participants to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of any changes falling under 7.1 and consequential changes made to the principal brochure or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

Reporting to the Commission and the Insurance Authority

7.14 The Authorized Insurer should promptly report to the Commission and the Insurance Authority immediately any material breach, infringement of or non-compliance with the Handbook (including this ILAS Code).

Mention of SFC authorization

7.15 Where a scheme is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation by adding a prominent note in the following terms to the offering document and advertisements and other invitations to invest in the scheme:

SFC authorization is not a recommendation or endorsement of a scheme nor does it guarantee the commercial merits of a scheme or its performance. It does not mean the scheme is suitable for all investors nor is it an endorsement of its suitability for any particular investor or class of investors.

Appendix A

Information to be disclosed in the principal brochure

The principal brochure, preferably in one single document, should contain the information necessary for prospective scheme participants to be able to make an informed judgment of the scheme and in particular should contain the following:

(a) Name and type of scheme

The name and description of the scheme must not be misleading to potential scheme participants and should be an accurate reflection of the type of scheme and its objectives.

(b) Parties involved

The names and registered address of all parties involved in the operation of the scheme with a brief description of the applicant company.

(c) Investment returns

(i) Details of how the investment return of the scheme is determined.

(ii) Except where the scheme's investment returns are subject to a non-variable guarantee, a warning should be stated to the effect that investment involves risks.

(iii) A statement to the effect that the unit(s) allocated to the policy is notional and is solely for the purpose determining the value of the policy shall be included.

* See Chapter 6 for additional disclosure requirements for guarantee and with-profits or similar features.

If the nature of the investment policy so dictates, a warning should be given that investment in the scheme or investment option linked to a scheme is subject to abnormal risks, together with a description of the risks involved.

(d) Fees and charges

Explanations of fees and charges may be abbreviated, but should be clearly identified to include:

(i) the level of all fees and charges payable by a scheme participant, including all charges levied on subscription, redemption and switching;

(ii) the level of all fees and charges payable by the scheme or an investment option linked to the scheme; and

(iii) details of whether charges are subject to change and the relevant notice period.

A summary of all fees and charges in tabular form should be provided to give scheme participants an overview of the fees structure at a glance. Where complex calculations are required to disclose fees and charges, illustrative examples should be given for clarity.

(e) Investment objectives and restrictions

Summary of investment objective of the scheme or investment option(s) linked to a scheme, including, where applicable:

(i) the types of intended investments, and their relative proportions in the portfolio;

(ii) the geographical distribution of the intended investments;

(iii) the investment and borrowing restrictions; and

(iv) if the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Where the return of an investment option is determined with reference to one or more SFC-authorized funds, a statement as to how to make available offering documents of such SFC-authorized fund(s) shall be included.

For other cases, the specific investments, associated risks e.g. the use of financial derivative instrument, or leverage (if any) and a statement that the return of the investment option is calculated with reference to a pool of assets internally managed on a discretionary basis by the Authorized Insurer are required to be disclosed.

(f) Borrowing powers

The circumstances under which the scheme or investment option(s) linked to a scheme may have outstanding borrowings and the purpose for which and extent to which such outstanding borrowings were or may be incurred.

(g) Summary of provisions in constitutive documents

A summary of the provisions described in paragraphs (d), (f), (g), (h) and (k) of Appendix B with respect to:

- Valuation of Property and Pricing
- Characteristics of Premiums/Contributions
- Benefits
- Maturity and Early Surrender Values
- Conditions of Termination

(h) Application and surrender procedures

A summary of procedures for application and surrender.

(i) Warning statements

The following warning statements shall be disclosed in the principal brochure, where applicable, in a prominent manner:

(i) Investment-linked assurance schemes are insurance policies issued by the Authorized Insurer.

(ii) A scheme participant's investments are therefore subject to the credit risks of such Authorized Insurer.

(iii) The premiums paid by a scheme participant towards the insurance policy will become part of the assets of the Authorized Insurer. A scheme participant does not have any rights or ownership over any of those assets. The recourse of a scheme participant is against the Authorized Insurer only.

(iv) A scheme participant's return on investments is calculated or determined by the Authorized Insurer with reference to the performance of the underlying funds*/assets.

(v) Where the return of the scheme is based on investment options linked to the scheme which is calculated or determined by the Authorized Insurer with reference to the performance of a corresponding SFC-authorized fund, a warning statement that the return of investments under the scheme shall be subject to the charges of the scheme and may be lower than the return of the corresponding SFC-authorized fund.

(vi) Early surrender or withdrawal of the policy/suspension of or reduction in premium may result in a significant loss of principal and/or bonuses awarded. Poor performance of underlying funds*/assets may further magnify the scheme participant's investment losses, while all charges are still deductible.

(vii) The investment options available under the scheme can have very different features and risk profiles. Some may be of high risk.

Other warning statements as required by this ILAS Code must be prominently displayed in the offering document.

(j) Cooling-off period

A summary of the provisions described in 5.12 and 5.13 with respect to the cooling-off period.

* "Underlying fund(s)" can be used by an Authorized Insurer in the event that it has disclosed in the offering document that it will be investing the net premium received from the scheme participants into the funds corresponding to the investment options as selected by the scheme participants for such Authorized Insurer's asset liability management. Otherwise, the Authorized Insurer should adopt the term "reference fund(s)".

(k) General information

(i) A list of constitutive documents and an address in Hong Kong where they can be inspected free of charge or purchased at a reasonable price.

(ii) A statement that the Authorized Insurer accepts full responsibility for the accuracy of the information contained in the offering document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement misleading.

(iii) A statement that the Commission does not take any responsibility for the contents of the offering document, makes no representation as to its accuracy or completeness, expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of the offering document.

(iv) Where a scheme is described as having been authorized by the SFC, the prominent note as required under 7.15 should be disclosed.

(v) If available, website address of the scheme which contains publication of its offering document, principal brochures, circulars, notices, announcements, financial reports and the latest available offer and redemption prices or net asset value.

(l) Governing law

The governing law of the scheme should be disclosed and an acknowledgment that the parties involved have the right to bring legal action in a Hong Kong court as well as in any court elsewhere which has a relevant connection with the scheme.

(m) Taxation

Where the likely tax benefits to be enjoyed by scheme participants are described, the principal brochure should also briefly explain the applicant company's understanding of the tax implications for Hong Kong scheme participants, based on expert advice received by the applicant company.

Scheme participants should also be advised to seek professional advice regarding their own particular tax circumstances.

(n) Date of publication of the principal brochure

All facts and figures in the principal brochure should be as reasonably up to date as possible.

(o) Authorization statement

Where a scheme is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation.

Appendix B

Contents of the constitutive documents

The constitutive documents should incorporate the detailed terms and conditions of the scheme. The paragraphs which follow illustrate the details which the Commission will look for although it is prepared to be flexible in determining which criteria should apply.

(a) Name and type of scheme

(b) Parties involved

A statement to specify the parties involved including, as applicable, the applicant company, the management company, the guarantor, the trustee and the auditor, giving full particulars of their functions, duties and obligations.

(c) Investment returns

A detailed description of how the investment returns of the scheme is determined, for example, with reference to:

(i) an investment option or its assets held in the name of the policy issuer;

(ii) any notional fund (with its basis stated); or

(iii) a rate determined at the discretion of the policy issuer.

(d) Valuation of property and pricing

(i) For schemes linked to unitized investment options;

- the method of determining the value of the assets and liabilities of the property of the scheme;
- the method of calculating the issue and redemption prices;
- how frequently prices are established;
- the lead times for the allocation of premiums to units and the realization of units; and
- the circumstances under which the above might change; or

(ii) For schemes linked to investment options which are not unitized;

- how and when the investment option is valued;
- how and when the investment return is calculated and distributed amongst the scheme participants; and
- the circumstances under which the above might change.

(e) Guarantee

Whether investment performance or capital is guaranteed and if so details of:

(i) the rate or amount guaranteed;

(ii) the conditions under which the rate or amount may be altered or discontinued;

(iii) the nature of the guarantee, e.g. capital, income, flat guarantee, year on year, or compounded;

(iv) how and when the guarantee is invoked or revoked;

(v) any charges or consideration for the guarantee;

(vi) the date of expiry of the guarantee;

(vii) if the guarantor is an entity other than the policy issuer, the provisions for appointment, retirement or removal;

(viii) where applicable, the methods of determining the discretionary benefits to be paid to scheme participants in excess of the guaranteed amount; and

(ix) where applicable, the extent to which, and the basis on which, the policy issuer may set up a reserve, by whatever name called, so as to smooth the progression of unit prices or rates of return.

(f) Premiums and contributions

(i) The full amount to be paid.

(ii) The currency of payment.

(iii) To whom and where paid.

(iv) How paid and the options if any for payment.

(v) The frequency, due dates and for what periods premiums must be paid.

(vi) If there are fixed due dates, the grace period and penalties if any for late payment.

(vii) The proportion or amount of the premiums paid which will be applied for investment purposes and if these proportions change as the scheme progresses, the stages at which these changes occur and the manner in which they change.

(viii) The consequences and options if any should payment of premiums be discontinued at any time.

(g) Benefits

The currency, dates and places of payment of benefits.

(h) Maturity and early surrender value

(i) The maturity value.

(ii) The methods of calculation of full surrender value, partial surrender value and death benefit.

(iii) Any notice periods for full or partial surrenders.

(iv) Other settlement options or rights.

(v) The circumstances under which payment of benefits may be deferred or suspended.

(vi) The maximum interval between the receipt of a properly documented request for surrender and the date of payment.

(vii) Whether interest is payable in respect of the period between the effective date of claim and the date of payment.

(i) Fees and charges

(i) All specific fees and charges under the scheme whether calculated by way of an amount, percentage or otherwise.

(ii) All indeterminable fees and charges.

(iii) Information as to when and on what event the fees and charges will fall due.

(iv) Any taxes and expenses charged to the scheme or levied against investment option(s) linked to the scheme on a basis deemed fair and reasonable by an actuary or other person of professional standing.

(v) Any fees payable to, as applicable, the applicant company, management company, trustee, guarantor or any other party.

(j) Investment and borrowing restrictions

The restrictions on the investment of the scheme or investment option(s) linked to a scheme (if any) and borrowing restrictions.

(Note: The maximum borrowing limit of the scheme or any investment option linked to a scheme should not exceed 25% of net asset value, inclusive of short-term borrowings to cover redemptions or other special situations.)

(k) Termination of the scheme

The circumstances in which a class of scheme or an investment option linked to a scheme may be terminated and the relevant notice to be given to scheme participants.

(l) Governing law

The governing law of the scheme must be specified.

(m) Cooling-off period

The detailed provision of a cooling-off period, as in 5.12 and 5.13, within which a scheme participant may withdraw unconditionally, subject to a market value adjustment, if any.

SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

SFC
證監會

Section IV:
Code on Unlisted Structured Investment Products

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Code on Unlisted Structured
Investment Products

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Explanatory Notes

1. The Securities and Futures Commission is empowered under Part IV of the Securities and Futures Ordinance (the "SFO") to authorize the issue of offering documents and advertisements for structured products, and, following enactment of legislative amendments currently proposed ("the enactment date"), to authorize structured products under the SFO. The authorization under the SFO may be granted subject to such conditions as the Commission considers appropriate. This Code establishes guidelines for the authorization under the SFO of unlisted structured investment products (from the enactment date), and the issue of offering documents and advertisements for unlisted structured investment products offered to the public in Hong Kong.

2. This Code forms part of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (the "Handbook").

3. The Commission will normally have regard to the Handbook, including the high-level principles set out in Part I of the Handbook, in considering authorization applications for unlisted structured investment products (from the enactment date), and the issue of offering documents and advertisements for unlisted structured investment products and, if authorized, whether such authorization should remain.

4. In addition to the high-level principles set out in Part I of the Handbook, this Code contains a series of requirements that are specifically applicable to unlisted structured investment products within the meaning of this Code. Some of these requirements are effectively expansions of the high-level principles and examples of their application and some are more detailed guidelines which are expected to be complied with in connection with the authorization of unlisted structured investment products (from the enactment date), and the issue of offering documents and advertisements for these products.

5. Although the requirements under this Code are expressed in more detailed language than the high-level principles, they, like the high-level principles, are to be interpreted in a manner that will best ensure the attainment of their underlying purposes. Where the high-level principles apply to situations not specifically covered by any requirements in this Code, the requirements of the high-level principles should be observed. The Commission may only consider granting waivers from strict compliance with specific requirements(s) under this Code in exceptional circumstances. General waivers will not be granted.

6. The Commission may review its authorization at any time, and may modify, add to or withdraw such authorization as it deems fit in accordance with the SFO.

7. This Code is not subsidiary legislation.

Part I: General matters

Chapter 1: Application of code and authorization procedures

General application

1.1 This Code is made under section 399 of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) (the "SFO") and establishes guidelines for authorization of structured investment products (from the enactment date), and the issue of offering documents and advertisements for unlisted structured investment products offered to the public in Hong Kong.

1.2 Applications for authorization which seek waivers of any of the requirements in the Code shall give detailed reasons why waivers are sought. The Commission retains the discretion to waive any requirement in this Code or in the Handbook, or to impose such additional requirements as it sees fit in discharging its regulatory objectives.

1.3 For the avoidance of doubt, the obligations and responsibilities imposed by the Handbook upon Issuers, Guarantors, Product Arrangers and trustees/custodians are intended for the ultimate benefit of the end investors in the relevant structured investment products and the parties shall discharge such obligations and responsibilities accordingly, notwithstanding any intervening commercial or other arrangements in the packaging and distribution of the relevant structured investment product.

Documents to be supplied to the Commission

1.4 An applicant for authorization of the issue of an offering document or advertisement for a structured investment product shall submit to the Commission the documents specified in the list available on the Commission's website, such other documents as may be required by the Commission from time to time, and the applicable fee in the form of a cheque payable to the "Securities & Futures Commission".

Nomination of an individual as approved person

1.5 For purposes of the Commission's approval of an individual pursuant to section 105(2) of the SFO, such individual shall:-

(a) be a director of the Issuer, or a director of any Guarantor, or the Responsible Officer or, where applicable, an Executive Officer of a Product Arranger;

(b) be licensed or registered in Hong Kong in respect of Type 1 or Type 4 regulated activities;

(c) have his/her ordinary residence in Hong Kong; and

(d) comply with such other requirements as the Commission may impose.

Chapter 2: Interpretation

2.1 Unless otherwise defined in this Code, terms and expressions used in this Code are as defined in the SFO. For the purposes of this Code:-

(a) ”Advertising Guidelines” (《廣告宣傳指引》) means the Advertising Guidelines Applicable to Unlisted Structured Investment Products in Appendix D to this Code.

(b) “Collateral” (抵押品) has the meaning ascribed to it in 5.12.

(c) “Code” (守則) means this Code on Unlisted Structured Investment Products, including its appendices.

(d) “Commission” or “SFC” (證監會) means the Securities and Futures Commission referred to in section 3(1) of the SFO.

(e) “Constitutive documents” (組成文件) of an entity means the principal documents governing the formation of that an entity, and includes all material agreements by which that an entity is bound.

(f) “Guarantor” (保證人), in respect of a structured investment product, means an entity which satisfies the requirements in 3.4 and provides a guarantee in accordance with 5.9 and 5.10 of this Code.

(g) “Handbook” (《手冊》) means the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products, of which this Code forms part.

(h) “HKMA” (金管局) means the Hong Kong Monetary Authority.

(i) “Issuer” (發行人) means the issuer of a structured investment product which is the subject of an application for authorization pursuant to this Code.

(j) “Key Product Counterparty” (主要產品對手) has the meaning ascribed to it in 5.5.

(k) “Offering document” (銷售文件) means an offering document for distribution in Hong Kong, which, pursuant to this Code, should contain the information required by Appendix C to this Code, and any other information necessary for investors to make an informed judgment about the structured investment product.

(l) “Product Arranger” (產品安排人), in respect of a structured investment product, means an entity appointed pursuant to 4.1.

(m) “Programme” (計劃) means a structured investment product issuance programme set up by an Issuer for the periodic issuance of structured investment products.

(n) "Product KFS" (產品資料概要) means the product key facts statement required pursuant to 6.3.

(o) "Reference assets" (參考資產) has the meaning ascribed to it in 5.7.

(p) "Regulated Entity" (受規管實體) means an entity which is:-

(i) a bank licensed to carry on banking business pursuant to the Banking Ordinance (Cap. 155, Laws of Hong Kong) and is regulated by the HKMA; or

(ii) a corporation licensed by the Commission pursuant to section 116 of the SFO; or

(iii) an overseas banking entity which is subject to equivalent regulatory oversight to that of Hong Kong and is acceptable to the Commission.

(q) "Structured investment product" (結構性投資產品) includes a structured investment product (regardless of the legal form that it may take):-

(i) which, or the issue of any advertisement, invitation or document in respect of which, requires the Commission's authorization pursuant to Part IV of the SFO, and

(ii) which involves derivative arrangements and is commonly regarded in the market as an equity, index, commodity or credit-linked investment product.

(r) "Trade date" (交易日) in respect of an investment made by an investor in a structured investment product, means the date upon which the final terms of the structured investment product purchased or subscribed for by that investor are determined or any relevant initial pricing recorded, whichever is later.

2.2 Where the context so permits or requires, words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders and vice versa.

Part II: Authorization requirements

Chapter 3: Issuers and guarantors

Eligibility of Issuers

3.1 An Issuer shall satisfy the requirements in this Chapter at the time of issue of the structured investment product and for the period during which any of the Issuer's obligations to investors under the terms and conditions of the structured investment product remain outstanding.

3.2 An Issuer shall satisfy the following requirements:-

(a) it shall be duly incorporated in Hong Kong or duly incorporated or otherwise established under the laws of a jurisdiction acceptable to the Commission;

(b) it shall be in compliance with the laws of the place in which it is incorporated or established and its constitutive documents; and

(c) the laws of the place in which it is incorporated or established and its constitutive documents shall permit the issuance and offering of the structured investment product to the investing public in Hong Kong and shall not be inconsistent with the applicable requirements of the Handbook.

Notes: (1) The Commission may request evidence of compliance with these requirements by such means as it considers appropriate, including provision of a legal opinion.

(2) In considering whether a particular jurisdiction is acceptable for purposes of these requirements, the Commission may have regard to factors which include the following:-

(a) whether there would be any legal impediment to any enforcement action against the Issuer taken by or on behalf of any investor in Hong Kong, or to the enforcement of any judgment or award granted by a Hong Kong court;

(b) whether applicable laws protecting the interests of investors and creditors, corporate governance standards and anti-money laundering obligations are equivalent to those applicable to companies incorporated in Hong Kong; and

(c) whether the jurisdiction imposes any foreign ownership restrictions which might adversely affect investors' acquisition or divestiture of the structured investment product, or foreign exchange or other restrictions which might affect the ability of the Issuer to perform its obligations in respect of, or the settlement or clearance of transactions in respect of, the structured investment product.

3.3 An Issuer shall meet the eligibility requirements in either (a) or (b) below at the time of issue of the structured investment product. Without limiting the generality of the other provisions in this Code, any failure to meet any such eligibility requirement at any time during the period in which the Issuer's obligations under the terms and conditions of the structured investment product remain outstanding will be construed as an ongoing disclosure obligation under 7.6(c) of this Code.

(a) The Issuer shall be an entity which:-

(i) meets the core requirements set out in Appendix A to this Code; and

(ii) is not the subject of any disciplinary proceeding in respect of its licence or registration to conduct any regulated activity, or subject to any action by an exchange, regulated market or self-regulatory organisation for breach of any applicable rules, which may materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity.

Note: The Commission may require the Issuer to confirm it meets the core requirements and to provide to the Commission its own records of any past disciplinary action or proceedings taken against it in Hong Kong or elsewhere and such other matters which may reasonably affect its eligibility to act as an Issuer.

(b) Where the Issuer does not meet the requirements in 3.3(a), the Commission may consider an application for authorization of the issue of an offering document or advertisement for a structured investment product made by such an Issuer in the following circumstances:-

(i) where the Issuer does not meet the requirements in 3.3(a), and the structured investment product is not collateralised in accordance with 3.3(b)(ii):-

(A) the Issuer must have its obligations under the terms of the structured investment product guaranteed in compliance with 5.9 and 5.10 by a Guarantor; and

(B) the Guarantor shall meet the requirements set out in 3.4.

Note: The Commission normally expects the Guarantor in such a case to be part of the corporate group to which the Issuer belongs.

(ii) where the Issuer does not meet the requirements in 3.3(a), and the Issuer does not have its obligations under the terms of the structured investment product guaranteed in accordance with 3.3(b)(i):-

(A) the Issuer shall be a special purpose vehicle:-

(I) which is established for the sole and exclusive purpose of, and has its permitted activities limited to, issuing the structured investment product, or one or

more series of structured investment products, and functions wholly incidental to that activity;

(II) which is subject to restrictions preventing a transfer of its ownership or control if this would in any way prejudice the interests of investors in the structured investment product or the structure of the structured investment product;

(III) which has no encumbrances on its share capital or ownership interests other than in favour of the investors in the structured investment products it has issued;

(IV) which has no other borrowings, indebtedness in the nature of borrowings, loan capital outstanding or created but unissued (including term loans), guarantee obligations or material contingent liabilities, save for structured investment products it has issued under the relevant Programme;

(V) which maintains proper accounts and records;

(VI) which has independent, professional directors or trustees; and

(VII) which is insulated from liabilities of third parties or the corporate group sponsoring its establishment, protected from dissolution risk and has appropriate restrictions on its filing of a bankruptcy or winding-up petition or taking any other insolvency action; and

(B) the structured investment product shall be collateralised in compliance with the applicable requirements in 5.12 to 5.22.

Eligibility of Guarantors

3.4 The Guarantor shall satisfy the following requirements at the time of the issue of the structured investment product. Without limiting the generality of the other provisions in this Code, any failure to meet any such eligibility requirement at any time during the period in which the Issuer's obligations under the terms and conditions of the structured investment product or the Guarantor's obligations under the terms and conditions of the guarantee remain outstanding will be construed as an ongoing disclosure obligation under 7.6(c) of this Code.

(a) The Guarantor shall comply with 3.2 and 3.3(a) as if it were the Issuer;

Note: The Commission may require the Guarantor to provide its own records of any past disciplinary action or proceedings taken against it in Hong Kong or elsewhere and such other matters which may reasonably affect its eligibility to act as the Guarantor.

and

(b) the laws of the place in which it is incorporated or established and the Guarantor's constitutive documents shall permit the Guarantor to enter into the guarantee and shall not be inconsistent with the applicable requirements of the Handbook.

Note: The Commission may request evidence of compliance with these requirements by such means as it considers appropriate, including provision of a legal opinion.

General obligations of the Issuer

3.5 In addition to any other obligations under the terms and conditions of the relevant structured investment product, the Issuer:-

(a) shall ensure that it complies, and that the structured investment product complies, with the applicable provisions of the Handbook;

(b) is responsible for the contents of, and the completeness and accuracy of the information contained in, any advertisement, invitation or other document issued by it in respect of the structured investment product;

(c) shall ensure that it complies, and that the structured investment product complies, with all applicable laws and rules and, in addition, any codes or guidelines issued by governmental departments, regulatory bodies or any other organisations regarding its activities or its administration both at the time of issue of the structured investment product and for the period during which any of the Issuer's or, where applicable, a Guarantor's obligations to investors under the terms and conditions of the structured investment product remain outstanding;

(d) shall ensure that the proceeds of the issue of the structured investment product are applied as set out in the offering document in respect of that structured investment product;

(e) shall make and maintain arrangements to facilitate timely dissemination to investors in the structured investment product of any information required to be disclosed to them under 7.6 or 7.7;

(f) shall at all times comply with its obligations under the terms of the structured investment product, the applicable requirements in the Handbook and its regulatory obligations, and shall have implemented and shall maintain appropriate systems, controls, procedures and policies, including, without limitation, in relation to risk management, independent valuation of the structured investment product or of any collateral and, where applicable, collateral administration, to ensure such compliance;

Note: By "independent" valuation of the structured investment product or of any collateral the Commission expects a clear segregation of functions, and when a party assumes different responsibilities in relation to the structured investment product, a clear segregation of functions within the organisation.

(g) shall exercise reasonable care and diligence in any appointment and selection of any intermediaries of a structured investment product; and

(h) shall ensure that there is sufficient monitoring of the structured investment product to enable compliance with its obligations in Chapter 7.

3.6 In addition, in the case of an Issuer within the scope of 3.3(b)(ii), the Issuer shall implement sufficient arrangements to preserve its organisation and structure, discharge its administrative and operational obligations and ensure that it is able to fulfil its obligations under the terms and conditions of the structured investment product and to comply with all applicable requirements in the Handbook.

3.7 An Issuer shall provide information and undertakings to the Commission in such form as the Commission may require from time to time.

Chapter 4: Product arrangers

Appointment and eligibility of Product Arranger

4.1 An Issuer of the type in (a) or (b) below shall appoint a Product Arranger in respect of the structured investment product, who shall comply with the applicable requirements in this Code for so long as any of the Issuer's obligations to investors under the terms and conditions of the structured investment product remain outstanding:-

(a) the Issuer is within the scope of 3.3(b)(ii); or

(b) the Issuer, and (in the case of a guaranteed structured investment product) the Guarantor, is not:-

(i) a bank licensed to carry on banking business pursuant to the Banking Ordinance and is regulated by the HKMA; or

(ii) a corporation licensed by the Commission pursuant to section 116 of the SFO.

4.2 A Product Arranger shall meet the eligibility requirements below. Without limiting the generality of the other provisions in this Code, any failure to meet any such eligibility requirement at any time during the period in which the Issuer's obligations under the terms and conditions of the structured investment product remain outstanding will be construed as an ongoing disclosure obligation under 7.6(c) of this Code. The Product Arranger shall:-

(a) at the time of issue of the structured investment product and for so long as the Issuer's obligations to investors in the structured investment product remain outstanding, be licensed or registered in Hong Kong for Type 1 regulated activity;

Note: Without limiting the generality of 4.2(a) and without prejudice to any obligation of the Product Arranger in connection with other activities, the Commission expects a Product Arranger to be appropriately licensed or registered to conduct the relevant regulated activities in connection with its role as a Product Arranger in respect of the structured investment *product.*

and

(b) at the time of issue of the structured investment product, not be the subject of any disciplinary proceedings in respect of its licence or registration to conduct any regulated activity, or subject to any action by an exchange, regulated market or self-regulatory organisation for breach of any applicable rules, which may materially affect its financial condition, status as a licensed or regulated entity, or ability to perform its licensed or regulated activity.

Note: The Commission may require a Product Arranger to provide its own records of any past disciplinary action or proceedings taken against it in Hong Kong or elsewhere and such other matters which may reasonably affect its eligibility and its competence to act as the Product Arranger.



4.3 Where an Issuer appoints more than one Product Arranger in respect of a structured investment product, one of the Product Arrangers shall be designated as the primary channel of communication with the Commission, and the Commission shall be informed accordingly. All Product Arrangers will nevertheless remain severally responsible for complying with applicable requirements set out in the Handbook.

Obligations and responsibilities of Product Arranger

4.4 Without limiting the Issuer's obligations and responsibilities, each Product Arranger shall ensure that the Issuer at all times complies with the applicable requirements in the Handbook. For the avoidance of doubt, a Product Arranger shall not, by virtue of this provision, be liable for the financial obligations of the Issuer or the Guarantor (if applicable) under the terms and conditions of the structured investment product.

4.5 A Product Arranger shall at all times comply with the applicable requirements in the Handbook and its regulatory obligations, and shall have implemented and shall maintain appropriate systems, controls, procedures and policies, including, without limitation, in relation to risk management, independent valuation of the structured investment product or of any collateral and, where applicable, collateral administration, to ensure such compliance.

Note: By "independent" valuation of the structured investment product or of any collateral the Commission expects a clear segregation of functions, and when a party assumes different responsibilities in relation to the structured investment product, a clear segregation of functions within the organisation.

4.6 A Product Arranger shall provide information and undertakings to the Commission in such form as the Commission may require from time to time.

Chapter 5: Product structure

General principles

5.1 The Issuer and, where applicable, each Product Arranger shall be satisfied that a structured investment product is designed fairly and is appropriate for the market(s) for which it is intended.

5.2 The Issuer and, where applicable, each Product Arranger should be independent of any Key Product Counterparty.

5.3 The Issuer and, where applicable, each Product Arranger shall avoid situations where conflicts of interest may arise including any actual or potential conflicts that may arise between different parties involved in respect of the structured investment product. Where such a conflict cannot be avoided, and provided that investors' interests can be sufficiently protected, the conflict shall be managed and minimised by appropriate measures, and the actual or potential conflicts and these measures shall be disclosed in the offering documents.

5.4 (a) The Issuer and, where applicable, each Product Arranger shall exercise reasonable care and diligence in selecting and (for the Issuer) appointing parties:-

(i) who undertake one or more roles or services in respect of a structured investment product;

(ii) who are or will be counterparties to material agreements in respect of the structured investment product; or

(iii) to whose credit risk the Issuer or investors in the structured investment product may be exposed.

(b) Without limiting the generality of 5.4(a), the Issuer and, where applicable, each Product Arranger shall give due consideration to the following matters:-

(i) the parties referred to in 5.4(a)(i), (ii) and (iii) shall meet any applicable eligibility requirements (including, in the case of a trustee or a custodian, the specific requirements set out in Appendix B to this Code) and shall have the necessary experience, competence and resources to perform such roles and/or services; and

(ii) in selecting the parties referred to in 5.4(a)(i), (ii) and (iii), the Issuer and, where applicable, such Product Arranger shall have regard to all relevant factors, including the degree of regulatory oversight to which such parties are subject, their locations and any possible conflict of laws risks, the legality, validity and enforceability of the governing agreements and arrangements, the parties' risk management practices, their financial resources and creditworthiness and, where applicable, the degree of counterparty exposure and concentration risk in or of the structured investment product and the implications of these factors for investors in the structured investment product.

Note: In the case of a trustee/custodian, the Issuer and such Product Arranger shall ensure that the trust deed or custodial agreement does



not contain any term that may operate to undermine any applicable provision in the Handbook.

5.5 Where a structured investment product is designed such that the Issuer's payment obligations to investors or the investors' economic return from the structured investment product depend(s) or will depend wholly or substantially upon payments made or to be made pursuant to an agreement or arrangement, for example a swap or forward arrangement, between the Issuer and another party, and where such party's creditworthiness may have an impact on the risk and return of the structured investment product (such party, and any party guaranteeing or providing credit support for such party's obligations, collectively referred to as a "Key Product Counterparty"), the Issuer and, where applicable, each Product Arranger shall ensure that any such transaction is entered into at a fair market value and on the best available terms and that the Key Product Counterparty is selected in an objective manner with regard to the requirements in 5.4.

5.6 The Issuer and, where applicable, each Product Arranger shall ensure that any agreement between it and one or more of the parties referred to in 5.4(a)(i), (ii) and (iii) and any Key Product Counterparties described in 5.5, any guarantee provided pursuant to Chapters 3 and 5, and any arrangements with trustees/custodians provide for the parties to submit, at a minimum, to the non-exclusive jurisdiction of the courts of Hong Kong.

Note: In general, the Commission expects such agreements, guarantees and arrangements to be governed by Hong Kong law. Where the same are not governed by Hong Kong law, the Issuer should explain in the offering document the implications to investors of this choice of law. See Appendix C for details.

Reference assets, obligations and benchmarks for unlisted structured investment products

5.7 The reference entities, assets, obligations and/or benchmarks (collectively, "reference assets") to which a structured investment product is linked shall be acceptable to the Commission.

Note: In considering whether reference assets are acceptable, the Commission will generally take into account factors which include the following:-

(1) where structured investment products are linked to equity securities, indices or funds, the Commission will have regard to the reference assets eligible from time to time as reference assets for structured products listed on The Stock Exchange of Hong Kong Limited;

(2) whether sufficient information is available to the public, or will be made available to investors, in English and Chinese, in respect of the reference assets;

(3) in the case of a structured investment product linked to an index, the name of the publisher of the index, how it is compiled, its computation, the frequency with which it is updated and published, and the circumstances in which it could be modified or discontinued;

(4) in the case of a basket or baskets of reference assets, the number of reference assets and their relative weightings; and

(5) the extent to which any reference asset, or its price, value or performance or any other relevant attribute is or might be controlled or influenced by one party or a group of parties.

5.8 The Issuer shall ensure that reference assets for a structured investment product meet the following requirements:-

(a) information on the reference assets, their performance and/or value and any other attribute of such reference assets relevant to determining the Issuer's obligations under the terms and conditions of the structured investment product shall be transparent and regularly available to investors free of charge;

Note: Where the information in relation to a reference asset such as Hang Seng Index is readily available in both English and Chinese and easily accessible to the investing public in Hong Kong free of charge, the Issuers and Product Arrangers may, instead of providing the same information to investors, inform investors of the source(s) and means to access such information.

and

(b) the basis upon which the value or return of the structured investment product is linked to each such reference asset, including relative weightings and other formulae, the circumstances in which any change might be made to these, and any basis upon which any such reference asset may be replaced or substituted shall be transparent and objective.

Guaranteed structured investment products

5.9 For purposes of 3.3(b)(i), the terms of the guarantee shall:-

(a) inure for the benefit of all of the investors in the structured investment product; and

(b) provide for the Guarantor to be unconditionally and irrevocably liable, as primary obligor, for the due and punctual performance of all obligations of the Issuer to investors arising under and in accordance with the terms and conditions of the structured investment product, including to the extent that such terms and conditions may be varied or waived.

5.10 The guarantee shall be issued by the Guarantor in conformity with the laws of the place in which the Guarantor is incorporated or otherwise established, it shall be issued in conformity with the Guarantor's constitutive documents, and all authorizations needed for its issue under such laws or documents shall have been duly given.

5.11 The Issuer and/or the Guarantor shall provide to the Commission legal opinions in relation to the guarantee from competent legal counsel qualified to practise in the relevant jurisdiction(s) as to the following matters:–

(a) confirming that the guarantee constitutes legal, valid and binding obligations of the Guarantor and is enforceable in accordance with its terms;

(b) confirming that the guarantee will not be adversely affected by waiver or variance of the terms of the structured investment product, by the invalidity or unenforceability of the Issuer's obligations or by events such as bankruptcy, reorganisation, merger or transfers affecting the Issuer, and excludes any right of set-off on the part of the Guarantor;

(c) opining on whether there are any circumstances in which the guarantee may be invalidated, voided, vitiated or terminated or in which the Guarantor may be afforded relief from its obligations thereunder;

(d) confirming that the guarantee meets the requirements in 5.9 and 5.10; and

(e) addressing such other matters as the Commission may require.

Collateralised structured investment products

5.12 Where any of the Issuer's obligations to investors under the terms and conditions of a structured investment product are, or will be, secured by an asset or a pool of assets ("collateral"), 5.13 through 5.20 apply.

Assets held as collateral

5.13 Where a structured investment product is collateralised in order to provide credit support or to secure (whether wholly or partially) relevant financial obligations in connection with that structured investment product, the collateral shall meet the following criteria:-

(a) the collateral shall be in cash or shall be liquid and tradable;

(b) there shall be an active secondary market for the relevant assets comprising the collateral, with trading carried out by a number of dealers, and trading prices in such market shall be continuously available;

(c) the collateral shall have a credit rating which is one of the top three investment grades awarded by at least one rating agency of international standing and reputation which is acceptable to the Commission;

(d) the collateral shall not include:-

(i) structured products whose payouts primarily rely on embedded derivatives or synthetic instruments; or

(ii) securities issued by special purpose vehicles, special investment vehicles or similar entities;

(e) the issuer of any such collateral shall normally not be related to the Issuer or any Product Arranger in respect of the structured investment product which the collateral supports or any party who is or will be a Key Product Counterparty;

Note: Where the Issuer considers that it is appropriate to use collateral issued by a related party to the Issuer, the Product Arranger or the Key Product Counterparty, the Issuer should disclose this in the offering documents and the fact, with reasons in support, that it is satisfied that investors' interest is not thereby prejudiced. The Issuer must also explain their relationship, and how a default by any of the parties may affect the collateral.

(f) the collateral shall be acquired at the best available price in the market and on an arms-length basis;

(g) the collateral shall be fully-funded;

(h) the collateral shall be selected in reliance on objective benchmarks and considerations, and shall not be used primarily to enhance the return on the structured investment product;

(i) the tenor of the assets comprising the collateral shall generally match that of the structured investment product the collateral supports;

(j) where appropriate, the collateral shall be diversified;

Note: Where the Issuer considers that there is no need to diversify, the Issuer should disclose this in the offering documents and the fact, with reasons in support, that it is satisfied that investors' interest is not thereby prejudiced.

(k) the risk and return characteristics of the collateral, including any concentration risk, and their implications for investors shall be able to be explained in a way that an investor in the target market could reasonably be expected to understand; and

(l) the collateral shall be capable of being enforced in a timely and efficient manner.

5.14 In structuring the structured investment product and selecting the collateral, the Issuer shall use best efforts to ensure that, in the absence of a default or early termination, the value of the collateral as of the date the structured investment product matures or expires will be at least equal to the notional amount of the issue.

Note: The Commission expects that Issuers should establish and maintain sufficient internal measures, including, where appropriate, valuation of the collateral by functionally independent means.

Measures in relation to collateralised structured investment products

5.15 At a minimum, the Issuer shall ensure that the following requirements are met at all times from the date of issue of the structured investment product until such time as the Issuer's obligations to investors in the structured investment product are fully discharged:-

(a) the collateral shall be clearly identified, properly segregated and ring-fenced for the benefit of the investors in respect of each series or tranche of the relevant structured investment product from all other series or tranches issued by the same Issuer, and held in safe custody by a trustee/custodian which meets the requirements in Appendix B to this Code;

Notes: (1) The Commission generally expects that there will be no power on the part of the trustee/custodian or any Key Product Counterparty to direct the trustee/custodian to substitute collateral.

(2) Without prejudice to any obligations or duties imposed on the trustee/ custodian under the applicable laws, the Commission generally expects that the Issuer will ensure that any trust deed/custodial agreement imposes an obligation on the trustee/custodian to use its best efforts to take such steps and action as the circumstances may require to enforce the rights and interests in relation to the collateral held by it on behalf of the investors.

(b) the collateral shall be free from prior encumbrances, save for any interest(s) granted in favour of investors, and shall not be used or dealt with by any of the Issuer, any Product Arranger and the trustee/custodian in contravention of the Handbook or in any other way that would prejudice the interests of the investors;

Notes: Although not a Code requirement, Issuers should consider the structural needs in designing a product and where appropriate, the Commission encourages Issuers to accord first priority to investors' claims to the proceeds of realization of the collateral.

and

(c) the Issuer shall make all necessary arrangements to eliminate or mitigate any risks that would impede or prevent efficient and timely realisation of the proceeds of the collateral for the benefit of investors, including conflict of laws or cross-border insolvency issues.

Notes: (1) The Issuer shall explain in the offering document how the arrangements mentioned in 5.15*(c) may serve such purposes, and any limitations.*

(2) For the avoidance of doubt, the Issuer shall give the highest regard to the protection of investors' interests in designing a structured investment product.

5.16 The Issuer shall provide to the Commission legal opinions from competent legal advisers qualified to practise in the relevant jurisdictions, opining as to the legally



binding nature, validity and enforceability of any interest created or proposed to be created, any proposed trust or custodial arrangements under 5.15 and such other matters as the Commission may require, for example relating to the nature and location of the collateral and applicable laws governing the creation, perfection, maintenance and enforceability of the collateral.

5.17 The Issuer and, where applicable, each Product Arranger shall be satisfied that the collateralisation of the structured investment product adequately protects the interests of investors in the structured investment product.

Other requirements

5.18 Subject to 5.19, the Issuer shall identify in the offering document in respect of the structured investment product all relevant details of the assets comprising or to comprise the collateral, including, where applicable, details of specific asset types, issuers, tenors, market segment, historical performance, ratings, valuations and any secondary markets, and the proportion in value of the total collateral pool each such asset type represents or will represent at the time the collateral is acquired.

5.19 Where the collateral has not been identified or acquired as of the date of issue of the offering document, or where the Issuer cannot legally provide all details required by 5.18 as of the date of the offering document, the Issuer shall:-

(a) identify in the offering document the relevant types of assets comprising, or to comprise, the collateral, provide details of market segment, historical performance, ratings, valuations and secondary market activity, to the extent applicable, of proxy collateral similar to the intended collateral and disclose the proportion in value of the total collateral pool each such type represents or will represent at the time the collateral is acquired; and

(b) provide the remaining details required by 5.18 to investors by the business day in Hong Kong following the acquisition of the collateral pursuant to 5.20.

5.20 The Issuer shall ensure that relevant collateral is acquired and all rights and interests in such collateral created in connection with the structured investment product at the latest by the end of the first business day in Hong Kong after the relevant trade date in respect of the structured investment product. The Issuer shall ensure that such rights and interests are perfected as soon as practicable.

Chapter 6: Offering documents and advertisements

Offering documents

6.1 An offering document shall:-

(a) be issued by the Issuer of the relevant structured investment product;

(b) contain the information necessary for investors to be able to make an informed judgment of the investment which is the subject matter of the authorization; and

(c) without prejudice to any of the above, contain details with respect to all of the applicable items of disclosure listed in Appendix C to this Code.

6.2 Where structured investment products are issued under a Programme, the offering document in respect of a particular structured investment product issue may consist of more than one document which, when read together as a whole, comprise the offering document for that issue and comply with the requirements in the Handbook and applicable regulatory requirements.

Notes: (1) The number of documents comprising an offering document shall be reasonable.

(2) The Issuer shall ensure that the overall presentation of the invitation or offer in this way could not reasonably be expected to confuse or mislead investors or otherwise impede an investor's understanding of the risks and nature of the structured investment product.

(3) The Issuer shall be prudent and reasonable in deciding upon how the information required to be included in the offering document for a structured investment product is presented. Notwithstanding that the Issuer may consider it necessary for the offering document in respect of a structured investment product to comprise more than one document, it should ensure that the information is presented in as simple and straightforward a format as possible.

6.3 Every offering document must contain a Product KFS. Such statement shall form a part of the offering document and shall contain information to enable investors to comprehend the key features and risks of the relevant structured investment product.

Note: An illustrative template of a Product KFS will be made available on the Commission's website.

6.4 An offering document (or any document referred to in 6.2 constituting part of the offering document) may only be amended by:-

(a) a supplemental or subsequent offering document (or document constituting part of the offering document); or

(b) replacing that offering document (or document constituting part of the offering document) with a new offering document or document, as applicable.

6.5 In granting authorization for the issue of an offering document, the Commission will normally impose a validity period being the first anniversary of the date of publication of the offering document (and where multiple documents are used, the first document constituting the offering document).

6.6 If, at any time after the issue of the offering document and before the commencement of dealings in the structured investment product, the Issuer becomes aware that:-

(a) there has been a significant change affecting any matter contained in the offering document; or

(b) a significant new matter has arisen, the inclusion of information in respect of which would have been required in such offering document if it had arisen before such offering document was issued,

the Issuer (unless the Commission agrees otherwise) shall, as soon as practicable, issue a supplement to its offering document including details of any such change or new matter, provided that such supplement shall remain subject to prior review and authorization by the Commission under section 105(1) of the SFO. For this purpose "significant" means significant for the purpose of making an informed judgment of the proposed investment as required under 6.1.

Advertisements

6.7 Advertisements in respect of structured investment products shall be submitted for authorization prior to their issue or publication to the public in Hong Kong. The criteria for authorization are set out in the Advertising Guidelines. The Commission may review its authorization at any time, and may modify, add to or withdraw such authorization as it deems fit, in accordance with the SFO.

Presentation of offering documents

6.8 Offering documents shall be issued in the English and Chinese languages.

Part III: Post-authorization requirements

Chapter 7: Post-sale continuing obligations

Provision of information

7.1 The Issuer shall make available to investors in a timely manner any information, notice or document that it is required to provide to them pursuant to the Handbook or under applicable law or regulations.

Note: In addition to provision of information through intermediaries, Issuers should consider also making information available by means of their own websites as a matter of best practice.

7.2 The Issuer shall ensure that all material documents in relation to the structured investment product (including without limitation any guarantee, Programme agreement(s), trust deed, custodial agreement and documents creating and evidencing interests in collateral or credit enhancement arrangements, and all arrangements with Key Product Counterparties and parties undertaking roles or providing services in respect of the structured investment product which are material to investors' interests in the structured investment product) are made available in Hong Kong for inspection by investors, free of charge at all times during normal office hours at the place of business of the Issuer or any Product Arranger, and ensure that copies of such documents are available upon request by any investor upon the payment of a reasonable fee.

Market-making

7.3 (a) The Issuer shall provide market-making in respect of the structured investment product at least bi-weekly on a committed basis, and for this purpose, make indicative bid prices for the structured investment product available to investors, either itself or through its designated market agent.

(b) Indicative bid prices shall be made available throughout each market-making day, although they may be subject to intra-day changes.

(c) On each market-making day, based on the indicative bid prices, the Issuer shall, or shall procure its market agent to, provide a firm (actual) bid price in good faith and buy back the structured investment product on the same market-making day, subject to acceptance of the firm (actual) bid price by the investor.

(d) The minimum market-making size shall be the minimum denomination of the structured investment product.

7.4 An Issuer will not be required to comply with the requirements in 7.3:-

(a) in the case of a structured investment product with a scheduled tenor of six months or less (in the absence of early termination or default) as stated in the relevant offering document;

(b) where there is market disruption or suspension of trading of the reference asset(s).

Enquiries and communications

7.5 An Issuer and, where applicable, each Product Arranger shall put in place arrangements promptly to address any enquiries or other communications concerning a structured investment product throughout the period during which any of the Issuer's obligations to investors in respect of the structured investment product remain outstanding.

Continuing disclosure obligations

7.6 An Issuer shall comply with the following requirements throughout the period during which any of its obligations to investors in respect of the structured investment product remain outstanding:-

(a) where an Issuer is required under the Handbook or any law to include in its offering document its annual report and audited financial statements, or those of a Guarantor or a Key Product Counterparty, the Issuer shall make available to investors:-

(i) as soon as practicable after the date of their publication but, in any event, not later than four months after the date to which they relate, the annual report and audited financial statements in respect of the Issuer, the Guarantor and/or the Key Product Counterparty, as applicable, and, where group accounts are prepared, the relevant group accounts, together with the auditor's report thereon;

(ii) as soon as practicable after the date of its publication or preparation but, in any event, not later than four months after the period to which it

relates, any interim financial report in respect of the Issuer, the Guarantor and/or the Key Product Counterparty, as applicable;

(iii) where published, as soon as practicable after the date of its publication, any current financial report in respect of the Issuer, the Guarantor and/or the Key Product Counterparty, as applicable; and

(iv) as soon as practicable after the date of their publication, full details of any other financial information which the Issuer, and (where applicable) the Guarantor and/or the Key Product Counterparty may provide to any other securities or financial regulator, stock exchange or market as filings made as a matter of public record;

Note: (1) The reports and accounts required to be provided in 7.6(a)(i) and (ii) above shall be in both the English and Chinese languages, provided that an Issuer / Guarantor / Key Product Counterparty who is not otherwise required by any law, code or regulation to publish financial statements in both Chinese and English may make available the reports and accounts in full in one language – either in Chinese or English. The version in the other language may be made available in the form of a summary.

(2) The above requirements are directed at ensuring that investors who have already invested in the structured investment product will be kept informed about the Issuer's, and where applicable, the Guarantor's and any Key Product Counterparties' financial status, on an ongoing basis. It is possible that financial information falling within 7.6(a)(iii) or (iv) of the Code may also trigger a disclosure obligation under 7.6(c). That is a matter for the Issuer to determine.

(3) For the avoidance of doubt, the Issuer is reminded that, where it intends to continue offering structured investment products to the public, it needs to comply with the requirements in the Code (in particular Appendix C) with regard to disclosure of financial information in offering documents.

(b) the Issuer shall keep the Commission and all investors in the structured investment product informed as soon as reasonably practicable if the Issuer or

the Guarantor (as the case may be) ceases to meet any of the core requirements in Appendix A;

(c) to the extent permitted by applicable law, the Issuer shall notify the Commission and all investors in the structured investment product of changes in the financial condition or other circumstances which could reasonably be expected to have a material adverse effect on the ability of the Issuer or, if applicable, the Guarantor or a Key Product Counterparty, to fulfil its commitments in connection with the structured investment product;

(d) the Issuer shall notify the Commission and all investors in the structured investment product:

(i) where applicable, of any event of default in respect of the collateral, or failure of a material portion of the collateral to continue to meet any of the requirements in 5.13 and, to the extent it is able to do so, explain the reasons for such failure; and

(ii) to the extent it is aware or ought to be aware after reasonable enquiry, of any breach of the requirements in Appendix B to this Code by a trustee/custodian appointed in respect of the structured investment product; and

(e) the Issuer shall notify the Commission and all investors in the structured investment product as soon as reasonably practicable of any termination or resignation of any Product Arranger or any trustee/custodian appointed in respect of the structured investment product and, in such case, their replacement and the reasons for such termination, resignation and replacement.

Note: The notifications to investors to be made under 7.6(b) to (e) shall be in both the English and Chinese languages.

7.7 An Issuer and, where applicable, a Product Arranger shall respond promptly to any enquiries made of it by the Commission concerning a structured investment product by giving such relevant information as is available to the Issuer or the Product Arranger, as

applicable, or, if appropriate by making the information available to all investors in the structured investment product.

Additional obligations in the event of failure to continue to meet requirements

7.8 Where, after the authorization of the issue of an offering document or advertisement, the relevant structured investment product or any party in respect of the structured investment product fails to continue to meet applicable requirements under the Handbook, and without prejudice to any powers, rights or remedies on the part of any person as a result thereof, the Issuer and, where applicable, each Product Arranger shall:-

(a) cease to advertise, invite offers or subscriptions for, or offer the structured investment product to the public in Hong Kong;

(b) inform the Commission immediately; and

(c) take remedial action to rectify the situation as soon as possible.

Part IV: Post-sale arrangements - cooling-off period

Chapter 8: Issuer to provide for cooling-off or unwind right

8.1 Subject to the provisions in this Chapter 8, in respect of any unlisted structured investment product to which this Code applies, the Issuer shall confer on investors a cooling-off or unwind right in respect of the structured investment product purchased or subscribed for, whereby investors may cancel their orders, sell the product back to the Issuer or its agent, or otherwise unwind the transaction, and receive a refund or payment calculated in accordance with 8.4.

8.2 An Issuer need not comply with 8.1 in the case of a structured investment product with a scheduled tenor of one year or less (in the absence of early termination or default).

8.3 The right to be conferred on investors under 8.1 shall be exercisable for a period of at least five business days in Hong Kong after the investor places an order for a relevant structured investment product. Any exercise of the right should be irrevocable. The right should only be exercisable by a relevant investor: (a) in respect of the whole (and not part) of the order; (b) when the investor has not sold or otherwise transferred the structured investment product, and (c) when the structured investment product is still subsisting and not yet expired or otherwise terminated.

8.4 Subject to 8.5, any refund or payment to an investor upon exercise of the right under 8.1 shall be equivalent to:-

the principal amount,

less (if applicable) a market value adjustment (including break costs attributable to the unwind or cancellation), any handling fee (provided that the handling fee (at both Issuer and intermediary levels) shall be reasonable, fixed or ascertainable and disclosed in advance, and shall not contain any profit margin for the Issuer or intermediary),

plus a refund of sales charges/commissions.

8.5 In any event, the amount required to be refunded or paid upon exercise of the right under 8.1 will be capped at the principal amount (plus the sales charges/commissions, if not already subsumed in the principal amount).

8.6 The Issuer shall put in place arrangements to ensure that the refund or payment is provided to investors as promptly as practicable after exercise of the right by the investor.

Appendix A

Core requirements

1. For purposes of this Code, in order to satisfy the core requirements, an entity shall:-

   (a) have a net asset value (i.e. the aggregate of share capital and reserves) of not less than HK$2 billion as set out in its latest published audited financial statements and interim financial report;

   (b) either:-

      (i) be a Regulated Entity; or

      (ii) have a credit rating which is one of the top three investment grades awarded by at least one rating agency of international standing and reputation which is acceptable to the Commission;

      Notes: A credit rating which is presently of such grade but which is under review for possible downgrading to less than such grade will not be regarded as fulfilling this requirement.

   and, in either case:-

   (c) not:-

      (i) be the subject of any proceeding, petition, application or resolution for winding-up or dissolution, or for bankruptcy administration or any other similar relief or analogous proceedings under any applicable law;

      (ii) be, or be deemed under any applicable law to be, insolvent or unable to pay its debts as and when they become due;

      (iii) have entered into any restructuring, rescheduling, or settlement arrangement with any creditor which resulted in a compromise or waiver of any indebtedness;

      (iv) have had any moratorium declared or instituted in respect of its general unsecured indebtedness;

      (v) have made any general assignment, arrangement or composition with or for the benefit of its creditors;

      (vi) have had any secured creditor or receiver take possession of; or have had any legal process levied or enforced against, all or substantially all of its assets; or

      (vii) have had any receiver, administrator or similar officer appointed in respect of the entity or its assets.

Note: The Commission may require the relevant party to confirm and substantiate its status in this regard.

Appendix B

Requirements for trustees/custodians appointed in relation to unlisted structured investment products

1. A trustee/custodian appointed in relation to an unlisted structured investment product shall be:-

   (a) a bank licensed under section 16 of the Banking Ordinance; or

   (b) a trust company which is a subsidiary of a bank referred to in 1(a); or

   (c) a banking institution incorporated or established outside Hong Kong and subject to equivalent regulatory oversight acceptable to the Commission.

2. A trustee/custodian appointed in relation to an unlisted structured investment product shall be independently audited and shall have minimum issued and paid-up capital and non-distributable capital reserves of HK$10 million or its equivalent in foreign currency.

3. A trustee/custodian appointed in relation to an unlisted structured investment product shall not:-

   (a) be the subject of any proceeding, petition, application or resolution for winding-up or dissolution, or for bankruptcy administration or any other similar relief or analogous proceedings under any applicable law;

   (b) be, or be deemed under any applicable law to be, insolvent or unable to pay its debts as and when they become due;

   (c) have entered into any restructuring, rescheduling, or settlement arrangement with any creditor which resulted in a compromise or waiver of any indebtedness;

   (d) have had any moratorium declared or instituted in respect of its general unsecured indebtedness;

   (e) have made any general assignment, arrangement or composition with or for the benefit of its creditors;

   (f) have had any secured creditor or receiver take possession of; or have had any legal process levied or enforced against, all or substantially all of its assets; or

   (g) have had any receiver, administrator or similar officer appointed in respect of the trustee/custodian or any of its assets.

4. A trustee/custodian shall be independent of the Issuer, the Guarantor, any Product Arranger and any Key Product Counterparty in respect of the relevant structured investment product.

Appendix C

Information to be disclosed in offering documents for unlisted structured investment products

This list is not intended to be exhaustive. The Issuer shall at all times bear in mind the overarching principle laid down in 6.1(b), namely, that an offering document shall contain the information necessary for investors to be able to make an informed judgment of the investment which is the subject matter of the authorization.

Note: A stand-alone offering document in relation to a structured investment product should contain all the information required by the Code, including this Appendix. Where multiple documents are used which together constitute the offering document for a particular structured investment product, they should, between them, contain all the information required by the Code and each such document shall contain the statements required pursuant to 33 and 34 of this Appendix C.

The Issuer and other key parties

1. The names, registered addresses, date and place of incorporation or establishment, regulatory status, key responsibilities and the basis upon which any eligibility requirements, where applicable, are satisfied for each of the parties involved in the structured investment product, and their relationships with each other. Normally the following parties (where applicable) shall be included:-

   (a) the Issuer;

   (b) the Product Arranger(s);

   (c) the Guarantor;

   (d) any Key Product Counterparty; and

   (e) the trustee(s)/custodian(s).

   Notes: (1) The offering document shall disclose the following additional information for the Issuer, each Product Arranger, where applicable, and any Guarantor:-

   (a) names, descriptions and addresses for service of process of its directors; and

(b) the ownership structure.

(2) Information regarding the relationships between various parties in respect of the structured investment product and their respective roles should include without limitation:-

(a) information on any relationship or affiliation between the Issuer, the Guarantor (where applicable), each Product Arranger (where applicable), any Key Product Counterparty or trustee/custodian (where applicable), or confirmation that such party is not related to or affiliated with any other such party;

(b) details of the role of each of the above entities stated in Note (1) above (other than the Issuer itself) and a brief description of how each of them (other than the Issuer itself) is and/or will be compensated for that role; and

(c) a diagram or chart showing the relationships between the Issuer, any Key Product Counterparty, the Guarantor, any trustee/custodian and each Product Arranger, as applicable, and between these parties and the investors, as well as the flow of funds, should be provided if practicable.

(3) The basis upon which any Key Product Counterparty was selected should be disclosed.

(4) In the case of special purpose vehicle Issuers, the disclosure must include details of arrangements made under 3.6 of this Code for the performance of the Issuer's obligations and compliance with the requirements of the Code.

The structured investment product

2. (a) The nature and amount of the issue including the total issue size, if applicable. Where the offer is under a Programme, a description of the Programme, the types of structured investment products that can be offered under the Programme, the total Programme size and (where applicable) minimum and maximum tenors permitted for structured investment products under the terms of the Programme.

(b) A description of the structured investment product's strategy and investment objective(s).

(c) Details, in clear and simple language, of how the product strategy and investment objective(s) are intended to be achieved, including an explanation of all material assumptions.

(d) The structure and features of the structured investment product.

(e) Where the Issuer is a special purpose vehicle, an explanation of the reasons for using such structure.

(f) The key components of the structure and any embedded derivatives.

(g) Whether the structured investment product is principal-protected and if so, to what extent, and details of how principal protection will be achieved.

(h) The terms and conditions of the structured investment product. Where the terms and conditions stipulate a governing law which is not Hong Kong law, a prominent warning of the fact, as well as an explanation of the relevant issues relating to conflicts of laws, enforceability or recognition of judgments and their implications for investors.

(i) A description of the way in which the payouts or deliveries that are expected to be made to investors will be determined.

(j) Details of the effect of market disruptions and/or extraordinary events affecting the one or more of the reference assets.

(k) A description of the events of default and circumstances in which the structured investment product may be terminated prior to its scheduled maturity or expiry.

(l) The rights of investors in the event of a termination prior to scheduled maturity or expiry under (k) above, and in the event of a default or the bankruptcy or insolvency or a similar event affecting any of the Issuer, the Guarantor, a Key Product Counterparty or a trustee/custodian, how these rights can be enforced and any risks or limitations affecting such rights.

(m) The rights of the Issuer vis-à-vis each Key Product Counterparty, any trustee/custodian and, if applicable, any Guarantor in the event of a default by

such party or the bankruptcy or insolvency of such party or a similar event affecting such party.

(n) The parties to whom investors have recourse in respect of the structured investment product and an explanation of any risks or limitations affecting investors' recourse.

(o) Where applicable, details of any "cooling-off" or "unwind" right provided to investors, including without limitation, the time period during which the right is exercisable and the mechanism for such exercise, an explanation of the basis for determination of the amount of the payment to which an investor would be entitled, including the amount of any fee, how any applicable market value adjustment will be calculated and the nature of any break or unwind cost that is likely to be deducted from a payment due to an investor upon exercise of the right, and the expected mode and timing of settlement.

The offer

3. (a) Details of the terms of the offer of the structured investment product, including (if known) the offer period, the issue date and the offer price.

(b) Distribution details for the structured investment product.

(c) The minimum denomination of the structured investment product, and, if applicable, the minimum investment amount.

(d) Whether any fees, charges and commissions would be payable by investors, in a generic manner.

(e) The scheduled tenor (or minimum or maximum tenor) (in the absence of early termination or default) of the structured investment product being offered.

(f) Any restriction on transferability of the structured investment product and any arrangement for settlements of transfers.

Payments and settlements

4. (a) Details of when and how payments or delivery of assets will be made to investors.

(b) An explanation of the mechanism for settlement upon termination, maturity or

expiry of the product, including any requirement that investors provide notice of election or exercise, or other conditions or requirements imposed on investors in relation to settlement, any right on the part of either the Issuer or investors to elect for cash or physical settlement, and any additional costs payable by investors.

5. If applicable, circumstances in which any payment or delivery of assets may be delayed, provisions made to manage the risk of any disruption, and whether and to what extent the Issuer or any other party will compensate investors in the event of late payment or delivery.

Product KFS

6. A Product KFS conforming with the requirements in, and containing the information required by, this Code.

Scenario analyses

7. Scenario analyses showing a balanced picture of the potential payout to investors and stating applicable assumptions. Normally the worst case and best case scenarios must be presented by way of easy-to-understand graphical, diagrammatical or pictorial illustrations among these examples.

Risk disclosures

8. A list of risk factors as well as the measures (if any) taken to mitigate any such risks, of which disclosure is necessary for investors to be able to make an informed judgment of the investment in the structured investment product. In each case the offering document needs to explain how these risks may affect an investment in the structured investment product and the implications of such risks for investors. Where practicable, the risks should be quantified, and should include a statement setting out the maximum loss which may be sustained by investors.

Information on the reference assets, obligations and benchmarks for unlisted structured investment products

9. A description of the assets, obligations and/or benchmarks to which the structured investment product is linked, and an explanation (in easily understandable terms) of the basis upon which the value or return of the structured investment product is linked to each such asset, obligation or benchmark, including relative weightings and other

formulae, the circumstances in which any change might be made to such weightings and formulae, and any basis upon which any such asset, obligation or benchmark may be replaced or substituted.

10. In the case of structured investment products linked to equity securities of a company or companies, the offering document shall include the following information in respect of each of the relevant companies:-

(a) in the case of a company listed on The Stock Exchange of Hong Kong Limited (the "Exchange"), an indication of where information on that company including its published audited consolidated financial statements and interim financial statements may be obtained;

(b) in the case of a company which is not listed on the Exchange, an indication of where information on that company including its published audited consolidated financial statements and interim financial statements may be obtained;

(c) in the case of a company which is not listed on the Exchange:-

(i) a description of the principal activities of the company and its subsidiaries;

(ii) details of its issued share capital and substantial shareholders' interests;

(iii) where its shares are listed on another exchange or regulated market, a statement of that fact, and a description of that exchange or market regarding its rules on trading, settlement and disclosure requirements;

(iv) market statistics covering at least the price of the securities at the latest most practicable date, the market capitalisation, the historic price/earnings multiple and dividend yield and a brief trading history of the securities for a period of 5 years to the latest practicable date before the issue of the offering document. In cases where reference assets have been listed for less than 5 years, such history should be given since the date of listing;

(v) details of where updated information regarding the securities/company may be obtained; and

(vi) any other information concerning the company which has been published and which is necessary to enable an investor to make an informed judgment of the structured investment products;

(d) where applicable, the date of and arrangements for any adjustments to take account of any rights issue, bonus issue, sub-division, consolidation or other alteration to the share capital of any such company; and

(e) the rights (if any) of the holders of the structured investment products in the event of the bankruptcy, insolvency or liquidation of any such company.

11. In the case of structured investment products linked to an index or indices, for each index:-

(a) a description of the index;

(b) a description of the constituent components and their relative weightings;

(c) the identity of the party/ies who sponsor and calculate the index;

(d) a description of the method of calculation of the index;

(e) the historic highs and lows for the last five years;

(f) the closing spot level at the latest most practicable date;

(g) where investors may obtain information on the index; and

(h) such additional information as the Commission may require.

12. In the case of a structured investment product linked to any other reference assets, the offering document must contain information with respect to those other reference assets which is necessary to enable an investor to make an informed judgment of the investment in the structured investment product.

Historical performance of reference assets

13. Offering documents may only contain information on the historical performance of the reference assets to which a structured investment product is linked if the information is relevant and conducive to investors' understanding of the structured investment product.

Note: Where the reference assets are listed securities and if historical share price



information is set out in an offering document, the period covered shall be 5 years to the latest practicable date, save for cases where the reference assets have been listed for less than 5 years, in which case the period should be from the date of listing.

14. All performance information, including awards and rankings, shall be referenced to the relevant sources and dated. Rankings and awards may be quoted from any recognised, published independent source. For peer group comparisons, only one source shall be used and a clear description of the peer group shall be included.

15. No forecast of the structured investment product's performance may be presented.

16. Where provided, information on past performance of a reference asset shall be up to the latest practicable date before the issue of the offering document, and will normally be expected to be no more than 7 days old.

Examples and presentation

17. Hypothetical examples are permitted for the purpose of explaining how the structured investment product works. Any such examples must be fair, balanced and commercially realistic. They must also include the worst-case scenario. They must be accompanied by a statement to the effect that the examples used are for illustrative purposes only and that the actual performance of the product may differ from the examples shown.

18. An offering document may only include an annualised rate of return or potential return of a structured investment product if:

    (a) all the assumptions underpinning the calculation are stated;

    (b) it is accompanied by a prominent statement that the annualised rate of return is hypothetical and is not the actual return; and

    (c) the actual return (or potential return) and the annualised return (or potential return) are presented side by side.

19. If graphs are used, they must be clearly presented without distortion. If different sets of data are plotted on the same graph for comparison purposes, the same axes shall be used. Periods/tenors for comparison shall be consistent.

20. If non-US$/HK$-denominated returns are shown, the offering document shall, in addition, either:

(a) show the same returns in US$/HK$ with an explanation of the exchange rate used as the basis for the calculation; or

(b) include a statement to the effect that "*The investment returns are denominated in [foreign currency]. US/HK dollar-based investors are therefore exposed to fluctuations in the US/HK dollar / [foreign currency] exchange rate.*"

Use of proceeds

21. Details of the intended use of the proceeds of the issue.

Conflicts of interest

22. Any conflicts of interest or potential conflicts of interest that any parties involved may have in respect of the structured investment product and a description of how these conflicts may affect investors and how these conflicts are managed and minimised.

Information on the guarantee for guaranteed structured investment products

23. In the case of a guaranteed structured investment product, the full text of the guarantee should be set out as an appendix to the offering document. The terms of the guarantee should be summarised in the main text of the offering document. This should be accompanied by an explanation, in clear and simple language, of the scope and limitations of the guarantee, including any circumstances in which the guarantee may be invalidated, voided, vitiated or terminated, and the implications for investors. The offering document should include details of the circumstances in which, and how, the guarantee might be enforced against the Guarantor, and by whom. It should explain any relevant issues relating to conflicts of laws or recognition of judgments and their implications for investors, including, without limitation, whether it can be enforced in Hong Kong courts and whether there are any conditions or impediments to enforcement of Hong Kong judgments against the Guarantor.

Information on the collateral for collateralised structured investment products

24. For collateralised structured investment products:-

(a) the purpose for which the collateral is held;

(b) the details required pursuant to 5.18 and 5.19 of the Code;

(c) an explanation of how the collateral satisfies each of the requirements in 5.13 of the Code;

(d) an explanation of how ring-fencing of the collateral and any proceeds has been or will be achieved for the benefit of investors;

(e) how the collateral would be used (for example, whether as credit support or otherwise, and which parties' interests are being secured under such collateral);

(f) a description of the nature of the interests in the collateral created or granted, or intended to be created or granted, for the benefit of investors, including how they are/will be created and maintained and by whom they are/will be held. Details of the arrangements with, and the duties of, trustees and custodians with respect to the collateral. Details of the duties owed by trustees and custodians of the collateral to the investors, and any restrictions and limitations to which they are subject;

(g) without limiting 2(l) of this Appendix C above, details of when and how the rights and interests in the collateral can be enforced and the proceeds realised, by whom and for whose benefit, including implications for investors of any conflict of laws or recognition of judgments issues and any factors arising from the nature and/or location of assets comprising the collateral. The offering document should include a prominent and upfront explanation (including implications) of the ranking and priority of investors' claims to the proceeds of realisation of the collateral, and where investors do not rank first in priority, a prominent warning of that fact;

Note: Where relevant, there should be such a warning in the Product KFS, and the offering document should include a waterfall demonstration of the order of priority.

(h) the policy with respect to selecting and administering collateral;

(i) the scheduled tenor of each asset comprising the collateral;

(j) an explanation of how the risks presented by the collateral may affect the overall return of the structured investment product; and

(k) where the Issuer seeks to rely on 5.19 of the Code, the reasons for this, the details required by 5.19(a) of the Code and details of when and how investors

will receive the details required to be provided pursuant to 5.19(b) of the Code.

Credit ratings

25. Where a credit rating of a structured investment product, the Issuer of such structured investment product, any reference asset or any collateral is given in an offering document, it shall be accompanied by:

(a) the source of the credit rating, which must be a rating agency of international standing and reputation acceptable to the Commission;

(b) an explanation of what the credit rating means, including the class and/or type of rating and the specific entity or obligation rated; and

(c) an appropriate warning to the effect that the credit rating (i) is not a recommendation, (ii) is not necessarily an indication of liquidity or volatility, and (iii) may be downgraded if the credit quality of the relevant entity or asset or obligation declines.

Note: (1) Where a negative outlook has been assigned, such fact shall be disclosed.

(2) Where the structured investment product is not rated, such fact shall be disclosed.

Reports and accounts

26. The date of the Issuer's and, where applicable, the Guarantor's and each Key Product Counterparty's financial year.

27. The names and business addresses of the auditors for any entity whose accounts are required to be provided to investors or included in the offering document pursuant to the Code.

28. The Issuer's and, where applicable, the Guarantor's and each Key Product Counterparty's most recently published audited annual report and consolidated financial statements (including the accompanying notes thereto) for the last two financial years, in each case in conformity with the following requirements:-

(a) All auditors' reports must be prepared by accountants who have an international name and reputation, and who will usually be required to be

qualified under the Professional Accountants Ordinance for appointment as an auditor of a company. In the case of an overseas Issuer, Guarantor or Key Product Counterparty, the Commission may be prepared to accept a firm of accountants which is not qualified under the Professional Accountants Ordinance. Such a firm will usually be expected to have equivalent qualifications and be a member of a recognised body of accountants. The accountants must be independent of the Issuer, any Guarantor, each Product Arranger (where applicable), any trustee/custodian and any Key Product Counterparty.

(b) The auditors' report must conform with either:-

(i) accounting standards approved by the Hong Kong Institute of Certified Public Accountants and laid down in the Hong Kong Financial Reporting Standards issued from time to time by that Institute;

(ii) International Financial Reporting Standards ("IFRS") as promulgated from time to time by the International Accounting Standards Board; or

(iii) accounting standards approved by the law, financial regulator or accounting industry body of the home jurisdiction of the Issuer, the Guarantor or the Key Product Counterparty (as the case may be).

29. (a) For each of the Issuer and, where applicable, the Guarantor and each Key Product Counterparty, where published, or if more than 10 months have elapsed since the end of the financial year to which the most recent audited accounts relate, an interim financial report (the "Interim Report") covering the first 6 months of its financial year containing the following information:-

(i) profits or losses before taxation,

(ii) taxation on profits,

(iii) profits or losses attributable to minority shareholders,

(iv) profits or losses attributable to shareholders,

(v) the balance at the end of the period of share capital and reserves, and

(vi) comparative figures for the matters specified in (i) to (v) inclusive for the corresponding previous period.

(b) Where the Interim Report does not contain items of information referred to in 29(a) of this Appendix C above, the Issuer and, where applicable, the Guarantor and any Key Product Counterparty must provide a statement in respect of the same period as the Interim Report referred to in 29(a) above which sets out any information specified in that paragraph which is not so included.

(c) A statement that the Interim Report and, if applicable, any statement made pursuant to 29(b) of this Appendix C above have been prepared in accordance with the Issuer's and, where applicable, the Guarantor's or the Key Product Counterparty's usual accounting policies and procedures.

30. Where published, the Issuer's and, where applicable, the Guarantor's and each Key Product Counterparty's latest quarterly financial report. Where the quarterly report is made up to a date subsequent to the date of the Interim Report above and contains the information required by 29(a) of this Appendix C, the Interim Report may be omitted. The quarterly report may be omitted where it is made up to a date prior to the date of any Interim Report included in accordance with 29(a) above.

Material adverse changes and material litigation

31. A statement of any material adverse change in the financial condition or other circumstances of the Issuer, the Guarantor or any Key Product Counterparty since the date of the most recent audited accounts for such entity included in the offering document, or, where there has been none, an appropriate negative statement.

32. Information on any proceedings or claims, current or threatened, which could have a significant impact on the Issuer, any Guarantor or any Key Product Counterparty, or, where there are none, an appropriate negative statement. Where the offering document for a particular offer consists of more than one document, and particulars of these matters are provided in an earlier document, the particulars should be updated in each subsequent document forming part of the offering document. Issuers who include unaudited interim or quarterly financial statements in an offering document may peg such statement to the date of the unaudited interim or quarterly financial statement.

Warnings/statements/legends to be included

33. Disclaimer statement:-

"The Commission has authorized the issue of this document under section 105(1) of the Securities and Futures Ordinance. The Commission takes no responsibility for the

contents of this document, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document. The Commission's authorization does not imply its endorsement or recommendation of the structured investment products referred to in this document."

34. Statements/warnings in the following form (or to the like effect) shall be prominently displayed in the front of the offering document:-

(a) "Investors are warned that the value of these structured investment products may fluctuate and holders may sustain a total loss of their investment. Prospective investors should therefore ensure that they understand the nature of the structured investment products and carefully study the risk factors set out in this document and other document comprising the offering document for the structured investment products and, where necessary, seek professional advice, before they invest in the structured investment products.";

Notes: (1) The Issuer may modify the above statement to reflect any principal protection features of the structured investment product.

(2) The Issuer may replace the words "structured investment products" with the name of the structured investment product provided that the offering document relates solely to that type of structured investment product and the name provides an accurate description of the structured investment product.

and

(b) Responsibility statements:-

"This document includes particulars given in compliance with the Code on Unlisted Structured Investment Products issued by the Securities and Futures Commission for the purpose of giving information with regard to the Issuer [, the Guarantor [and each Product Arranger]]. The Issuer [, the Guarantor [and each Product Arranger] collectively and individually accept[s] full responsibility for the contents of, and the completeness and accuracy of the information contained in this document and confirm[s], having made all reasonable enquiries, that to the best of their knowledge and belief there is no untrue or misleading statement, or other facts the omission of which would make any

statement herein untrue or misleading.";

Note: Where the issue is guaranteed, the Guarantor should be included. Where the Issuer is a special purpose vehicle within the scope of 3.3(b)(ii), the Product Arranger(s) should be included.

A statement that the Issuer accepts full responsibility for the accuracy of the information contained in the offering document and confirm, having made all reasonable enquiries, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement misleading.

Confirmation by the Issuer that the structured investment product complies with the Code.

Note: In the case of an Issuer which is a special purpose vehicle within the scope of 3.3(b)(ii), the confirmation statement should also be given by each Product Arranger.

For non-collateralised structured investment products:-

"The structured investment products constitute general unsecured contractual obligations of the Issuer and of no other person. If you purchase the structured investment products, you are relying upon the creditworthiness of the Issuer [and the Guarantor] and have no rights under the terms of the structured investment products against the issuer(s) of the reference assets."

Notes: (1) The Issuer may modify the above statement depending on whether the issue is guaranteed.

(2) The Issuer may also replace the words "structured investment products" with the name of the structured investment product provided that the offering document relates solely to that type of structured investment product and the name provides an accurate description of the structured investment product.

(c) That investing in the structured investment product is not the same as investing in the reference assets;

(d) That the structured investment product is not covered by the Investor Compensation Fund; and

(e) Where the name of the structured investment product contains the word "deposit", that the deposit is a structured investment product which is not a protected deposit, that it is not protected by the Deposit Protection Scheme and that it is not the same as and should not be treated as a substitute for a term deposit.

Expert statements

35. Where the offering document includes a statement purporting to be made by an expert,

(a) the name, address, professional qualifications of such expert and whether there is any conflict of interests or perceived conflict of interests and, if so, a full description thereof;

(b) a statement that the expert has given his, her or its consent to the issue of the offering document with the statement included in the form and context in which it is included; and

(c) the date on which the expert's statement was made and whether or not it was made by the expert for incorporation in the offering document.

Taxation

36. An overview of Hong Kong and principal taxes levied upon transfer of the structured investment product or exercise of any rights accorded to the Issuer or investors under the terms of the structured investment product, and upon expiry or maturity of the structured investment product.

Language

37. For each single language offering document, a prominent and eligible description in the other language on how to obtain an offering document in that other language.

Continuing disclosure obligations

38. A description of the Issuer's continuing disclosure obligations pursuant to this Code and details of how investors will receive or be able to access the relevant information.



Market-making

39. Whether and how investors may dispose of or exit from the structured investment product before termination, maturity or expiry. If applicable, the Issuer should disclose information regarding market-making arrangements, including, without limitation:-

(a) the identity and regulatory status of the market maker(s);

(b) the frequency of such market-making;

(c) the minimum and maximum transaction sizes, if any, for each request for liquidity provision;

(d) where and how investors can obtain or access indicative bid prices, and the implications of such prices to investors;

(e) the mechanisms of market-making, and logistics with regard to placing orders and settlements; and

(f) a description of the circumstances (including those in 7.4(b) of the Code) in which the Issuer will not be able to provide market-making for the particular structured investment product.

Valuation of the structured investment product or any collateral

40. The details of any valuation policy or methodology in respect of the structured investment product or any collateral.

Documents available for inspection

41. A list of documents to be made available for inspection and an address in Hong Kong where they can be inspected free of charge or where copies can be purchased at a reasonable price during the period that any part of the structured investment products issue remains outstanding.

42. The list of documents pursuant to 41 of this Appendix C should include, without limitation:-

(a) the memorandum and articles of association or equivalent constitutive documents of the Issuer;

(b) certified true copies of all reports, letters or other documents, balance sheets, valuations and statements by any expert any part of which is extracted or referred to in the offering document;

(c) certified true copies of all offering documents relating to the structured investment product the issue of which is authorized from time to time to the extent that they are current and valid during the period that the structured investment product is outstanding;

(d) certified true copies of all material documents in relation to the structured investment product (including without limitation any guarantee, Programme agreement(s), trust deed, custodial agreements and documents creating and evidencing collateral and rights and interests thereunder or credit enhancement arrangements, and all arrangements with Key Product Counterparties and parties providing services in respect of the product which are material to investors' interests in the structured investment product);

(e) the Issuer's, or in the case of a guaranteed issue, the Guarantor's, and, where applicable, any Key Product Counterparty's latest published audited consolidated financial statements and any more recently published interim and quarterly financial statements;

(f) a certified true copy of the signed expert consent letter regarding the issue of a statement purporting to be made by such expert in the offering document; and

(g) all other documents which the Issuer considers materially relevant to the structured investment product.

Risk management

43. A summary of the risk management policies and controls implemented by the Issuer with a view to ensuring compliance with its obligations under the terms of the structured investment product, the applicable requirements in the Handbook and its regulatory obligations pursuant to the Handbook.

Waivers

44. Details of any waivers of any requirements under this Code or the Handbook or any applicable law, regulation or rule which have been obtained in respect of the structured investment product, the Issuer, the Guarantor, any Key Product Counterparty, any

trustee/custodian or a Product Arranger (as the case may be).

General information

45. The date of issue of the offering document.

46. Where a structured investment product is issued as part of a Programme and the Issuer chooses to use multiple documents which together constitute the offering document for a structured investment product, a statement in each such document listing all documents which together comprise the offering document for that product and providing details of where all such documents can be obtained at reasonable cost.

Appendix D

Advertising guidelines applicable to unlisted structured investment products

Application of advertising guidelines

These Advertising Guidelines are applicable to advertisements for unlisted structured investment products.

The guidelines outline the expected standard of disclosure and presentation of advertisements for unlisted structured investment products. These guidelines are not intended to be exhaustive.

All persons or entities issuing advertisements for unlisted structured investment products (including, for the avoidance of doubt, licensed and registered persons acting as intermediaries of the structured investment product) are required to comply with these guidelines.

For purposes of these guidelines, advertisements do not include materials which market the expertise or branding of or services offered by an Issuer without reference to any particular product.

General

Pursuant to the SFO, the Commission may at any time review its authorization of an advertisement and may modify, add to or withdraw any of the conditions of such authorization, or withdraw the authorization, as it considers appropriate.

Nothing in these guidelines undermines the prohibition under section 103 of the SFO, or compromises or prejudices any of the powers of the Commission under the SFO.

These guidelines do not have the force of law and shall not be interpreted in any manner which overrides the provisions of any law, codes or other regulatory requirements.

Disclosure and presentation of advertisements

General principles

1. Advertisements for a structured investment product shall:

   (a) not be false, biased, misleading or deceptive;

   (b) be clear, fair and present a balanced picture of the structured investment product with adequate and prominent risk disclosures; and

   (c) contain information that is timely and consistent with the offering document.

   Notes: *(1) Key features and risks, including, where appropriate, a description of any derivative component in the context of the risk and return of the structured investment product, shall be presented for investors upfront and presented prominently.*

   (2) Presentation of benefits and returns shall not be disproportionately more prominent than, or be made without mentioning, the risks of the structured investment product. Use of different font sizes for the positive and negative features of or statements regarding a structured investment product shall be avoided. An advertisement shall not give the impression that an investor could profit without risk.

   (3) Terms like "guaranteed" shall not be used unless what is being guaranteed and the extent of the guarantee are accurately and clearly described. If a guarantee is subject to limitations or conditions, it would not be appropriate to use the word "guaranteed" generally to describe the structured investment product.

   (4) Other terms which may convey an impression of low risk or a risk-free investment such as "principal-protected", "secure", "safe", "warranty", "deposit", "likely" and "promise" shall generally not be used unless the issuer of the advertisement can demonstrate that such use is fair and not misleading.

   (5) Advertisements shall not carry any slogan that is exaggerated or unwarranted or is inconsistent with or unrelated to the nature and risk and return profile of the structured investment product.

(6) *Presentation of cumulative returns in advertisements is generally discouraged unless the issuer of the advertisement can demonstrate that such presentation is fair and not misleading.*

(7) *Advertisements shall not contain any information in respect of a structured investment product that is not contained in its offering document.*

2. Advertisements shall not refer to structured investment products for which no issue of offering document has been authorized by the SFC.

3. Advertisements shall take into account, and be reflective of, the knowledge and the level of comprehension which the investing public could reasonably be expected to have.

Language and graphics

4. Advertisements shall be visually reader-friendly and information shall not be densely-packed.

5. Advertisements shall be written in plain language so that investors can understand them. Use of technical jargon or complex sentences shall be avoided.

6. Where comparative information is presented, the comparison shall be meaningful and presented in a fair, balanced and unbiased way. The source of the information used for the comparison shall be specified and the key facts and assumptions used to make the comparison shall be included.

7. An advertisement shall not contain language, artwork or graphics that is inaccurate or inconsistent with the offering document for the relevant structured investment product.

8. Advertisements shall not be disguised. For example, where advertisements are included in a newspaper, the advertisement shall not give the appearance of being editorial comment.

Note: Where any of the Issuer's affiliates or any other party connected with the Issuer sponsors or participates in any activities or produces any materials promoting or discussing the structured investment product, there shall be clear disclosure of such party's interests and its relationship with the Issuer.

9. Any commentary in an advertisement regarding a structured investment product shall be reasonable and shall be made by a person who is competent to form a valid and objective opinion on the relevant matter.

10. Where visual images are used in advertisements, the issuer of the advertisement shall satisfy itself that the visual images accurately portray the relevant structured investment product and are not misleading. Visual images should not divert or mislead investors' focus from the proper consideration of the structured investment product.

11. An advertisement shall not seek to denigrate competitors of a product in such a way as might lower the reputation of the industry, or use language or artwork that would be considered by a reasonable person to be in poor taste.

Warning statements/Notes

12. If an advertisement or where applicable, a structured investment product or the issue of its offering document is described as having been authorized by the Commission, a statement that authorization does not imply official recommendation as set out in the Overarching Principles Section of the Handbook or to the like effect must be stated in the advertisement.

13. Advertisements shall contain warning statements/notes to the effect that:

    (a) investors must read the offering document for further details including the risk factors;

    (b) investors should not invest in the structured investment product based on the advertisement alone;

    (c) the structured investment product is unlisted and, where applicable, that there may not be an active or liquid secondary market;

    (d) the maximum loss that an investor may suffer is highlighted;

    (e) the investment is subject to the credit and insolvency risks of the Issuer, the Guarantor and/or other identified counterparties (as the case may be);

    (f) investing in the structured investment product is not the same as investing in its reference assets;

(g) where applicable, investors may, at settlement, receive physical delivery of reference asset(s);

(h) where applicable, the structured investment product is not principal-protected;

(i) where applicable, the investment may be terminated early by the Issuer;

(j) where applicable, the structured investment product is not collateralised;

(k) the product is a structured investment product involving derivatives;

(l) the structured investment product is not covered by the Investor Compensation Fund;

(m) where the name of the structured investment product contains the word "deposit", the deposit is a structured investment product which is not a protected deposit, that it is not protected by the Deposit Protection Scheme and that it is not the same as and should not be treated as a substitute for a term deposit; and

(n) in the case of a collateralised structured investment product, the priority of claims of investors to the proceeds of realisation of the collateral.

14. Warning statements and footnotes shall be clear and legible and shall not be presented in a style, font size or position which reduces their impact.

Historical performance of reference assets

15. Advertisements may only contain information on the historical performance of the reference assets to which a structured investment product is linked if the information is relevant and conducive to investors' understanding of the structured investment product. Such information shall not be the main focus of the advertisement.

Note: Where the reference assets are listed securities and if historical share price information is set out in an advertisement, the period covered shall be 5 years to the latest practicable date, save for cases where the reference assets have been listed for less than 5 years, in which case the period should be from the date of listing.

16. All performance information, including awards and rankings, shall be referenced to the relevant sources and dated. Rankings and awards may be quoted from any recognised,

published independent source. For peer group comparisons, only one source shall be used and a clear description of the peer group shall be included in the advertisement.

17. No forecast of the structured investment product's performance may be presented.

18. Where provided, information on past performance of a reference asset shall be up to the latest practicable date before the issue of the relevant advertisement, and will normally be expected to be no more than 7 days old.

Examples and presentation

19. Hypothetical examples are permitted for the purpose of explaining how a structured investment product works. Any such examples must be fair, balanced and commercially realistic. They must also include the worst-case scenario. They must be accompanied by a statement to the effect that the examples used are for illustrative purposes only and that the actual performance of the product may differ from the examples shown.

20. An issuer of advertisement may only present an annualised rate of return or potential return of a structured investment product if:

    (a) all the assumptions underpinning the calculation are stated;

    (b) it is accompanied by a prominent statement that the annualised rate of return is hypothetical and is not the actual return; and

    (c) the actual return (or potential return) and the annualised return (or potential return) are presented side by side.

21. If graphs are used, they must be clearly presented without distortion. If different sets of data are plotted on the same graph for comparison purposes, the same axes shall be used. Periods/tenors for comparison shall be consistent.

22. If non-US$/HK$-denominated returns are shown, the advertisement shall, in addition, either:

    (a) show the same returns in US$/HK$ with an explanation of the exchange rate used as the basis for the calculation; or

    (b) include a statement to the effect that *"The investment returns are denominated in [foreign currency]. US/HK dollar-based investors are therefore exposed to fluctuations in the US/HK dollar / [foreign currency] exchange rate*."



Presentation of credit ratings

23. Where a credit rating of a structured investment product, the Issuer of such structured investment product, any reference asset or any collateral is given in an advertisement, it shall be accompanied by:

(a) the source of the credit rating, which must be a rating agency of international standing and reputation acceptable to the Commission;

(b) either an explanation of what the credit rating means, including the class and/or type of rating and the specific entity or obligation rated, or a cross-reference to an explanation of what it means located in the offering document; and

(c) an appropriate warning to the effect that the credit rating (i) is not a recommendation, (ii) is not necessarily an indication of liquidity or volatility, and (iii) may be downgraded if the credit quality of the relevant entity or asset or obligation declines.

Note: Where a negative outlook has been assigned, such fact shall be disclosed.

Radio, television, cinema or other time-limiting advertisements / broadcasts

24. The following requirements apply to advertisements where the audience has no control over the time taken for the information in the advertisement to be delivered (e.g. radio, television, cinema broadcasts, etc.):

(a) For audio advertisements with no visual display, warning statements referred to in paragraph 13 of these guidelines shall be audibly and clearly read out in a voice-over at the end of each broadcast.

(b) For visual advertisements, warning statements referred to in paragraph 13 of these guidelines and the full name of the issuer of the advertisement shall be displayed for such time as to be sufficiently prominent to allow the viewer to read the entire text of the disclosure with reasonable ease.

(c) Advertisements shall not be disguised as authoritative reports, and shall be presented with courtesy and good taste. Disturbing or annoying materials such

as blatant sound effects, persistent repetition, or words and phrases implying emergency shall be avoided.

Responsibility of the issuer of an advertisement

25. Issuers of advertisements are responsible for the contents of their advertisements and the monitoring of their publication or distribution. Under no circumstances may an issuer disclaim its liabilities in respect of the accuracy of the contents of its advertisements. Where information in the advertisement is sourced externally and disclosed as such, such issuer shall not include the information in an advertisement unless the issuer has a reasonable belief that such information is accurate, complete and up-to-date.

26. Issuers of advertisements shall keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented therein. Such records shall be retained for at least 3 years from the latest date of publication/distribution of an advertisement and shall be made available to the Commission upon request.

27. The full name of the issuer of the advertisement, the Issuer and each Product Arranger for the relevant structured investment product(s) and their regulatory status in Hong Kong (or the lack thereof) shall be disclosed in the advertisement.

35/F, Cheung Kong Center, 2 Queen's Road Central, Hong Kong　香港皇后大道中二號長江集團中心三十五樓