

FUND MANAGER CODE OF CONDUCT

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FUND MANAGER CODE OF CONDUCT

HONG KONG

INTRODUCTION

Persons to whom this Code applies

This Code sets out conduct requirements for persons licensed by or registered with the Securities and Futures Commission (SFC) whose business involves the discretionary management of collective investment schemes (whether authorised or unauthorised) (Fund Managers). These guidelines apply to all licensed or registered persons acting as Fund Managers, including, as appropriate, their representatives.

Interpretation

For the purposes of this Code, a 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 (Cap. 155), and “registered” shall be construed accordingly. A reference in this Code to “representatives” has the same meaning as section 167 of the Securities and Futures Ordinance.

Purpose of this Code

This Code aims, firstly, to supplement codes and guidelines applicable to all categories of licensed or registered person with guidance in respect of the minimum standards of conduct specifically applicable to Fund Managers. It does not replace any legislative provisions, codes or guidelines issued by the SFC. Secondly, it highlights existing requirements applicable to Fund Managers. Further reference should however be made to the legislation, codes and guidelines, and in the case of any inconsistency, the more stringent applicable provision will be applied. This Code does not have the force of law and should not be interpreted in a way that would override the provisions of any law.

Effect of breach of this Code

Breach of any of the requirements of this Code will, in the absence of extenuating circumstances, reflect adversely on the fitness and properness of a Fund Manager and may result in disciplinary action. **When considering a person’s failure to comply with this Code, SFC staff will adopt a pragmatic approach taking into account all relevant circumstances, including the size of the corporation, and any compensatory measures implemented by senior management.**

I. ORGANISATION AND STRUCTURE

1. Organisation and Management Structure

Incorporation and Registration

- 1.1 A Fund Manager should ensure that its business is properly incorporated and that any person it employs or appoints to conduct business is properly licensed or registered in accordance with all applicable statutory requirements.

Organisation and Resources

- 1.2 A Fund Manager should maintain:
- (a) financial resources in accordance with all applicable statutory requirements;
 - (b) sufficient human and technical resources and experience for the proper performance of its duties. This would be expected to vary depending on the amount of assets under management by the corporation, and the type and nature of the assets and markets in which the corporation invests. The functions of the corporation including fund management, operations, compliance and audit should only be performed by qualified and experienced persons, who should receive appropriate training on an ongoing basis;
 - (c) satisfactory internal controls and written compliance procedures which address all applicable regulatory requirements;
 - (d) satisfactory risk management procedures commensurate with its business;
 - (e) adequate professional indemnity insurance cover commensurate with its business.

Functional Separation

- 1.3 Where a Fund Manager is part of a group of companies which undertake other financial activities such as advising on corporate finance, banking or broking, it should ensure there is an effective system of functional barriers (Chinese Walls) in place to prevent the flow of information that may be confidential and/or price sensitive between the different areas of operations. There should be physical separation between the activities and the different persons it employs or appoints to conduct business unless this is impossible given the size of the corporation, together with written procedures to document the controls. If physical separation is impossible, the corporation should prohibit dealing in price sensitive or confidential information.

Segregation of Duties

- 1.4 A Fund Manager should ensure that key duties and functions are appropriately segregated, unless this is impossible given the size of the corporation. In particular:
- (a) front office functions (which include making investment decisions, marketing and dealing in collective investment schemes, and placing orders to deal with brokers) should be physically segregated from back office functions (which include receiving broker confirmations, settling trades, accounting and reconciliation, valuing client portfolios and reporting to clients) and should be carried out by different staff with separate reporting lines;
 - (b) compliance and audit functions should if possible, be separated from each other, and have separate reporting lines from other functions;
 - (c) the investment decision making process should be clearly delineated from the dealing process.

Note: A central dealing function is encouraged but is not mandatory.

Responsibilities of Management

“Senior management” means the Managing Director of a corporation or its Board of Directors, Chief Executive Officer or other senior operating management personnel in a position of authority over the corporation’s business decisions.

- 1.5 The senior management of a Fund Manager should:
- (a) be principally responsible for compliance by the Fund Manager with all relevant requirements under this Code, as well as the nurturing of a good compliance culture within the corporation;
 - (b) maintain clear reporting lines with supervisory and reporting responsibilities assigned to qualified and experienced persons;
 - (c) ensure that all persons performing functions on behalf of the corporation are provided adequate and up-to-date information about the corporation’s policies and procedures applicable to them;
 - (d) ensure that the performance of Fund Managers in managing client accounts is reviewed, on at least an annual basis.

Compliance

- 1.6.1 A Fund Manager should:

- (a) maintain an effective compliance function, including a Designated Compliance Officer, within the corporation to ensure that the corporation complies with its own internal policies and procedures, and with all applicable legal and regulatory requirements, including this Code;
 - (b) ensure that the compliance function possesses the technical competence and experience necessary for the performance of its functions.
- 1.6.2 The compliance function and Designated Compliance Officer should be independent of other functions and report directly to the corporation's senior management, unless this is impossible given the size of the corporation. Where there is no separation of functions, the corporation's senior management should assume the role of Designated Compliance Officer. Compliance activities may be delegated to an appropriately qualified professional, although the responsibility and obligations may not be delegated.
- 1.6.3 The Designated Compliance Officer should maintain sufficiently detailed compliance procedures to give senior management reasonable assurance that the corporation complies with all applicable requirements at all times.

Audit

- 1.7 Where practicable, a Fund Manager should maintain an independent and objective audit function to report on the adequacy, effectiveness and efficiency of the corporation's management, operations and internal controls. The audit function should:
- (a) where practicable, be free from operating responsibilities, with a direct line of communication to senior management or the audit committee, as applicable;
 - (b) follow clearly defined terms of reference (including monitoring the timeliness and accuracy of other functions) which set out the scope, objectives, approach and reporting requirements;
 - (c) adequately plan, control and record all audit work performed, and record the findings, conclusions and recommendations;
 - (d) report to management on all matters highlighted in the audit report, which should be resolved satisfactorily and in a timely manner.

Where the size of the corporation does not justify a separate internal audit function, the relevant roles and responsibilities should be performed or reviewed by the external auditors.

Delegation

- 1.8 Where functions are delegated to third parties, there should be ongoing monitoring of the competence of delegates, to ensure that the principles of this Code are followed. Although the investment management role of the corporation may be sub-contracted, the responsibilities and obligations of the corporation to its clients may not be delegated.

Withdrawal from Business

- 1.9 A Fund Manager who withdraws from business should ensure that any affected clients are promptly notified and that proper arrangements remain in place for the safekeeping of client assets. Where a corporation is being wound up it should comply with all the applicable statutory requirements.

2. Staff Ethics

Personal Account Dealing

Note: The following guidelines are intended to address the basic principles that persons engaged in fund management business, when transacting for themselves, must give their clients priority and avoid conflicts of interest. In the context of these guidelines, “relevant persons” means any employees or directors of a Fund Manager:

- *who in their regular functions or duties make or participate in investment decisions, or obtain information, prior to buying or selling investments on behalf of a client;*
- *whose functions relate to the making of any recommendations with respect to such buying or selling;*

or any persons over whom they exercise control and influence.

As a minimum, these guidelines cover trading in shares and derivatives. Beyond this, however, the scope of investments that should be covered is not defined, as this may vary depending on the business of the corporation. A Fund Manager is expected to define the types of investment intended to be covered, to respect the principles outlined here.

- 2.1.1 A Fund Manager should ensure that it has internal rules or provisions in its contracts of employment for relevant persons as follows:
- (a) that relevant persons are required to disclose existing holdings upon joining a Fund Manager and at least annually thereafter;
 - (b) that relevant persons are required to obtain prior written permission for personal account dealing from the Designated Compliance Officer or other person designated by senior management. The permission

should be valid for no more than 5 trading days, and be subject to the following constraints:

- (i) that relevant persons may not buy or sell an investment on a day in which the Fund Manager has a pending “buy” or “sell” order in the same investment until that order is executed or withdrawn;
- (ii) that relevant persons may not buy or sell an investment for their personal account within 1 trading day before (if the relevant person is aware of a forthcoming client transaction) or after trading in that investment on behalf of a client;
- (iii) that relevant persons may not buy or sell an investment for their personal account within 1 trading day before (if the relevant person is aware of a forthcoming recommendation) or after a recommendation on that investment is made or proposed by the Fund Manager;

Note: Subject to rules being set down by the Designated Compliance Officer, the restrictions in (ii) and (iii) above need not be applied where client orders have been fully executed and any conflicts of interest have been removed.

- (iv) that cross trades between relevant persons and clients be prohibited;
 - (v) that short-selling of any securities recommended by the Fund Manager for purchase be prohibited;
 - (vi) that relevant persons should be prohibited from participating in initial public offers available to clients of the Fund Manager or its connected persons, and should not use their positions to gain access to IPO’s for themselves or any other person;
- (c) that relevant persons are required to hold all personal investments for at least 30 days, unless prior written approval of the Designated Compliance Officer or other persons designated by senior management is given for an earlier disposal;
 - (d) that relevant persons are required, either:
 - (i) to hold their personal accounts with the Fund Manager or a connected person and place all deals through that corporation; or
 - (ii) obtain approval from the Designated Compliance Officer for outside broking accounts, and ensure that copies of records and statements of personal transactions entered into by them are submitted to the Designated Compliance Officer.

- 2.1.2 A Fund Manager should maintain appropriate procedures to distinguish personal transactions for relevant persons from other transactions, and to ensure that such transactions are properly approved and there is an adequate audit trail of such approval and the transaction [see 5.1(a)].
- 2.1.3 A Fund Manager should not permit relevant persons to delay settlement of personal transactions beyond the normal settlement time for the relevant market.
- 2.1.4 A Fund Manager who is a relevant person should comply with the provisions set out in 2.1.1 (a) to (d) above.

Receipt or Provision of Benefits

- 2.2 A Fund Manager:
 - (a) should not offer or accept any inducement in connection with the affairs or business of a client which is likely to significantly conflict with the duties owed to clients;
 - (b) in the case of a corporation, should maintain:
 - (i) written guidelines, including monetary limits, about the acceptance by staff members of gifts, rebates or other benefits received from clients or business contacts, to give effect to (a);
 - (ii) a register of benefits received above the specified limit.

II. FUND MANAGEMENT

3. Fund Management

Investment within Client Mandate

- 3.1 A Fund Manager should ensure that transactions carried out on behalf of a client are in accordance with the portfolio's stated objectives, investment restrictions and guidelines, whether in terms of asset class, geographical spread or risk profile.

Best Execution

- 3.2 A Fund Manager should execute client orders on the best available terms, taking into account the relevant market at the time for transactions of the kind and size concerned.

Prohibition on Insider Dealing

- 3.3 A Fund Manager should not effect or cause to be effected any transaction based on confidential price sensitive information or when otherwise prohibited from dealing by statutory restrictions on insider dealing, and should have procedures in place to ensure that staff are aware of such restrictions.

Order Allocation

- 3.4 A Fund Manager should:
- (a) ensure that all client orders are allocated fairly;
 - (b) make a record of the intended basis of allocation before a transaction is effected;
 - (c) ensure that an executed transaction is allocated promptly in accordance with the stated intention, except where the revised allocation does not disadvantage a client and the reasons for the re-allocation are clearly documented.

Portfolio Turnover

- 3.5 A Fund Manager should not trade excessively on behalf of the client portfolio, taking into account the portfolio's stated objectives.

Underwriting

- 3.6 Unless specifically permitted in the Client Agreement or client mandate, a Fund Manager should not participate in underwriting activities on behalf of a client. Where underwriting is undertaken on behalf of a client, all commissions and fees received under such contract should be credited to the client account.

Participation in Initial Public Offers

- 3.7 Where a Fund Manager participates in an initial public offering on behalf of clients, it should ensure that:
- (a) the allocation of stock received in the offering provides for a fair and equitable allocation amongst clients;
 - (b) preferential allocations are prohibited;
 - (c) the reasons for all allocations are documented.

Transactions with Connected Persons

- 3.8 A Fund Manager should not carry out any transaction on behalf of a client with a corporation which is a connected person unless such transaction is

carried out on arm's length terms, consistent with best execution standards, and at a commission rate no higher than customary institutional rates. In the case of an authorised collective investment scheme, total transactions with connected persons should not exceed 50% of the scheme's transactions in value in any one financial year of the scheme, except with the approval of the SFC.

- 3.9 A Fund Manager should not deposit or borrow funds on behalf of a client with a connected person unless:
- (a) in the case of a deposit, interest is received at a rate not lower than the prevailing commercial rate for a deposit of that size and term; and
 - (b) in the case of a loan, interest charged and fees levied in connection with the loan are no higher than the prevailing commercial rate for a similar loan.

Cross Trades

- 3.10.1 A Fund Manager should only undertake sale and purchase transactions between client accounts (cross trades) where:
- (a) the sale and purchase decisions are in the best interests of both clients and fall within the investment objective and policies of both clients;
 - (b) the trades are executed on arm's length terms at current market value;
 - (c) the reason for such trades is documented prior to execution; and
 - (d) such activity is disclosed to the client.
- 3.10.2 Cross trades between house accounts and client accounts should only be permitted with the prior written consent of the client, to whom any actual or potential conflicts of interest should be disclosed. Cross trades between staff personal accounts and client accounts should be prohibited.

House Accounts

"House account" means an account owned by a Fund Manager or any of its connected persons over which it can exercise control and influence.

- 3.11 When dealing for a house account, a Fund Manager should:
- (a) give priority to satisfying a client order. Where a client order has been aggregated with another order, the client's order must take priority in any subsequent allocation if all orders cannot be filled;
 - (b) not deal in accordance with a recommendation, research or analysis to be published to clients until the clients have had a reasonable opportunity to act on the information;

- (c) except with the prior written consent of the Designated Compliance Officer, not deal ahead of any transaction to be carried out on behalf of a client, or, where the house account and a client have invested in the same investment, only dispose of its holdings following, or together with, the disposal of holdings on behalf of a client. The Designated Compliance Officer should properly document the reasons for any consents given.

4. Custody

Safety of Client Assets

- 4.1 A Fund Manager should ensure that the assets entrusted to it are properly safeguarded. If the Fund Manager is responsible for making custody arrangements this means:
 - (a) if permitted by the terms of its license, it may retain the responsibility for safekeeping in a segregated trust account; or
 - (b) it should arrange for the appointment of a custodian (see below), taking all reasonable steps to ensure that the custodian is properly qualified for the performance of its functions. On an ongoing basis, a Fund Manager should satisfy itself as to the continued suitability and financial standing of any appointed custodian.

Appointment of Custodian

- 4.2 A custodian appointed by a Fund Manager should be either:
 - (a) a registered trust company;
 - (b) an authorised financial institution (including a licensed bank, deposit-taking company or restricted-license bank) or the subsidiary of a licensed bank;
 - (c) a banking institution or trust company outside Hong Kong that is subject to prudential supervision; or
 - (d) any other appropriately qualified institution appointed with the prior written consent of the client.

5. Operations

Records Required to be Kept

- 5.1 A Fund Manager should keep its accounts and records properly and in line with all applicable statutory requirements. Proper record keeping includes:

- (a) maintaining an audit trail of all transactions effected by the Fund Manager, all information relating to client accounts produced by third parties and all relevant internal reports, by keeping all transaction records such as contract notes from third party brokers, client registers, accounting/securities ledgers, registers of securities, and records of investment processes adopted;
- (b) maintaining appropriate procedures for the safekeeping, retrieval and storage of documents and records; and
- (c) complying with provisions of the Securities and Futures (Keeping of Records) Rules.

Auditors and Audited Accounts

- 5.2 A Fund Manager should appoint a firm of auditors to perform an audit of the financial statements of the corporation on at least an annual basis. The audited accounts should be filed in accordance with the applicable statutory requirements and be made available to clients upon request.

Portfolio Valuation

- 5.3 All assets held by a Fund Manager on behalf of clients should be valued on a regular basis and the basis of valuation disclosed to clients. Unless otherwise agreed with a client or specified in a collective investment scheme's constitutive documents, valuation should be made in accordance with the following general principles:

- (a) listed securities should be consistently valued at a price representative of either the daily opening, mid, closing or average price for that security at the stock exchange or market on which that security is listed or traded as indicated by an automatic price feed or other independent pricing source;
- (b) unlisted or unquoted securities should be valued at cost price subject to adjustment by reference to:
 - (i) comparable third party transactions in the same investments, taking into consideration the cost of the investments;
 - (ii) any appraisals of the relevant investments or issuer of the investments undertaken by qualified accountants, appraisers or credit rating agencies. Where necessary the Fund Manager should seek independent confirmation of the valuation from a suitably qualified person; and
 - (iii) any information generally about the relevant investments or issuer of the investments that is or becomes known to the Fund Manager from independent sources;

- (c) units or shares in collective investment schemes should be consistently valued by reference to the latest quoted price;
- (d) any listed securities which are not actively traded or have been suspended from trading should be identified and the price at which that security is valued should be monitored. In this case, a Fund Manager should maintain procedures to:
 - (i) demonstrate that it will actively seek independent confirmation of the appropriate price for the security from suitable brokers or market makers;
 - (ii) identify when such a security will be written down or written off in the valuation of a client account; or
 - (iii) ascertain whether it will in appropriate situations transfer the security to its own account and if so, at what price the client account will be compensated for the transfer.

Net Asset Value Calculation and Pricing

- 5.4 In connection with a collective investment scheme, a Fund Manager should ensure that a valuation is carried out, in accordance with the constitutive documents of the scheme, to calculate accurately the net asset value of the scheme.

Reconciliations

- 5.5 A Fund Manager should arrange to carry out reconciliations of the corporation's internal records against those issued by third parties e.g. clearing houses, banks, custodians, counterparties and executing brokers, to identify and rectify any errors, omissions or misplacement of assets, as follows:
- (a) reconciliations should be performed at least monthly;
 - (b) reconciliations should be prepared from an asset register that is maintained and used to update client asset ledger accounts.

Disclosure of Interests

- 5.6 A Fund Manager should disclose all interests in securities as required by all applicable statutory requirements and have procedures in place to ensure that staff are aware of such requirements.

III. DEALING WITH CLIENTS

6. Dealing with Clients

Providing Information About the Corporation

6.1 A Fund Manager should:

- (a) provide clients with adequate information about the corporation including its business address, relevant conditions or restrictions under which its business is conducted, and the identity and status of persons acting on its behalf with whom the client may have contact;
- (b) disclose the financial condition of its business to a client upon request.

Confidentiality

6.2 A Fund Manager should maintain proper procedures to ensure confidentiality of client information.

Account Opening Procedures/Information About Clients

6.3 A Fund Manager should:

- (a) take all reasonable steps to establish:
 - (i) the client's full and true identity, including the identity of the actual beneficiaries, where appropriate, and verify that identification where required;
 - (ii) where appropriate, the client's financial situation, investment experience, and investment objectives; and
- (b) maintain written procedures to comply with all relevant legal and regulatory requirements against money laundering, including the SFC's Guidelines on Money Laundering.

Client Agreements (Discretionary Services)

6.4.1 A Fund Manager should ensure that a written agreement (Client Agreement) is entered into with a client before any services are provided to or transactions made on behalf of that client. A Client Agreement should contain at least such information set out in **Appendix 1** and be provided in a language understood by the client.

6.4.2 Notwithstanding the above, in the case of a collective investment scheme:

- (a) where a Fund Manager is providing services to a collective investment scheme, a written management agreement in accordance with the rules of the collective investment scheme may be regarded as a Client Agreement;
- (b) where a Fund Manager is acting as distributor of a collective investment scheme on a non-discretionary basis, an authorised offering document and application form in accordance with the Code on Unit Trusts and Mutual Funds may be regarded as a Client Agreement.

Reporting: Periodic Statements

6.5 A Fund Manager should adhere to all relevant legal and regulatory requirements in respect of reporting, including the Securities and Futures (Contract Notes, Statements of Account and Receipts) Rules.

Valuations and Performance Reviews

6.6 Except as agreed otherwise in writing by the client or where the portfolio is a collective investment scheme, a Fund Manager should:

- (a) review the performance of each client's account against any previously agreed benchmark, either in writing to the client or by way of meeting, at least twice a year;
- (b) provide written portfolio valuations to the client at least as regularly as provided in the Client Agreement. The report should, as a minimum, include the following:
 - (i) the date at which the report is made;
 - (ii) the contents and value of the client portfolio at that date including income received;
 - (iii) movements in the value of the client portfolio;
 - (iv) any open positions in relation to derivative transactions.

Complaints

6.7 A Fund Manager should maintain:

- (a) procedures to ensure that:
 - (i) complaints from clients relating to its business are handled in a timely and appropriate manner;

- (ii) steps are taken to investigate and respond promptly to a complaint by a person other than an individual directly concerned with the subject of the complaint, or by the Designated Compliance Officer;
 - (iii) if a complaint is not remedied promptly, the client is advised of any further steps which may be available to the client under the regulatory system;
- (b) a register of complaints to give effect to (a) above. This should be reviewed by senior management on a regular basis.

7. Marketing Activities

Representations by the Fund Manager or its Representatives

- 7.1 A Fund Manager should ensure that any representations made and information supplied to a client are accurate and not misleading.

Issue of Marketing Materials

- 7.2 A Fund Manager should ensure that all advertisements and marketing materials are authorised as required by the SFC before issue. Where such materials are not required to be authorised, a Fund Manager should nonetheless ensure that marketing materials are accurate and not misleading and that any performance claims can be verified.

Offers of Investments

- 7.3 A Fund Manager should comply with all applicable statutory requirements regarding the offer of investments.

8. Fees and Expenses

Disclosure of Charges

- 8.1 A Fund Manager should disclose to the client the basis and amount of its fees and charges.

Fair and Reasonable Charges

- 8.2 All charges, fees and mark-ups affecting a client should be fair and reasonable in the circumstances, and be characterized by good faith. In connection with mark-ups levied on transactions on behalf of a client, where the Fund Manager is:

- (a) acting as agent, such mark-ups are prohibited;
- (b) acting as principal, the circumstances should be disclosed in the Client Agreement and transactions reported in periodic statements.

Rebates and Soft Commission

- 8.3 In connection with an authorised collective investment scheme, a Fund Manager should comply with 10.12 of the Code on Unit Trusts and Mutual Funds, and in connection with other clients with 13.1 to 13.4 of the Code of Conduct for Persons Licensed by or Registered with the SFC.

APPENDIX 1

Minimum Content of Discretionary Client Agreement

- (a) Full name and address of client;
- (b) Full name and address of Fund Manager business, including its licensing or registration status;
- (c) Undertakings to notify the other in the event of material changes;
- (d) Authorisation for discretionary management;
- (e) Statement of the client's investment policy and objectives, including any limitations or prohibitions on asset classes and markets (e.g. use of derivatives) or geographical spread, performance benchmark and/or attitude to risk;
- (f) The amount of all fees to be paid by the client, whether to the Fund Manager or a connected person with respect to the account, and a description of fees to be paid to third parties;
- (g) Any necessary consents in relation to cash rebates and soft commissions, if applicable;
- (h) Risk disclosure statement as required by the Code of Conduct for Persons Licensed by or Registered with the SFC;
- (i) Details of custody arrangements; and
- (j) Details of periodic reporting to be made to client.