

**DECLARATION ON MUTUAL RECOGNITION OF CROSS-  
BORDER OFFERING OF  
COLLECTIVE INVESTMENT SCHEMES**

**Signed by Mr Tony D'Aloisio, Chairman for the Australian  
Securities and Investments Commission and  
Mr Eddy Fong, Chairman for the Hong Kong  
Securities and Futures Commission**

**7 July 2008**

The Australian Securities and Investments Commission, an independent Commonwealth government body established pursuant to the Australian Securities and Investments Commission Act 1989 (and continued in existence by the Australian Securities and Investments Commission Act 2001), and the Hong Kong Securities and Futures Commission, an independent agency established pursuant to the Securities and Futures Commission Ordinance (and continued in existence by the Securities and Futures Ordinance),

SHARING the goals of facilitating investment, enhancing competition in capital markets, increasing choice for investors, and promoting investor protection;

OBSERVING the growth of global securities markets, cross-border investment management activity and offers of collective investment schemes, as well as the continuous development and innovation in financial products and activities in the investment management area; and

BELIEVING that, in light of these developments it is appropriate to formalize and systematize mechanisms for the operation of cross-border offers of collective investment schemes to retail investors in both jurisdictions,

HAVE reached the following understanding:

## **1. Definitions**

For the purposes of this Declaration, unless the context requires otherwise:

"ASIC-licensed manager" means a responsible entity licensed by the Australian Securities and Investments Commission (ASIC);

"Australian MIS" means managed investment schemes that are registered with ASIC under Chapter 5C of the Corporations Act 2001, and as defined by the relevant Australian legislation (Section 9 - Corporations Act 2001 or such other successive or equivalent legislation which defines a product similar to a "collective investment scheme" as defined in Part 1 of Schedule 1 to the SFO as amended from time to time);

"Authority" means ASIC or the Securities and Futures Commission of Hong Kong (SFC); and collectively, shall be referred to as "the Authorities";

"Corporations Act 2001" means Act No. 50 of 2001 of the Parliament of Australia to make provision in relation to corporations and financial products and services, and for other purposes;

"Dual Scheme" means a collective investment scheme which is mutually recognized by ASIC and SFC within the framework of this Declaration and is offered to retail investors in both jurisdictions subject to the applicable conditions as agreed between ASIC and SFC from time to time.

"Foreign Scheme" means a Dual Scheme which is offered to retail investors in the Host Authority but whose primary regulator is the Home Authority;

"Home Authority" means the Authority which is the primary regulator of the Dual Scheme;

"Hong Kong CIS" means collective investment schemes (as defined in Part 1 of Schedule 1 to the SFO as amended from time to time) that are authorised by the SFC under section 104 of the SFO and includes all mutual funds, unit trusts and other forms of collective investment schemes that are contemplated under the Unit Trust Code;

"Host Authority" means the Authority (other than the Home Authority) in whose jurisdiction a Dual Scheme is offered to retail investors;

“Laws and Regulations” means any law, regulation or regulatory requirement applicable in the jurisdiction of an Authority, and where the context permits includes any rule, direction, requirement, or policy made or given by or to be taken into account by the Authority;

“SFO” means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market in Hong Kong, as amended, supplemented or otherwise modified from time to time; and

“Unit Trust Code” means the Code on Unit Trusts and Mutual Funds issued by the SFC (as may be amended, updated or replaced from time to time).

## **2. Scope of Mutual Recognition**

### **2.1 SFC’s recognition of Australian MIS**

2.1.1 Under the framework of this Declaration, the SFC intends to recognize all Australian MIS for the purpose of authorization pursuant to section 104 of the SFO provided that --

- (a) the Australian MIS is managed by an ASIC-licensed manager and is registered with ASIC under the Corporations Act 2001 (with the exception of hedge funds as categorized in the Unit Trust Code which are ineligible for this SFC recognition);
- (b) the Australian MIS meets the requirements referred to in paragraph 2.1.3; and
- (c) having regard to all offers of interests in the Australian MIS that have been made at any time (whether in Hong Kong or elsewhere), promotion of membership of the Australian MIS has not been principally aimed at persons in Hong Kong and there is no reason to believe that the manager of the Australian MIS intends that promotion of membership of the scheme will be principally aimed at persons in Hong Kong.

2.1.2 In principle, taking into account factors such as the regulatory regime and development of ASIC, cooperation between the Authorities, and industry

best practices in Australia, Australian MIS satisfying the descriptions in 2.1.1 would be deemed to have complied with the relevant provisions in the Unit Trust Code and thus would generally not be required to strictly observe the specific requirements therein, except for the specific areas set out in paragraph 2.1.3 below.

2.1.3 To ensure proper investor protection and consistency with existing Hong Kong CIS, Australian MIS are expected to comply with the relevant provisions in the Unit Trust Code in respect of the following matters:

- (a) appointment of an ASIC-regulated custodian that holds an Australian Financial Services licence and is separate from the manager for safe custody of the scheme assets;
- (b) core investment restrictions;
- (c) the monthly dealing requirement; and
- (d) appointment of a Hong Kong representative and an approved person.

2.1.4 Where appropriate or necessary, the SFC may require such other reasonable disclosure requirements and/or impose specific conditions on an Australian MIS in the light of the specific circumstances of the scheme, whether upon or subsequent to the authorization of the scheme.

## 2.2 ASIC's recognition of Hong Kong CIS

2.2.1 Under the framework of this Declaration, ASIC intends to recognize all Hong Kong CIS for the purpose of exemption from registration as an Australian MIS pursuant to the Corporations Act 2001, subject to the conditions of the relevant class order issued in relation to Hong Kong CIS under ASIC Regulatory Guide 178: Foreign collective investment schemes, and provided that -

- (a) the Hong Kong CIS and its manager (that holds a licence issued by the SFC which permits it to operate Hong Kong CIS) are primarily regulated by the SFC and are not subject to regulatory concessions applicable because of their regulation outside Hong Kong; and
- (b) having regard to all offers of interests in the Hong Kong CIS that have been made at any time (whether in Australia or elsewhere), promotion of membership of the Hong Kong CIS has not been principally aimed

at persons in Australia and there is no reason to believe that the manager of the Hong Kong CIS intends that promotion of membership of the Hong Kong CIS will be principally aimed at persons in Australia.

2.2.2 ASIC grants registration, and certain licensing and product disclosure relief to the managers of the Hong Kong CIS.

2.2.3 Where appropriate or necessary, ASIC may impose specific conditions on a Hong Kong CIS in the light of the specific circumstances of the scheme, whether upon or subsequent to entry of the scheme into the Australian market.

2.3 Where an Authority imposes limits on the extent of ownership interests that investors in its jurisdiction may have in a Foreign Scheme, then the other Authority may impose equivalent limits on Foreign Schemes offered in its jurisdiction. Where such limits have been imposed, it will be the responsibility of the manager of the relevant Foreign Scheme to monitor and ensure compliance with them.

### **3. General Principles**

3.1 This Declaration serves as a basis for mutual recognition by the Authorities of Dual Schemes which are not principally intended to be offered in the jurisdiction of the Host Authority. This Declaration does not modify or supersede any Laws and Regulations, in force or applying in the respective jurisdictions of the Authorities. The Declaration does not create any enforceable rights, nor does it affect any arrangements under other Memoranda of Understanding.

3.2 The performance of the provisions of this Declaration –

3.2.1 shall be consistent with the Laws and Regulations of the respective jurisdictions of the Authorities; and

3.2.2 shall not be contrary to the public interest in the respective jurisdictions of the Authorities.

3.3 An offer of a Dual Scheme in the jurisdiction of the Host Authority must comply with all requirements under the Laws and Regulations of the Host Authority which may be applicable or specified by the Host Authority from time to time. The

Authorities may issue circulars and notices to provide guidance on administrative and procedural matters in connection with the implementation of the mutual recognition in this Declaration.

3.4 For the avoidance of doubt and without prejudice to any powers and authority conferred at law, the Host Authority has unfettered powers and discretion -

3.4.1 to regulate the marketing and dealing in a Dual Scheme within its jurisdiction, including the authority or powers to require persons marketing or dealing in the Dual Scheme within its jurisdiction to be licensed or authorised by the Host Authority;

3.4.2 to intervene in the offer of a Dual Scheme within its jurisdiction by means of a stop order or otherwise in accordance with the Laws and Regulations of the Host Authority notwithstanding that the Dual Scheme has been granted entry by the Host Authority within the parameters of this Declaration; and

3.4.3 to obtain such information or documentation from the manager of the Dual Scheme for the purpose of monitoring or confirming compliance with the framework of mutual recognition as stipulated in this Declaration.

#### **4. Exchange of Information**

4.1 The Authorities intend to provide each other with an updated list of the names of Dual Schemes on a regular basis. The Home Authority shall notify the Host Authority on a timely basis of any changes to the registration or authorization status of a Dual Scheme.

4.2 The Home Authority intends, upon request, to inform the Host Authority of the authorization or registration status of a Dual Scheme, and any waiver, relief or conditions specific to the scheme.

4.3 Each Authority intends, upon request and consistent with the laws and regulatory requirements which govern it, to provide the other Authority with further information which is significant about a Dual Scheme.

- 4.4 Each Authority intends to inform the other of any significant changes in the Laws and Regulations in respect of Hong Kong CIS or Australian MIS as the case may be, that would have a material impact on the scope or matters covered by this Declaration.
- 4.5 To facilitate exchange of information under this Declaration, the Authorities hereby designate the contact persons as set forth in Attachment A.

## **5. Applicability of MOU and Other Declaration**

- 5.1 This Declaration is being made within the framework of the Memorandum of Understanding, dated 8 October 2001 (the "MOU") between ASIC and the SFC, and the Declaration of Cooperation and Supervision of Cross-Border Investment Management Activity (the "Declaration on Cross-Border Investment Management Activity"), dated 26 June 2003, and nothing contained herein modifies or amends the MOU or the Declaration on Cross-Border Investment Management Activity.
- 5.2 Materials and information provided under this Declaration are to be kept confidential and governed by the provisions of paragraphs 22, 23, 24, 25 and 26 of the MOU.

## **6. CONSULTATIONS**

- 6.1 The Authorities intend to engage in regular consultations regarding investment management activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation or in light of any significant changes as mentioned in paragraph 4.4 above.

SIGNED THIS seventh day of July 2008

By

Mr Eddy Fong, Chairman of SFC, and Mr Tony D'Aloisio, Chairman of ASIC