



Appendix A:

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





Section IV:
**Code on Unlisted Structured Investment
Products**

**(as marked up against the proposed SIP Code to reflect amendments made
following the public consultation)**



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

Code on Unlisted Structured Investment Products

[Date]



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Explanatory Notes

1. The Securities and Futures Commission is empowered under ~~Part IV section 105~~ 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. ~~By virtue of section 105(1) of 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 and whether 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 ~~authorized~~.
 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 to achieve their underlying purposes. ~~Accordingly, this Code, through Where~~ the high-level principles, ~~may~~ apply to situations not specifically covered by any requirements in this Code, the requirements of the high-level principles should be observed. ~~Therefore, the spirit of this Code shall be observed as well as its letter and~~ 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.
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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 and/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

~~**Unless otherwise defined in this Code, terms and expressions used in this Code are as defined in the SFO.**~~

- 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:–“Advertising Guidelines” means the Advertising Guidelines Applicable to Unlisted Structured Products in Appendix D to 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.~~
- 2-2(b) ~~“Collateral” (抵押品) has the meaning ascribed to it in 5.12.~~
- 2-3(c) ~~“Code” (守則) means this Code on Unlisted Structured Investment Products, including its appendices.~~
- 2-4(d) ~~“Commission” or “SFC” (證監會) means the Securities and Futures Commission referred to in section 3(1) of the SFO.~~
- 2-5(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.~~
- 2-6(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.~~
- 2-7(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.~~
- 2-8(h) ~~“HKMA” (金管局) means the Hong Kong Monetary Authority.~~
- 2-9(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.~~
- 2-10(j) ~~“Key Product Counterparty” (主要產品對手) has the meaning ascribed to it in 5.5.~~
- 2-11(k) ~~“Offering document” (銷售文件) means an offering document for distribution in Hong Kong, which, pursuant to this Code, should contain ~~containing~~ 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.~~
- 2-12(l) ~~“Product Arranger” (產品安排人), in respect of a structured investment product, means an entity appointed pursuant to 4.1.~~



2.13(m) “Programme” (計劃) means a structured investment product issuance programme set up by an Issuer for the periodic issuance of structured investment products.

2.14(n) “Product KFS Key Facts Statement” (產品資料概要) means the product key facts statement required pursuant to 6.3.

2.15(o) “Reference assets” (參考資產) has the meaning ascribed to it in 5.7.

2.16(p) “Regulated Entity” (受規管實體) means an entity which is:-

- (a)(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
- (b)(ii) a corporation licensed by the Commission pursuant to section 116 of the SFO; or
- (c)(iii) an overseas banking entity which is subject to equivalent regulatory oversight to that of Hong Kong and is acceptable to the Commission.

(g) ~~2.17~~ “Structured investment products” (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.

~~2.1~~

Note: At the time of publication of this draft Code for consultation purposes, there are proposals to amend the SFO and the Companies Ordinance (Cap. 32, Laws of Hong Kong). These proposals are still under consideration and are expected to be the subject of a separate public consultation later this year. The proposed amendments include a definition of “structured products”. The definition of “structured products” adopted for this Code will be based upon that proposed for the legislative amendments, and will contemplate the types of structured products commonly seen to date in the retail market in Hong Kong. Please see the discussion in the “structured products” section of the consultation paper.]

2.2(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.



2.32.2 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 ~~will~~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 ~~both~~ at the time of issue of the structured investment product ~~and for~~. 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 during in which ~~any of~~ the Issuer's obligations ~~to investors~~ 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 in good standing and in particular, it~~ is not the subject of any disciplinary proceeding in respect of its licence or registration to conduct any regulated activity, ~~is not or~~ subject to any action by an exchange, regulated market or self-regulatory organisation for breach of any applicable rules, ~~and has never been convicted of any offence under applicable securities or corporate laws or other laws involving fraud or dishonesty 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 its meeting 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 good standing eligibility to act as ~~the an~~ Issuer.

- (b) ~~where~~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 ~~and for so long as~~. 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 ~~to investors in 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; ~~and~~

Note: The Commission may require the Guarantor to ~~confirm~~ provide its own records ~~s~~ of any past disciplinary action or proceedings taken against it



in Hong Kong or elsewhere and such other matters which may reasonably affect its good-standingeligibility 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 ~~due~~reasonable care and diligence in any appointment and selection of any ~~intermediaries~~distributors 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 ~~within of the scope of 3.3~~ type in (a) or (b)(ii) below shall appoint a Product Arranger ~~or Product Arrangers~~ in respect of the structured investment product, ~~to discharge who shall comply with the responsibilities set out~~ applicable requirements in this Chapter 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:-

~~*[Note: The requirement to appoint a Product Arranger is currently being considered, additionally, for situations where neither the Issuer nor, where applicable, the Guarantor is a licensed corporation or a registered institution under the SFO. Please refer to discussion in, and Question (5)(c) of, Section 1 of Part II of the consultation paper.]*~~

- (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 and Type 4 regulated activities;

~~*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 such a Product Arranger in respect of the structured investment product.*~~

- (a) ~~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, not be 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.

~~(i) be the subject of any disciplinary proceedings in respect of its licence or registration to conduct any regulated activity;~~

~~(ii) be, or have been, the subject of any sanction under the SFO for breach of any provision of the SFO or any of the codes or guidelines made under the SFO;~~

~~—be subject to any action by an exchange, regulated market or self-regulatory organis~~

~~(iii) action for breach of any applicable rules; or~~

~~(iv) have been convicted of any offence under applicable securities or corporate laws or other laws involving fraud or dishonesty.~~

Note: The Commission may require a Product Arranger to ~~confirm~~ 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 ~~good~~ standingeligibility 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 ~~satisfy itself and confirm to the Commission~~ 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 ~~due~~ reasonable care and diligence in selecting and (for the Issuer) appointing parties:-
- ~~(i)~~ (i) ~~who undertake one or more roles or services in respect of a structured investment product;~~
 - ~~(ii)~~ (ii) ~~or~~ who are or will be counterparties to material agreements in respect of the structured investment product; or
 - ~~(iii)~~ (iii) ~~or~~ to whose credit risk the Issuer or investors in the structured investment product may be exposed.
- ~~5.4(b)~~ (b) Without limiting the generality of ~~5.4(a), the foregoing,~~ the Issuer and, where applicable, ~~such each~~ Product Arranger shall give due consideration to the following matters:-
- ~~(a)(i)~~ (a)(i) ~~such parties 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
 - ~~(b)(ii)~~ (b)(ii) ~~in selecting such parties 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, ~~together with and~~ any party guaranteeing or providing credit support for such party's obligations, collectively referred to as a "Key Product Counterparty"), ~~for example a swap or forward arrangement~~, 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 ~~parties~~ described in ~~5.4 or~~ 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; **and**

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.

~~*Note: In considering whether reference assets are acceptable, the Commission will generally take into account the following factors:-*~~

~~(1) where structured 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 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 (which shall be reasonable in light~~



~~of the product strategy or objective and the intended target market) 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.~~

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:-~~The Issuer shall ensure that collateral held as security for the Issuer's obligations to investors in respect of a structured product satisfies the following requirements:-~~

- (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, ~~solely for the purpose of securing the interests of investors,~~ 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 ~~appropriately~~ diversified;



~~(j) 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 collateral shall not subject investors to any undue risks; and~~

~~(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 The collateral shall be marked to market daily. The Issuer shall ensure that such valuation is verifiable and independently conducted on the basis of a reliable up-to-date market value of each relevant asset according to established valuation policies consistently applied and disclosed in the offering document.~~

~~5.155.14~~ 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

~~5.16 The Issuer of a collateralised structured product shall ensure that the investor's security interests in the collateral are capable of being enforced in a timely and efficient manner and the realised proceeds are applied to meet any outstanding obligations of the Issuer to investors in the structured product.~~

~~5.175.15~~ 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;

~~(c) investors' claims to the proceeds of the collateral shall always rank in priority to all other claims, save for fees and costs of administrators or liquidators and other payments which are given priority under applicable law, or reasonable fees and costs of receivers, trustees or custodians as provided for in the relevant document. In each case, details of the payment priority must be set out in the offering document; and~~

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 ~~5.17(d)~~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.*

5.185.16 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 ~~5.175~~ 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.

~~5.195.17~~ The Issuer and, where applicable, each Product Arranger shall be satisfied, ~~and provide a confirmation to the Commission thereof,~~ that the collateralisation of the structured investment product adequately protects the interests of investors in the structured investment product.

Other requirements

~~5.205.18~~ 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.

~~5.215.19~~ 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 ~~5.2018~~ 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 ~~5.2018~~ to investors by the business day in Hong Kong following the acquisition of the collateral pursuant to ~~5.2220~~.

~~5.225.20~~ The Issuer shall ensure that relevant collateral is acquired and all rights and security interests in such collateral created ~~for the benefit of investors 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 ~~security 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~~Key Facts Statement. Such statement shall form a part of the offering document and shall contain ~~sufficient~~ 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~~Key Facts Statement 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.

~~6.9 The English and Chinese versions of any offering document carry equal weight.~~



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/distributors, Issuers should ~~also~~ 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 ~~and indicative valuations~~

- ~~7.3~~ (a) The Issuer shall ~~make firm price quotations~~ 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, ~~at least weekly~~, either itself or through its designated market agent. ~~Such quotations~~

~~(b)~~ Indicative bid prices shall be ~~fair and reasonable. They~~ 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 ~~foregoing requirement~~ requirements in 7.3:-

~~7.3(a)~~ in the case of a structured investment product with a scheduled tenor of ~~one calendar month~~ six months or less (in the absence of early termination or default) as stated in the relevant offering document. ~~;~~



~~7.4(b) The Issuer shall make available to investors daily, either itself or through its designated market agent, an indicative valuation of the structured product. Such indicative valuation shall be determined in good faith, on an independent basis, and shall be fair and reasonable. Where there is a material fluctuation in the indicative valuation of the structured product, the Issuer should provide a timely and effective explanation to investors. 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 ~~deliver to the Commission and~~ 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 or other documents~~ 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. Without being limited by the foregoing requirements, as soon as any of the financial information required by (i) to (iv) above is published or becomes available, the Commission considers it best practice for the Issuer to:—, 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 it is a matter for the Issuer to determine.
- ~~(a) prepare and issue a supplemental— (3) For the avoidance of doubt, the Issuer is reminded that, where it intends to continue offering document containing such financial information; and~~
- ~~(b) suspend any further issuance or offering of the structured investment product products to the public prior to authorization of the issue of, it needs to comply with the supplemental offering document by requirements in the Commission pursuant to the SFO and the Handbook Code (in particular Appendix C) with regard to disclosure of financial information in offering documents.~~
- (b) ~~The the~~ Issuer shall keep the Commission and all investors in the structured investment product informed as soon as reasonably practicable ~~of any material adverse change in the financial condition or business of~~ the Issuer or the Guarantor ~~or their respective corporate groups which could reasonably (as the case may be expected) ceases to be material to investors' interests in meet any of the structured product, including, without limitation:— core requirements in Appendix A:~~
- ~~(i) where the net asset value of the Issuer, or, where applicable, a Guarantor falls below the levels required by this Code; and~~
- ~~(ii) where the credit rating of the Issuer or, where applicable, a Guarantor falls below the levels required by this Code;~~
- (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 ~~negative~~adverse effect on the ability of the Issuer or, if applicable, the Guarantor or a Key Product Counterparty, to fulfil its commitments in respect of 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 ~~and, where appropriate, provide compensation to investors to ensure that investors are not disadvantaged because of such failure.~~



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; ~~and~~
 - (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; ~~and~~

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 ~~such~~ 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 be in good standing and~~ 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 ~~(if known)~~ 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) ~~Fees~~ 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~~Key Facts Statement

6. A Product ~~KFS~~Key Facts Statement 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 ~~any other company~~ 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 ~~least 5 but not more than 6 years or a period equal to the maximum tenor of the structured product, whichever is the longer, in each case~~ 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 advertisement, the period covered shall be at least 5 but not more than 65 years, or a period equal to the maximum tenor of the structured product, whichever is the longer 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 expected 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 ~~expected~~-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;



- ~~(a)(b)~~ the details required pursuant to 5.2018 and 5.2419 of the Code;
- ~~(b)(c)~~ an explanation of how the collateral satisfies each of the requirements in 5.13 of the Code, ~~including, without limitation, a confirmation under 5.13(e) and 5.15;~~
- ~~(c)(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);
- ~~(e)(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;
- ~~(e)~~ details of the basis upon which the collateral will be valued pursuant to 5.14 of the Code and the party performing the valuation;
- ~~(g)~~ without limiting 2(l) of this Appendix C above, details of when and how the rights and security 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 explain 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;
- ~~(f)~~ 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.
- ~~(g)(h)~~ the policy with respect to selecting and administering collateral;
- ~~(h)(i)~~ the scheduled tenor of each asset comprising the collateral;
- ~~(i)(j)~~ an explanation of how the risks presented by the collateral may affect the overall return of the structured investment product; and
- ~~(j)(k)~~ where the Issuer seeks to rely on 5.2419 of the Code, the reasons for this, the details required by 5.2419(a) of the Code and details of when and how investors will receive the details required to be provided pursuant to 5.2419(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; ~~or~~
 - (ii) International Financial Reporting Standards ("IFRS") as promulgated from time to time by the International Accounting Standards Board; ~~or~~ 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 business of the Issuer, the Guarantor or any Key Product Counterparty ~~or of the corporate group of any of the foregoing~~ since the date of the most recent audited accounts for such entity ~~or group~~ 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.”; ~~and~~

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, ~~and that the Issuer will ensure that the structured product continues to comply 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. ~~Details~~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, ~~including tax implications for investors.~~

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 and indicative valuations

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~~sizes, if any, for each request for liquidity provision; ~~and~~
- ~~(d)~~ where and how investors can obtain or access indicative ~~valuations~~bid prices, and the implications of such prices to investors;
- ~~(e)~~ the mechanisms of market-making, and firm price quotations. ~~logistics with regard to placing orders and settlements;~~ and
- ~~(f)~~ Valuations of the 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 ~~and~~.

Valuation of the structured investment product or any collateral

40. The details of any valuation ~~policies required by 3.5(f) and, if applicable, 5.14, including, without limitation, valuation methodologies to be used~~policy or methodology in respect of the event of market disruptions or other contingenciesstructured 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 security 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~~distributors~~ 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; ~~and~~
- (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 **at least 5 but not more than 6 years, or a period equal to the maximum tenor of the***



~~structured product, whichever is the longer 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 ~~expected~~ 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 ~~expected~~ 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.