



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

**CONSULTATION CONCLUSIONS ON THE
PROPOSED STREAMLINING OF THE
PRE-VETTING OF NOTICES AND
ADVERTISEMENTS OF RELEVANT
AUTHORIZED COLLECTIVE INVESTMENT
SCHEMES**

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CONSULTATION CONCLUSIONS ON THE PROPOSED STREAMLINING OF THE PRE-VETTING OF NOTICES AND ADVERTISEMENTS OF RELEVANT AUTHORIZED COLLECTIVE INVESTMENT SCHEMES

EXECUTIVE SUMMARY

1. On 31 January 2008, the Commission issued a consultation paper (the “Consultation Paper”) inviting comments on proposed revisions to its codes and guidelines and the administrative practice in respect of the pre-vetting of notices and advertisements of collective investment schemes authorized under the following codes (“authorized schemes”):
 - Code on Unit Trusts and Mutual Funds (the “UT Code”)
 - Code on Investment-Linked Assurance Schemes (the “ILAS Code”)
 - Code on Pooled Retirement Funds (the “PRF Code”)
 - SFC Code on MPF Products (the “MPF Code”)(collectively, the “Product Codes”)
2. The consultation period ended on 29 February 2008. The Commission received 16 written submissions from 15 respondents, including various market practitioners, legal professionals and industry associations.
3. The respondents welcomed and were generally supportive of the proposed changes to the existing regime in relation to the pre-vetting of notices and advertisements of authorized schemes as well as the proposed revisions to the Product Codes and the proposed common set of advertising guidelines (the “revised Advertising Guidelines”).
4. Having considered the comments received, the Commission now concludes that the pre-vetting of notices and advertisements be streamlined as proposed in the Consultation Paper and the proposed revisions to the Product Codes and the proposed revised Advertising Guidelines be adopted, with the amendments as discussed in this paper. The final version of the revisions to the Product Codes and revised Advertising Guidelines in marked-up format are set out in Annexes 1 to 5. Amendments made to the proposed revisions to the Product Codes and revised Advertising Guidelines following the close of the consultation have been highlighted in different shades for easy reference.
5. The final set of revisions to the Product Codes and revised Advertising Guidelines will be published in the Government Gazette. The gazette notice will specify the effective date of the revisions to the Product Codes and the revised Advertising Guidelines, which will be no later than 1 August 2008. Advertisement issuers will be permitted to apply the respective Advertising Guidelines as included in the current Product Codes until 31 December 2008.

6. A number of respondents also sought clarification and requested practical examples and illustrations to be given in respect of the interpretation and application of the revised Advertising Guidelines. The Commission will post a set of Frequently Asked Questions (“FAQ”) on Advertising Materials of Authorized Schemes on the website to give examples on the practical applications of the Product Codes, and in particular, the revised Advertising Guidelines. The examples given will be for illustrative purposes only and not intended to define the precise extent or limit the application of the Product Codes and/or the revised Advertising Guidelines. Each case must be determined based on its particular facts and circumstances.

COMMENTS RECEIVED AND THE COMMISSION’S RESPONSES ON THE PROPOSED REGULATORY APPROACH

Notices

7. *Public Comments:* All respondents supported the Commission’s proposal to cease pre-vetting of all notices, letters and public announcements to investors other than those relating to withdrawals of authorization, mergers or terminations. Three respondents sought clarification on the circumstances where the Commission would require submission of draft notices for review. Two respondents enquired about the monitoring measures and follow-up actions to be taken by the Commission under the post-vetting regime. Four respondents further suggested that pre-vetting by the Commission should not be required for changes to offering or constitutive documents, especially those that were administrative in nature.
8. *Commission’s Response:* All notices, other than those relating to withdrawals of authorization, mergers or terminations, will not need to be submitted to the Commission for approval prior to distribution. The Commission will implement this proposal by revoking the authorization condition requiring all notices, letters and public announcements to investors to be submitted to the Commission for prior approval. The Commission will notify the approved persons of all relevant authorized schemes in writing in relation to the changes to the authorization conditions, pursuant to section 104(4) of the Securities Futures Ordinance (the “SFO”).

The Commission will monitor compliance with the Product Codes through subsequent reviews of filed notices. The Commission may make follow-up enquiries, require clarification notices to be issued or take such regulatory action as considered appropriate.

Separately, having considered the respondents’ suggestions and noted the practice in some major overseas jurisdictions, such as the United Kingdom (the “UK”), the Republic of Ireland, Luxembourg and Australia, the Commission has further streamlined the pre-vetting requirement for scheme changes and has amended the Product Codes to require only the following proposed scheme changes to be submitted to the Commission for prior approval:

- changes to constitutive documents;
- changes of key operators (including, where applicable, the trustee / custodian, management company / product issuer and its delegates and Hong Kong representative) and their regulatory status and controlling shareholder;
- changes in investment objectives, policies and restrictions (including the purpose or extent of use of derivatives), fee structure and dealing and pricing arrangements; and
- any other changes that may materially prejudice investors' rights or interests.

Changes other than those set out above will not require the Commission's prior approval. The Commission has also clarified in the Product Codes that any increase in fees and charges from the current level as stated in the offering documents up to the maximum level permitted by the constitutive documents may be effected without the Commission's prior approval. However, prior notice of not less than one month should be given for any increase in fees and charges.

In any event, management companies / product issuers are under a duty to inform investors as soon as reasonably practicable of any information concerning the scheme, including any changes to the offering or constitutive documents, which is necessary to enable investors to appraise the position of the scheme. The offering documents should also be updated to incorporate such changes and may be re-issued without further authorization provided that the content and format of such documents remains fundamentally the same as the version submitted for authorization. The authorization letter for offering documents will include appropriate terms to allow this flexibility. The updated offering documents should be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.

Advertisements

General

9. *Public Comments:* All respondents generally supported the Commission's proposal to shift from pre-vetting towards post-issue monitoring of the advertisements of authorized schemes exempted under section 103 of the SFO, although there were comments suggesting that legislative amendments would be a more appropriate channel to achieve the desired policy objective.

A number of respondents commented that the proposal to shift from pre-vetting to post-vetting would create an unlevel playing field between issuers / schemes that would be able to use the exemptions under the SFO and those that would not (e.g. advertisements of mandatory provident fund ("MPF") schemes and their constituent funds, pooled retirement funds and investment-linked assurance schemes, and advertisements issued by persons who are not licensed or registered for Type 1, Type 4 or Type 6 regulated activity). These respondents were of the view that the same exemption should be extended to cover such authorized schemes for the purpose of fairness and consistency of application.

10. *Commission's Response:* The Commission will adopt the proposed revisions to the Product Codes to permit issuers of advertisements to make use of the exemptions currently provided under section 103 of the SFO such that their issue of advertisements will no longer be subject to pre-vetting by the Commission.

The Commission appreciates the concern raised by the respondents in respect of the current restrictions under the SFO. As discussed in paragraph 23 of the Consultation Paper, section 103(2)(a) of the SFO provides a specific exemption from the authorization requirement for advertisements that are “*made by or on behalf of an intermediary licensed or registered for Type 1, Type 4 or Type 6 regulated activity (whether acting as principal or agent) in respect of securities*”. In order to qualify for the above exemption, the issue of advertisements must be (i) in respect of securities and (ii) made by or on behalf of an intermediary duly licensed or registered for the relevant regulated activity. The term “*securities*” is defined under the SFO to include interests in any collective investment scheme but expressly excludes MPF schemes and their constituent funds, occupational retirement schemes and insurance contracts. It follows that the current exemption cannot be expanded to cover such authorized schemes without legislative amendments to the SFO.

The Commission will monitor closely the implementation situation of the streamlined approach and will take into account the suggestions raised by the respondents and consult the public further in the next review of Part IV of the SFO to further streamline the authorization requirement for advertisements of authorized schemes in the long run.

Scope of exemptions

11. *Public Comments:* Three respondents sought clarification on the scope and application of the exemption under section 103(2)(a) of the SFO, in particular, how schemes managed by overseas management companies and others who are not licensed would be able to utilize this exemption.
12. *Commission's Response:* The Commission encourages issuers of advertisements of authorized schemes to make use of the exemptions under section 103 of the SFO wherever applicable and will no longer pre-vet advertisements that are eligible for the exemptions upon the revised Product Codes becoming effective. The issue of advertisements of an authorized scheme managed by an overseas management company may benefit from the exemption under section 103(2)(a) of the SFO if it is made by a representative or distributor who is licensed or registered for Type 1, Type 4 or Type 6 regulated activity. Such representative or distributor should take responsibility for the advertisements it issues.

Advertisements of authorized schemes under the Companies Ordinance regime

13. *Public Comments:* Four respondents sought clarification as to whether the relevant advertisements would be caught by the prospectus regime under the Companies Ordinance (the “CO”) in the case where the scheme is a body corporate (e.g. a mutual fund company).

14. *Commission's Response:* It has not been a policy intent of the Commission to regulate advertisements of authorized schemes through the CO regime. Hence, the Commission will seek to amend paragraph 12 of Schedule 17 of the CO so as to facilitate schemes that are in corporate form to make use of the exemptions under section 103 of the SFO and to ensure that such advertisements will not otherwise fall under the definition of "*prospectus*" pursuant to the CO. Such consequential amendments to the CO shall be a subject of a separate consultation.

As an interim measure prior to effecting amendments to the CO, the management company / product issuer of a scheme may apply to the Commission pursuant to section 105(1) of the SFO for a one-off authorization of the issue of all advertisements of the scheme, on condition that (i) the scheme is and remains authorized by the Commission under section 104 of the SFO, (ii) each of the advertisements is exempted from authorization by the Commission under section 103 of the SFO, (iii) each of the advertisements is in compliance with the advertising guidelines applicable to the scheme, and (iv) the Commission reserves the right to vary or withdraw its authorization as it thinks fit, subject to section 106 of the SFO. The Commission may impose further conditions as it considers appropriate.

New authorization condition

15. *Public Comments:* In the Consultation Paper, the Commission proposed to impose a new authorization condition on all authorized schemes requiring the relevant management company / product issuer to cease or procure (or, for existing authorized schemes, use its best endeavours to procure) its agent to cease issuing an advertisement upon the Commission's request. Four respondents suggested that the condition applicable to existing authorized schemes and schemes authorized after the adoption of the revised Product Codes should be aligned. One respondent further suggested stipulating that no purchase orders may be accepted after the issue of a request by the Commission to cease issuing any relevant advertisement. One respondent suggested the Commission to allow a reasonable notification period for the management company / product issuer to cease or procure its agent to cease issuing an advertisement as there might be practical difficulties to withdraw an advertisement scheduled to be published or broadcast immediately.
16. *Commission's Response:* The Commission agrees with the suggestion of imposing the same authorization condition on all authorized schemes no matter whether they are authorized prior to or after the adoption of the revised Product Codes. Accordingly, the new authorization condition will require the scheme, its management company / product issuer to "*cease and/or use its best endeavours to procure its agents to cease issuing an advertisement upon the request of the Commission*". The Commission may also take other appropriate actions within its powers depending on the circumstances of the case.

As regards the notification period for ceasing the issue of advertisements, the Commission is of the view that its discretion to require an advertisement to be withdrawn from publication or broadcast will only be exercised when the advertisement is in breach of the applicable advertising guidelines or is otherwise false or misleading. Hence, it is in the public interest that any such advertisement be withdrawn from issuance as soon as practicable. The Commission will take

appropriate actions in the circumstances. However, it would not be practicable to specify a notification period to be applied to the relevant management company / product issuer in all circumstances.

COMMENTS RECEIVED AND THE COMMISSION'S RESPONSES ON THE PROPOSED REVISIONS TO THE PRODUCT CODES

Scheme Changes

General

17. *Public Comments:* One respondent suggested that the provision relating to increases in fees and the provision relating to mergers and terminations be combined under the section regarding the changes to documentation.
18. *Commission's Response:* The Commission will simplify the Product Codes, combining the provision relating to increases in fees with the provisions relating to scheme changes. However, since mergers and terminations may not necessarily involve a change to the documentation, the Commission considers it more appropriate to set out the requirements for mergers and terminations under a separate section.

Notice period

19. *Public Comments:* One respondent suggested that the three-month notice period for fee increase should remain so as to allow investors sufficient time to consider and take action.

Two respondents suggested that for changes to scheme's documents including fee increases, offshore schemes should be allowed to follow any shorter notice period requirement as permitted under their local regulations and as disclosed in the offering documents.

Two respondents contended that prior notification should not be required for changes in the underlying managers of multi-manager schemes. They explained that multi-manager structures were, in fact, designed to facilitate an efficient change in the underlying managers and it would be within the expectation and in the best interests of investors for changes of underlying managers to occur within the shortest period of time.

Three respondents sought clarification as to the meaning of "*exceptional circumstances*" under the revised Product Codes where the Commission might require a longer notice period of up to three months.

20. *Commission's Response:* In determining an appropriate notice period for a proposed change to a scheme, the Commission has sought to strike a balance between investor protection and the need for greater flexibility for authorized schemes to implement the change. The notice period required for fee increases under different overseas jurisdictions varies. For example, in the UK, the relevant regulations require a 60-day prior notice period whereas in other jurisdictions such as the United States of America

and Australia, there is no specified prior notice period. On balance, the Commission is of the view that the requirement of at least one month's prior notice is generally reasonable for schemes with frequent dealing.

For multi-manager schemes, our current practice already permits changes of underlying managers be effected without prior notification to investors in cases where the scheme's offering document has already disclosed clearly (i) the multi-manager feature of the scheme, (ii) the identity of each potential underlying manager, and (iii) that changes of underlying managers can be effected from time to time without prior notice. Any new appointment or removal of potential underlying managers that triggers amendments to the scheme's documents (e.g. appointment of new underlying managers), however, requires prior notification to investors. Having considered the respondents' comments, the Commission will allow further flexibility of the appointment of underlying managers by multi-manager schemes. Instead of requiring the identity of each potential underlying manager to be disclosed in the scheme's offering document and prior notification to be made to investors for any new appointment or removal of such underlying managers, the Commission will require a current list of underlying managers to be maintained at all times and made available for inspection by the public upon request.

The Commission would like to reiterate that the notes added to the Product Codes (11.1A of the UT Code, 10.1A of the ILAS Code, 10.1A of the PRF Code and 8.2A of the MPF Code) merely serve to codify our existing practice in respect of the notice period requirement and are not intended to impose any stricter requirement. In determining whether any circumstances would be "*exceptional*" that warrant a longer notice period of up to three months, the Commission will consider the circumstances on a case by case basis and will generally take into account factors such as (i) the nature of the proposed changes, (ii) the potential effect or consequences of the proposed changes to investors, and (iii) the dealing frequency of the relevant scheme. For example, a change that enables a passively managed index fund that has a dealing frequency of one month to become an actively managed equity fund may be considered as "*exceptional*".

Filing of notices

21. *Public Comments:* One respondent sought clarification on the scope of notices for which the post-filing requirement would be applicable. Another respondent suggested that the time period for post-filing of notices could be modified from two weeks to ten Hong Kong business days so as to avoid any possible delays due to holiday reasons.
22. *Commission's Response:* The post-filing requirement in the Product Codes will be applicable to all notices. It will not, however, apply to advertisements. When considering the time period allowed for the post-filing of notices, the Commission has already taken into account the impact of possible holidays and built in adequate buffer period. The Commission is of the view that a two-week period should be more than sufficient given that the notices concerned have already been finalized and issued to investors.

Application procedure and timing for approval of proposed changes to documentation

23. *Public Comments:* One respondent questioned whether the requirement of submitting proposed changes to the scheme's documents to the Commission for prior approval and determination of the required notice period would in effect result in a longer lead time as the management company / product issuer would be required to submit the revised documents to the Commission before the relevant notice could be released to investors.
24. *Commission's Response:* As discussed in paragraph 8 above, the Commission will further streamline the prior approval and notice requirement in relation to scheme changes and related notices. The Commission expects that this streamlined approach will provide increased flexibility for the relevant management company / product issuer and allow additional time savings, especially for minor changes where the Commission's prior approval will not be required. Even for scheme changes that require the Commission's prior approval, similar to current practice, it is not necessary for the management company / product issuer to submit the revised documents to the Commission for the determination of the notice period. A summary of changes is sufficient for this purpose. Hence, the notice period may start running concurrently with the processes of preparation, review and authorization of the revised scheme documents.

Withdrawal of Authorization / Merger or Termination

25. *Public Comments:* One respondent sought clarification on the content requirements applicable to notices of withdrawal of authorization, merger or termination and, in particular, to what extent the consequences and effects of such events on existing investors should be stated in the notice.
26. *Commission's Responses:* The Commission would like to clarify that the revision to the relevant provisions in the Product Codes (11.4 and 11.5 of the UT Code, 10.5 and 10.6 of the ILAS Code, 10.5 and 10.6 of the PRF Code and 8.5 and 8.5A of the MPF Code) is not intended to introduce any new requirements but rather serves to codify the key content requirements applicable to such notices as implemented under the existing regime. The extent to which the consequences and effects should be stated in the notice inevitably varies and depends on the circumstances of each case. The guiding principle, however, remains the same that the disclosure should contain adequate information for an investor to appreciate the likely impact of the withdrawal of the authorization, merger or termination on his investment so as to enable him to make an informed decision.

Advertising Materials

Use of authorized advertisements

27. *Public Comments:* With respect to the proposed flexibility provided to advertisement issuers to re-issue an authorized advertisement with updated performance information of schemes and general market commentary without further authorization, one respondent suggested that the terms in the authorization letter for advertisements be amended to provide this flexibility. Another respondent suggested that additional

flexibility be given for subsequent alterations of the format of presentation of the same content of authorized advertisements to cater for different publication sizes.

28. *Commission's Response:* The Commission will include appropriate terms in the authorization letter for advertisements to allow this flexibility. The Commission will also include this new provision in the Product Codes (11.12 of the UT Code, 10.8 of the ILAS Code, 10.8 of the PRF Code and 8.7 of the MPF Code) for clarification purpose. In considering whether to permit subsequent alterations of format, the Commission is concerned that allowing such alterations may result in advertisements being significantly different from the authorized version. Provided that the overall proportion remains the same, a change in publication size will not be regarded as a change in format.

Record keeping

29. *Public Comments:* On the proposed record keeping requirement for advertisements, three respondents sought clarification respectively as to (i) whether the records could be retained in electronic format, (ii) whether the requirement would only be applicable to the first issue, but not subsequent issues, of regular publications where performance information and general market commentary might have been updated; and (iii) the circumstances under which the Commission would request for such records to be made available.
30. *Commission's Response:* As already set out in the revisions to the Product Codes for consultation, records of advertisements may be kept in their actual form or by way of a copy of the final proof. Such copy, which may be in paper form (hard copy) or electronic format (soft copy), should enable the issuer to reproduce the actual advertisement in its same form and content if necessary. For regular publications, records of all issues should be kept to facilitate any investors' enquiries or complaints that may arise as well as for regulatory purposes. The Commission will request for such records to be made available at relevant inspections, surveillance checks, during enquiries and investigations of investors' complaints and any other circumstances as the Commission considers appropriate.

Nomination of one person to liaise with the Commission

31. *Public Comments:* One respondent expressed that there might be practical difficulties in complying with the proposed Product Codes requirement to nominate a single delegate per licensed entity to liaise with the Commission for the purpose of seeking the Commission's authorization of advertisements. Another respondent enquired if such requirement would be the same as the current practice where more than one single point of contact could be appointed on a case by case basis.
32. *Commission's Response:* In order to avoid the practical difficulties envisaged by certain advertisement issuers and to facilitate the need of having more than a single contact on a case by case basis, the Commission has further amended the Product Codes to make the requirement a recommended practice instead. The Commission wishes to clarify that this provision will only be applicable in cases where authorization of advertisements by the Commission is required and is not applicable to licensed issuers who can make use of the relevant exemptions under the SFO.

Advertising Guidelines

Harmonization of the advertising guidelines under the respective Product Codes

33. *Public Comments:* The respondents generally agreed with the proposed harmonization of the advertising guidelines applicable to different schemes authorized under respective Product Codes. Three respondents suggested the Commission to govern the conduct of advertisement issuers under the conduct regime rather than the product regime for better overall governance. Incorporating the revised Advertising Guidelines to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”) was suggested as a step towards achieving this.
34. *Commission’s Response:* The Commission will adopt the common set of revised Advertising Guidelines as proposed in the Consultation Paper, subject to further amendments as discussed below. As set out in 12.1 of the Code of Conduct, licensed or registered persons are required to ensure compliance with the law, rules, regulations and codes administered or issued by the Commission, which include such Advertising Guidelines in effect. In addition, as stated in the revised Advertising Guidelines, issuers (including licensed and registered persons acting as distributors) are required to follow the guidelines therein. Hence, the Commission is of the view that there is no need to incorporate further specific references in the Code of Conduct.

Application of the revised Advertising Guidelines

(introductory paragraphs of the revised Advertising Guidelines)

35. *Public Comments:* The revised Advertising Guidelines provides that “*under no circumstances may an issuer disclaim its liabilities in respect of the accuracy of the contents of its advertisements.*” One respondent commented that for advertisements prepared by a third party and distributed by an intermediary on its website, the relevant third party should be held responsible for the advertisements.
36. *Commission’s Response:* The primary responsibility for advertisements and the onus of compliance always rests with the issuer, whether in its capacity as a management company / product issuer, a distributor or an agent appointed to act on behalf of an authorized scheme or its operators. For the avoidance of doubt and regulatory supervision purposes, the revised Advertising Guidelines will require the full name of the issuer to be disclosed in every advertisement under most circumstances. For an advertisement that is prepared by the management company / product issuer of an authorized scheme and distributed by the distributor, the management company / product issuer or the distributor may be named as the issuer of the advertisement depending on which party is to bear the primary responsibility of the advertisement.

With respect to information quoted from external sources or provided by third parties, the Commission remains of the view that advertisement issuers should be required to have a reasonable belief that such information is accurate, complete and up-to-date. In practice, such information may be quoted without the third party’s express knowledge or endorsement and the third party may have little control as to the use and presentation of such information. Rather, an issuer may choose not to include any

information sourced from third parties in its advertisement should it be in doubt of the accuracy, completeness and timeliness of such information.

General principles

(paragraphs 1-2 of the revised Advertising Guidelines)

37. *Public Comments:* Three respondents suggested including “*conciseness*” as one of the general principles governing the disclosure in advertisements. Another respondent suggested adding a general principle that explicitly requires an advertisement not to focus purely on performance or have a disproportionate prominence given to past performance.
38. *Commission’s Response:* The Commission does not consider “*conciseness*” necessary or appropriate to be included as a requirement for advertisement disclosure while advertisement issuers are always encouraged to present information in a concise manner. “*Conciseness*” is largely a subjective matter and the Commission will continue to leave it to the industry to decide on the length and style of presentation to the extent that the principles and requirements of the applicable advertising guidelines are observed. Separately, the Commission considers the general principles that require advertisements to be balanced and not biased or misleading, together with the disclosure of appropriate warning statements, essentially include the principle that advertisements should not place too much focus on past performance. The general principles in the revised Advertising Guidelines will be adopted as proposed in the Consultation Paper.

Performance information

(paragraphs 8-16 of the revised Advertising Guidelines)

Prospective yield

39. *Public Comments:* Paragraph 10 of the revised Advertising Guidelines as proposed in the Consultation Paper permits schemes that substantially invested in fixed income and money market instruments to present a substantiated prospective yield in advertisements. Three respondents suggested extending such application to schemes that had an investment objective of income generation and those that provided stable and predictable distributions. On the other hand, one respondent disagreed with the proposed revision and commented that the returns of fixed income products and money market funds might be negative despite having positive yields. This respondent was of the view that prospective yields should only be allowed for guaranteed products.
40. *Commission’s Response:* While prospective yield does not present a full picture of the potential return of a scheme, such measure may provide useful information for investors to understand and compare the expected payouts of different schemes that provide regular distributions. Hence, in response to the respondents’ comments, the Commission has further amended paragraph 10 of the revised Advertising Guidelines (i) to also allow prospective yields to be disclosed for schemes that invest substantially in real estate investment trusts (“REITs”) or other investments that provide regular and stable distributions; and (ii) to require the disclosure of a warning statement to the effect that a positive distribution yield does not imply a positive

return to accompany the presentation of prospective yields. The Commission also wishes to remind issuers of advertisements that they have the responsibility to ensure any prospective yield presented can be properly substantiated.

Minimum performance information

41. *Public Comments:* Four respondents suggested allowing flexibility in the presentation of performance information, taking into account the differences among scheme types, distribution media and other regulatory requirements. Two of these respondents quoted the example of an MPF scheme, which is already subject to the performance disclosure requirements of the Mandatory Provident Fund Schemes Authority in respect of its fund fact sheets, and they commented that additional minimum information imposed by the revised Advertising Guidelines would increase the preparation and distribution costs of such fact sheets. Another respondent suggested that regular and website publications be exempted from disclosing such minimum performance information.

One of the above respondents also suggested such minimum performance information be limited to cover returns on net asset value (“NAV”) but not other performance parameters such as dividend yield, standard deviation or other measures.

42. *Commission’s Response:* As mentioned in paragraphs 50 and 51 of the Consultation Paper, the minimum standard for performance information has been introduced with an aim to standardize the presentation of performance information to allow better comparisons on performance and appreciation of volatility among schemes by the investing public. In formulating this minimum standard, the Commission has taken into account the differences of various scheme types and other regulatory requirements. The new requirement will not forbid the disclosure of any additional performance information, subject to compliance with the revised Advertising Guidelines, and hence, it will not be incompatible with any other regulatory requirements to which an authorized scheme may be subject. Issuers of advertisements may present minimum performance information in the footnotes of an advertisement.

The Commission regards regular or website publications as a few of the best means of allowing comparison among schemes. As such, the presentation of the minimum performance information in these media should be fostered and will not be exempted.

Having considered the respondent’s comments, the Commission has further amended paragraph 12 of the revised Advertising Guidelines to clarify that the minimum performance information required to be disclosed relates only to NAV / price returns, where applicable.

For illustrative purposes, the Commission will set out a number of sample disclosures on minimum performance information under the revised Advertising Guidelines in the FAQ on Advertising Materials of Authorized Schemes.

Short-term performance

43. *Public Comments:* In relation to the proposal to remove the limit on presenting only one less-than-one-year's figure, one respondent expressed concerns with the possibility that short-term performance might mislead investors and suggested that such performance, if presented, should not be used as the primary message of an advertisement and that such information should always be accompanied by a statement that short-term performance might not be indicative of the scheme's true character.
44. *Commission's response:* The increased flexibility to present more short-term figures has been proposed with the introduction of the minimum performance information requirement. In addition, the revised Advertising Guidelines also require less-than-one-year's figures to be presented in the same format as and no more prominently than the most recent 1-year figure (or since launch figure if the scheme has a track record of between 6 to 12 months). Hence, no short-term performance is expected to be presented on a stand-alone basis. The Commission believes that the above requirements on top of the general principles of requiring advertisements to be balanced and not misleading serve as good guiding principles to steer advertisement issuers away from placing disproportionate emphasis on short-term performance.

Hypothetical figures

45. *Public Comments:* On the Commission's proposal to require the presentation of the worst-case scenario of the payout mechanism, one respondent suggested that rather than only presenting the worst-case scenario, a balanced approach with a range of different scenarios should be required to provide investors with fairer and more reasonable information.
46. *Commission's response:* The Commission believes that the worst-case scenario should be presented so as to let investors appraise the potential downside of the investment. The presentation of different scenarios is not prohibited. However, the Commission does not consider it necessary to specify the presentation of different scenarios as a requirement in the revised Advertising Guidelines because, based on past experience, it has always been the worst-case scenario that is being left out from the illustrations but not those of high and moderate payouts.

Back-tested and simulated performance information

47. *Public Comments:* Three respondents disagreed with the proposal of permitting only passively managed formula funds to present back-tested or simulated performance as they regarded such proposal as one giving preferential treatment to a particular fund type. They suggested broadening the application of such proposal to all types of funds without a track record. On the other hand, one respondent considered that back-tested and simulated performance, being prone to manipulation, should only be used under rare circumstances such as for a very sophisticated product. Nevertheless, all respondents commenting on this proposal agreed with the Commission that detailed rules and guidelines should be developed to govern the preparation basis and presentation of such performance information.

48. *Commission's Response:* Major overseas jurisdictions, such as the UK and Australia, only allow passively managed funds to present back-tested or simulated performance. For actively managed funds, any back-tested or simulated performance would be meaningless and subject to manipulation as it would be impossible to truly replicate past investment decisions with current information or hindsight. Given the diverse views, the Commission considers that this topic will require further consideration. Further, the Commission will work on developing the detailed rules and guidelines governing the preparation basis and presentation of back-tested and simulated information and will further consult the public on these rules and guidelines. Meanwhile, the presentation of back-tested or simulated performance is not permitted.

Comparison of performance and use of comparative indices
(*paragraphs 17-19 of the revised Advertising Guidelines*)

49. *Public Comments:* One respondent recommended that any use of comparative indices other than the benchmark as stated in the scheme's offering document should be disclosed and explained in the advertisements. In relation to the use of a customized index, another respondent suggested the Commission to require a disclosure of an additional warning that the customized index was not commonly used.
50. *Commission's Response:* The Commission has further amended paragraph 17 of the revised Advertising Guidelines to clarify that the use of an index which most closely reflects the investment focus of the scheme for performance comparison will only be permitted for schemes whose offering documents have not already specified a benchmark. Otherwise, the scheme should always use its benchmark for performance comparison. Performance of other comparative indices may only be presented as additional information. Regarding the additional warning suggested for the use of customized indices, the Commission considers that the current provision requiring the disclosure of the creation basis has already made clear that such indices are not common but are customized.

The Commission will incorporate the existing FAQ on the Presentation of Benchmark Performance in Advertising Materials of SFC-authorized Unit Trusts and Mutual Funds as currently published on our website into the FAQ on Advertising Materials of Authorized Schemes.

Changes to a scheme
(*paragraph 21 of the revised Advertising Guidelines*)

51. *Public Comments:* On the requirement to accompany performance information by explanatory notes on the changes in the operations of a scheme during the relevant performance period, one respondent commented that this requirement should not apply to changes in investment objectives or investment advisers where the legal identity of the authorized scheme remained unchanged as the disclosure would otherwise become very lengthy for schemes with a long historical record.

Another respondent sought clarification as to whether the Commission would include this disclosure requirement regarding the operational changes to a scheme as a condition for authorization of the related changes to scheme documents.

52. *Commission's Response:* The above requirement is intended to apply to all changes to a scheme that have significant impact on the scheme's performance, irrespective of whether the legal identity of the scheme has changed or not. Therefore, it will apply to changes in investment objectives and investment advisers if such changes will have a significant impact on the scheme's performance. However, the explanatory notes should be specifically tailored for the circumstances of the change so as to ensure that the presentation of performance information prior to the change is not misleading. The Commission has further amended the provision under paragraph 21 of the revised Advertising Guidelines to clarify this.

Given that the relevant requirement will be set out in the revised Advertising Guidelines, the Commission does not consider it necessary to include it again as a condition for authorization of the related changes to scheme documents. The Commission will set out certain examples of circumstances that require additional explanatory notes in the FAQ on Advertising Materials of Authorized Scheme and will update this FAQ from time to time for industry reference. Management companies or product issuers and advertisements issuers are encouraged to use their professional judgement to determine the disclosure, if any, appropriate for their specific circumstances.

Performance information of an unauthorized scheme
(paragraph 22 of the revised Advertising Guidelines)

53. *Public Comments:* One respondent expressed concerns that investors might not have sufficient information for making investment decisions if performance information of an unauthorized scheme could no longer be shown in an advertisement of a newly authorized scheme after it had attained a six-month track record.

The respondent also suggested a slight amendment to the disclosure wordings regarding the unauthorized scheme under paragraph 22(c)(iii) of the revised Advertising Guidelines from "*the unauthorized scheme is not authorized in Hong Kong and not available to Hong Kong investors*" to "*the unauthorized scheme is not authorized by the relevant regulatory authority in Hong Kong and not available to the public of Hong Kong*".

Another respondent commented that the requirement to state "*whether the unauthorized scheme is subject to any significantly different terms (e.g. different / lower fees and charges)*" under paragraph 22(c)(ii) would be difficult to enforce and monitor and suggested it to be removed.

54. *Commission's Response:* Allowing past performance of an unauthorized scheme to be included in an advertisement of a newly authorized scheme serves to facilitate investors' understanding of the management company's past track record for a scheme under the same management and with substantially similar investment policies and strategies as the authorized scheme. Once the newly authorized scheme has attained a track record of six months, its own actual performance information may be presented in its advertisements. Therefore, information of the unauthorized scheme should no longer be included in order not to divert investors' focus from information of the new scheme.

With respect to the disclosure requirements under paragraphs 22(c)(ii) and (iii) of the revised Advertising Guidelines, the Commission will keep paragraph 22(c)(ii) as proposed in the Consultation Paper given that it represents merely a codification of the current practice but has further amended paragraph 22(c)(iii) taking into account the suggestions made by the respondent for clarity sake.

Warning statements / notes to prospective investors
(paragraphs 23-27 of the revised Advertising Guidelines)

Advertisements not reviewed by the Commission

55. *Public Comments:* Two respondents disagreed with the requirement for disclosure of a note that “*the advertisement has not been reviewed by the Commission*” where the advertisement were exempted from pre-vetting and authorization. Notwithstanding disagreement, one of them suggested a more elaborated wording that “*the advertisement does not require approval by the Commission and thus has not been reviewed by the Commission*”.
56. *Commission’s Response:* For advertisements exempted from authorization under the SFO, the note that “*the advertisement has not been reviewed by the Commission*” is a hard fact and can serve as a useful warning to investors, alerting them to read the advertisements with care. Issuers of advertisements may include other appropriate notes that are factual and not misleading.

Additional warning statements

57. *Public Comments:* Two respondents suggested that the additional warning statements and disclosures and their sample or exact wordings applicable to a scheme be included as a condition for authorization of the scheme. Three other respondents requested for guidelines on specific circumstances that the Commission would generally expect additional warning statements to be included in advertisements and examples of the wordings of such warning statements.

On the contrary, one respondent, who suggested that the revised Advertising Guidelines be incorporated into the Code of Conduct, considered it inappropriate to include the additional warning statement requirement as an authorization condition given that this approach might blur the differentiation between the product regulatory framework and the conduct regulatory framework. Nevertheless, this respondent also sought clarification as to whether such additional warning statement requirements would exhaustively be determined upon scheme authorization.

58. *Commission’s Response:* Whether additional warning statements or disclosures are required may depend on the nature, investment policies and special features of the scheme as well as the prevailing market conditions. Thus, it may not be possible to determine all applicable disclosure requirements at the time of scheme authorization and include such requirements as conditions of authorization. The Commission encourages the management company / product issuers and the advertisement issuers to use their professional expertise to consider what the most appropriate and applicable disclosures to be included in an advertisement should be. The FAQ on Advertising Materials of Authorized Schemes will give examples of specific

circumstances that commonly require additional warning statements as well as some sample disclosures.

Exemption from disclosure of specific warning statements

59. *Public Comments:* In relation to the exemption from disclosure of warning statements specific to a particular scheme available to display-only materials that are not for distribution, one respondent suggested the Commission to extend this exemption to print advertisements so as to avoid footnotes being too lengthy and difficult to read.
60. *Commission's Response:* In formulating this exemption, the Commission has taken into account the impracticality for the public to read the details of the advertisements that take the form of display-only materials. Print advertisements are, however, for distribution and the public may, at their own discretion, read the entire content of the advertisement irrespective of the length of the footnotes. Hence, the Commission will not extend this exemption to print advertisements.

Information of the advertisement issuer / rules applicable to radio, television, cinema or other time-limiting advertisements / broadcasts
(paragraphs 28 and 29 of the revised Advertising Guidelines)

61. *Public Comments:* The respondents generally agreed on the requirement to disclose the name of the issuer on advertisements. However, two respondents disagreed with the approach of making such disclosure optional for audio advertisements. One respondent considered it necessary to identify the issuer regardless of the medium of advertisement and the other believed that any use of the short form of issuer's name might cause confusion to investors.
62. *Commission's Response:* The proposal to make disclosure of issuer's information optional in audio advertisements with no visual display has been developed in view of the general observation that audio advertisements were seldom received in their entirety and giving such option to the issuer facilitates savings of air-time for audio advertisements where applicable. The Commission will adopt the provision as originally proposed in the Consultation Paper.

Off-the-Page Advertisements

(paragraph 25 of the existing Advertising Guidelines in the UT Code)

63. *Public Comments:* One respondent sought explanation on the proposed removal of the provisions relating to off-the-page advertisements under the existing Advertising Guidelines of the UT Code.
64. *Commission's Response:* The Commission has noted that off-the-page advertisements were hardly ever used in practice by management companies / product issuers or distributors. The related provisions in the existing Advertising Guidelines of the UT Code will be removed and 6.4 of the UT Code shall apply without exception. This is to ensure that investors are provided with more comprehensive information regarding the schemes prior to making investment decisions.

Other Consequential Revisions to the Product Codes

65. The Commission has further made the following consequential revisions to the Products Codes as a result of the amendments adopted:
- 6.9(e), 8.6(f) and paragraphs 2, 14, 24, 25 and 26 of Appendix I of the UT Code;
 - 10.6 and paragraph (n) of Appendix A of the ILAS Code; and
 - 10.6 and paragraph (n) of Appendix A of the PRF Code.

CONCLUSION

66. The Commission will adopt the revisions to the Product Codes and revised Advertising Guidelines as proposed in the Consultation Paper with further amendments as discussed in paragraphs 8, 18, 28, 32, 40, 42, 50, 52, 54 and 65 above.

Implementation Timetable

67. *Public Comments:* The respondents were generally supportive of the implementation timetable. One respondent suggested an exemption be granted to all existing authorized advertisements from compliance with the revised Advertising Guidelines upon its effective date.
68. *Commission's Response:* The revisions to the Product Codes and the revised Advertising Guidelines will be published in the Government Gazette and their effective date will be specified in the gazette notice. The revisions to the Product Codes and the revised Advertising Guidelines will become effective no later than 1 August 2008 and the Commission will then concurrently cease pre-vetting of eligible notices and advertisements. Advertisement issuers will be permitted to continue to follow the respective Advertising Guidelines as included in the current Product Codes until 31 December 2008. Partial adoption of provisions in the current and revised Advertising Guidelines will not be permitted. All advertisement issuers shall adopt and comply with the revised Advertising Guidelines starting from 1 January 2009.

The revised Advertising Guidelines include provisions that promote comparability among schemes and it is in the interests of the public to implement the revised guidelines as soon as practicable. Given that the above implementation timetable is generally acceptable among the industry, the Commission will not grant any exemption to existing advertisements from compliance with the revised guidelines.

Way Forward

69. The Commission will closely monitor the implementation situation and market practices under the post-vetting regime.
70. In addition to the implementation of the revised Product Codes and the revised Advertising Guidelines, as well as the posting of the FAQ on Advertising Materials of Authorized Schemes on the Commission's website, the Commission will arrange training seminars and workshops to brief market participants in respect of the

application of the revised Product Codes and the revised Advertising Guidelines. Management companies, product issuers and advertisement issuers are welcomed to contact the designated case officers for respective authorized schemes at any time for enquiries on the application of the revised Advertising Guidelines.

71. The Commission takes this opportunity to thank all parties who have assisted or made contributions during the consultation process. A list of respondents to the Consultation Paper is set out in Annex 6.

ANNEXES

- Annex 1 Revisions to the UT Code
(as marked up against the existing UT Code and shaded to reflect further amendments made following the public consultation)
- Annex 2 Revisions to the ILAS Code
(as marked up against the existing ILAS Code and shaded to reflect further amendments made following the public consultation)
- Annex 3 Revisions to the PRF Code
(as marked up against the existing PRF Code and shaded to reflect further amendments made following the public consultation)
- Annex 4 Revisions to the MPF Code
(as marked up against the existing MPF Code and shaded to reflect further amendments made following the public consultation)
- Annex 5 Revised Advertising Guidelines
(as marked up against the existing Advertising Guidelines and shaded to reflect further amendments made following the public consultation)
- Annex 6 List of Respondents to the Consultation Paper

Annex 1 Revisions to the UT Code
(as marked up against the existing UT code and shaded to reflect further amendments made following the public consultation)

Chapter 3: Interpretation

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

3.1B “Capital markets scheme” means a scheme, the primary objective of which is to invest in debt securities which have a remaining term to maturity of one year or more.

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

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

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

Chapter 6: Operational Requirements

Investment Plans

6.9 If investment plans are offered:-

- (e) in respect of any increase of initial fee of investment plans up to the maximum permitted level, at least three~~no less than one~~ months’s prior notice must be given to holders concerned.

Chapter 8: Specialized Schemes

8.6 Index Funds

Reporting Requirements

- (f) The Commission should be consulted on any events that may affect the acceptability of the index. Significant events relating to the index

should be notified to the holders as soon as practicable. These may include a change in the methodology/rules for compiling or calculating the index, or a change in the objective or characteristics of the index. Notices to holders should be submitted to the Commission for prior approval.

Chapter 11: Documentation and Reporting

Scheme Changes to Documentation

11.1 All The proposed changes to a scheme in respect of the following alterations or additions to the offering or constitutive documents must be submitted to the Commission for prior approval:

- (a) changes to constitutive documents;
- (b) changes of key operators (including the trustee / custodian, management company and its delegates and Hong Kong representative) and their regulatory status and controlling shareholder;
- (c) changes in investment objectives, policies and restrictions (including the purpose or extent of use of derivatives), fee structure and dealing and pricing arrangements; and
- (d) any other changes that may materially prejudice holders' rights or interests.

11.1A For changes to a scheme that require the Commission's prior approval pursuant to 11.1, the Commission will determine whether holders should be notified and the period of notice (if any) that should be applied before the changes are to take effect. Such notice period would not normally exceed three months, but individual cases will be considered on their merits. The revised Hong Kong Offering Document as a result of such changes should be submitted to the Commission for prior authorization.

Notes: (1) Normally, the Commission will expect that one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) should be provided to holders in respect of the changes. However, the Commission may permit a shorter period of notice if the change is not significant or may require a longer period of notice (up to three months) in exceptional circumstances. [see also 6.7]

(2) For the purposes of 11.1A, significant changes would include, for example, changes in investment objectives or major investment policies, and fee structure.

(3) For any increase in fees and charges from the current level as stated in the Hong Kong Offering Document up to the maximum level permitted by the constitutive documents, prior approval from the Commission is not required, but no less than one month's prior notice must be given to holders.

11.1B For changes to a scheme that do not require the Commission's prior approval pursuant to 11.1, unless there is a specified minimum prior notice period in this Code, the management company should inform holders as soon as reasonably practicable of any information concerning the scheme which is necessary to enable holders to appraise the position of the scheme. The Hong Kong Offering Document may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. The revised Hong Kong Offering Document must be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.

Notices to Holders

11.2 Notification to holders must be made in the language(s) in which the scheme is offered to investors in respect of any changes or proposed changes to the offering or constitutive documents as determined by the Commission pursuant to 11.1A.

Note: In the case of schemes domiciled outside Hong Kong, notwithstanding the notice provisions of a scheme's home jurisdiction, the Commission may require additional notice to ensure that Hong Kong investors have sufficient time to consider and respond to the documentation. For example, any general meeting at which a special resolution is to be proposed shall be convened on at least 21 days' prior notice and that any general meeting at which an ordinary resolution is to be proposed shall be convened on at least 14 days' prior notice.

11.2A Subject to 11.4 and 11.5 below, notices to holders need not be approved by the Commission prior to issuance, but are required to be filed with the Commission within two weeks from the date of issuance of the notice. The Commission, however, retains its power to require issuers to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 11.1 should be approved by the Commission prior to the distribution of the relevant notices to holders.

11.2B The management company has the responsibility to ensure that notices to holders are not misleading and contain accurate and adequate information to keep investors informed. All notices should contain a Hong Kong contact number for investors to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of the changes made to the offering or constitutive

documents where such date or timetable has not been agreed in advance with the Commission.

Increase in Fees

11.3 (Repealed)

~~In respect of any increase of the management fee from the current level as stated in the Hong Kong Offering Document up to the maximum level permitted by the constitutive documents, at least three months prior notice must be given to all holders.~~

De-authorization Withdrawal of Authorization

- 11.4 Following the authorization of a scheme, its management company should, subject to 11.5 below, give at least three months' notice to holders of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain the reasons for the de-~~withdrawal of~~ authorization, consequences of the withdrawal, any proposed changes in the operation of the scheme and their effects on existing investors, the alternatives available to investors in the event of de-authorization (including, if possible, a right to switch without charge into another authorized scheme) and, where applicable, an estimate of any relevant expenses and who is expected to bear them.

Merger or Liquidation Termination

- 11.5 If a scheme is to be merged or ~~liquidated~~ terminated, in addition to following any procedures set out in the scheme's constitutive documents or governing law, notice must be given to investors as determined by the Commission. Such notice should be submitted to the Commission for prior approval and contain the reasons for the merger or termination ~~liquidation~~, the relevant provisions under the constitutive documents that enable such merger or termination, the consequences of the merger or termination and their effects on existing investors, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized scheme), the estimated costs of the merger or termination ~~liquidation~~ and who is expected to bear ~~these~~ them.

Advertising Materials and ~~Public Announcements~~

- 11.11 Advertisements and other invitations to invest in a scheme, including but not limited to those issued by licensed or registered persons acting as the distributors of the scheme, must comply with the Advertising Guidelines, ~~including public announcements,~~ All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the Ordinance. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the Ordinance, the issuer must still ensure that the advertisement or invitation complies with the Advertising Guidelines. ~~Any~~

~~advertisement or announcement which concerns the trustee must be accompanied by its written consent.~~

11.12 Where authorization by the Commission is required, it is recommended that the issuer of advertisements nominate one person, such as the Approved Person, the Hong Kong Representative or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines~~The criteria for authorization are set out in Appendix F.~~

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts that require authorization by the Commission, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

11.13 Issuers must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least 3 years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Mention of SFC Authorization

~~11.12~~11.14 ~~If~~Where a scheme is described as having been authorized by the Commission it must be stated that authorization does not imply official approval or recommendation.

Appendix I

Guidelines for Regulating Index Tracking Exchange Traded Funds

Introduction

2. These guidelines are devised on the basis that ETFs, whether established in Hong Kong or overseas, should comply with common principles for safeguarding investors' interests if they seek to be authorized by the SFC. Local and overseas ETFs may seek to rely on the general relief granted in these guidelines from strict compliance with certain Code requirements including investment restrictions, and prescribed risk warnings ~~and certain prior approval procedures for notices or announcements.~~

Modified Post-Authorization Notification and Approval Procedures

14. The notification and approval requirements under ~~Chapters 11.1, 11.3, and 11.7 and 11.11~~ of the Code are modified to the following extent:

~~(a) *Changes to Documentation in Chapter 11.1:* Chapter 11.1 applies only to material alterations or additions to the Product Description Document / Hong Kong Offering Document (as the case may be), constitutive documents and other applicable product documentation, such as changes to investment objectives or investment risk profile, replacement of management companies or trustees, termination and mergers of ETFs. Immaterial changes to such documentation or events relating to an ETF, for example, legislative or regulatory changes, typographical or stylistic changes and dividend notices may be effected without prior approval of the SFC.~~

~~(b) *Increase in Fees and Charges in Chapter 11.1A3:* The prior notice requirements to issue a three months' prior notice and to seek the SFC's prior approval for such notice under Chapter 11.1A3 does not apply to adjustments in management fees if:~~

- (i) the proposed adjustments in management fees do not require holders' approval; and
- (ii) either a notice for the fee adjustments is published as stated in paragraph 14~~(c)~~ (which notice may be shorter than 3 months) or where the ETF is governed by an Acceptable ETF Regime or in the relevant overseas jurisdiction (see the Note to paragraph (d) in **Annex (III)**), there is no notification requirement for this type of fee adjustments in that jurisdiction;

~~(c) *Publication of NAV in Local Newspapers in Chapter 11.7:* On the basis that information is available to investors in accordance with paragraphs 17 to 21 in these guidelines (where applicable), the obligation under Chapter 11.7 to publish NAV in local newspapers is dispensed with.~~

The management company must immediately notify the SFC as soon as practicable if dealing in units/shares on the SEHK ceases or is suspended.

~~(d) *Prior Approval of Public Announcements in Chapter 11.11:* Chapter 11.11 applies to marketing materials that are targeted at the investing public of Hong Kong. Public announcements, not being marketing materials, made by ETFs pursuant to the applicable listing rules, the regulatory requirements of the relevant Acceptable ETF Regime or SEHK, or other applicable rules need not be subject to the approval procedures under Chapter 11.11. All public announcements and notices issued by an ETF should be filed with the SFC following publication unless otherwise waived.~~

(ec) Unless otherwise waived or provided for in paragraph 24(g) below, all notices and public announcements made by ETFs in accordance with the Code and these guidelines must be prepared in both English and Chinese.

*Note: For avoidance of doubt, nothing in paragraph 14 shall exempt an ETF from compliance with Chapters **11.1**, 11.4 and 11.5 of the Code.*

Streamlined Recognition Process for Overseas ETFs Listed in an Acceptable ETF Regime

24. An overseas ETF that complies with the conditions set out in **Annex (IV)** may rely on the following specific relief for a streamlined process for authorization in addition to the general relief in paragraphs 11 to 14.

(a) *Acceptability of Index in ~~Chapter 8.6(e)~~:* The index that such an overseas ETF tracks will be deemed to have complied with ~~Chapter 8.6(e)(i) to (v)~~ except where such index or its methodology contradicts the fundamental principles of a representative, diversified, investible and transparent index.

(b) *Reporting Requirements in ~~Chapter 8.6(f)~~:* ~~Chapter 8.6(f)~~ only applies to (i) any significant events relating to the index that might affect the authorization or listing status of an overseas ETF in an Acceptable ETF Regime; and (ii) any other events in relation to the index that the Acceptable ETF Regime would require notification to investors. Notification of these events must be published in Hong Kong in both English and Chinese and notified to the SFC on a timely basis. ~~No prior approval of such notices by the SFC would be required.~~

(c) *Replacement of Index in ~~Chapter 8.6(k)~~:* Subject to paragraphs 24(a) and 24(g) of these guidelines, ~~Chapter 8.6(k)~~ does not apply to the replacement of index. Any replacement of index must be notified to investors and the SFC on a timely basis.

(d) *Disclosure in Financial Reports in ~~Chapter 8.6(l)~~ and Appendix E:* ETFs that have prepared their semi-annual and annual financial reports in

accordance with their own governing overseas regulations, which reports are not qualified by their auditors, will be relieved from full compliance with the content requirements of ~~Chapter~~ 8.6(1) and Appendix E.

- (g) *Notification and Language Requirement in respect of Notices under ~~Chapters 11.1 and to 11.2B~~*: Notices in relation to scheme changes that require the SFC's prior approval pursuant to 11.1 for material alterations or additions to the offering document or constitutive document of an ETF that is primarily regulated in an overseas jurisdiction have to be published or made generally available to investors in Hong Kong. Unless otherwise waived, these notices must be in both English and Chinese, and be published on a timely basis and in such manner as the ETF considers appropriate. ~~Immaterial changes to such documentation or events relating to an ETF, for example, legislative or regulatory changes, typographical or stylistic changes and dividend notices may be effected without prior approval of the SFC.~~

Note: ~~Examples of material changes include but are not limited to the following: changes to investment objectives or investment risk profile, replacement of management companies or trustees, termination and mergers of ETFs.~~

Miscellaneous

25. These guidelines do not apply retrospectively to index tracking exchange traded funds already authorized on or before ~~the effective date of these guidelines~~ 24 October 2003.
26. With respect to ETFs that have been submitted to the SFC for approval pursuant to the Code but have not been authorized before ~~the effective date of these guidelines~~ 24 October 2003, they may elect to comply with the Code as amended by these guidelines.

Annex 2 Revisions to the ILAS Code
(as marked up against the existing ILAS Code and shaded to reflect further amendments made following the public consultation)

Chapter 3: Interpretation

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

3.1B “applicant company” means the company which applies to the Commission, directly or through an authorized representative, to have its scheme authorized pursuant to this Code.

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

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

Chapter 10: Post-authorization Requirements

Scheme Changes to Documentation

10.1 All The proposed changes to a scheme in respect of the following alterations or additions to the principal brochure and constitutive documents must be submitted to the Commission for prior approval:

- (a) changes to constitutive documents;
- (b) changes of key operators (including the applicant company / management company and its delegates and Hong Kong representative) and their regulatory status and controlling shareholder;
- (c) changes in investment objectives, policies and restrictions (including the purpose or extent of use of derivatives), fee structure and dealing and pricing arrangements; and
- (d) any other changes that may materially prejudice scheme participants’ rights or interests.

10.1A For changes to a scheme that require the Commission’s prior approval pursuant to 10.1, the Commission will determine whether scheme participants should be notified and the period of notice (if any) that should be applied before the

changes are to take effect. Such notice period would not normally exceed three months, but individual cases will be considered on their merits. The revised principal brochure as a result of such changes should be submitted to the Commission for prior authorization.

Notes: (1) Normally, the Commission will expect that one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the principal brochure or constitutive documents) should be provided to scheme participants in respect of the changes. However, the Commission may permit a shorter period of notice if the change is not significant or may require a longer period of notice (up to three months) in exceptional circumstances.

(2) For the purposes of 10.1A, significant changes would include, for example, changes in investment objectives or major investment policies, and fee structure.

(3) For any increase in fees and charges from the current level as stated in the principal brochure up to the maximum level permitted by the constitutive documents, prior approval from the Commission is not required, but no less than one month's prior notice must be given to scheme participants.

10.1B For changes to a scheme that do not require the Commission's prior approval pursuant to 10.1, unless there is a specified minimum prior notice period in this Code, the applicant company should inform scheme participants as soon as reasonably practicable of any information concerning the scheme which is necessary to enable scheme participants to appraise the position of the scheme. The principal brochure may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. The revised principal brochure must be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.

Increase in Fees

10.4 **(Repealed)**

~~In respect of any increase of the fees and charges from the current level as stated in the principal brochure up to the maximum level permitted by the constitutive documents, at least three months prior notice must be given to all scheme participants.~~

De-authorizationWithdrawal of Authorization

10.5 Following the authorization of a scheme, the applicant company should, subject to 10.6 below, give at least three months' notice to scheme participants of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain reasons for the

de-withdrawal of authorization, consequences of the withdrawal, any proposed changes in the operation of the scheme and their effects on existing scheme participants, and the alternatives available to scheme participants in the event of de-authorization (including, if possible, a right to switch without charge into another authorized scheme) and, where applicable, an estimate of any relevant expenses and who is expected to bear them.

Merger or Termination

- 10.6 Where a scheme or a fund linked to the scheme is to be merged or terminated, in addition to following any procedures set out in the constitutive documents or governing law, notice shall be given to scheme participants. Such notice should be submitted to the Commission for prior approval and shall contain the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger or termination, the alternatives available to participants (including, if possible, a right to switch without charge into another authorized scheme or fund), the estimated costs of the merger or termination and who is expected to bear ~~these~~them.

Advertising Materials and Public Announcements

- 10.7 Advertisements and other invitations to invest in a scheme, ~~including public announcements,~~ must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.

- 10.8 Where authorization by the Commission is required, it is recommended that the applicant company nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines. ~~The criteria for authorization of advertisements are set out in Appendix E.~~

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

- ~~10.8 No radio, television or cinema advertising of a scheme is permitted in Hong~~

Kong-

10.9 The applicant company must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least 3 years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Notices to Scheme Participants

10.10 Notification to scheme participants must be made in the language(s) in which the scheme is offered to investors in respect of any changes or proposed changes to the principal brochure or constitutive documents as determined by the Commission pursuant to 10.1A.

10.11 Subject to 10.5 and 10.6 above, notices to scheme participants need not be approved by the Commission prior to issuance but are required to be filed with the Commission within two weeks from the date of issuance of the notice. The Commission, however, retains its power to require the applicant company to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 10.1 above should be approved by the Commission prior to the distribution of the relevant notices to scheme participants.

10.12 The applicant company has the responsibility to ensure that the notices to scheme participants are not misleading and contain accurate and adequate information to keep them informed. All notices should contain a Hong Kong contact number for investors to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of the changes made to the principal brochure or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

Mention of SFC Authorization

10.13~~10.9~~ If Where a scheme is described as having been authorized by the Commission, it must be stated that authorization does not imply official approval or recommendation.

Appendix A: Information to be disclosed in the Principal Brochure

(n) *Authorization Statement*

If Where a scheme is described as having been authorized by the Commission, it must be stated that authorization does not imply official approval or recommendation.

Annex 3 Revisions to the PRF Code
(as marked up against the existing PRF Code and shaded to reflect further amendments made following the public consultation)

Chapter 3: Interpretation

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

3.1B “applicant company” means the company which applies to the Commission, directly or through an authorized representative, to have its pooled retirement fund authorized pursuant to this Code.

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

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

Chapter 10: Post-authorization Requirements

Scheme Changes to Documentation

10.1 ~~All~~ The proposed changes to a scheme in respect of the following alterations or additions to the principal brochure and constitutive documents ~~must be submitted to the Commission for prior approval.~~

- (a) changes to constitutive documents;
- (b) changes of key operators (including the applicant company, trustee / custodian, management company and its delegates and Hong Kong representative) and their regulatory status and controlling shareholder;
- (c) changes in investment objectives, policies and restrictions (including the purpose or extent of use of derivatives), fee structure and dealing and pricing arrangements; and
- (d) any other changes that may materially prejudice investors’ rights or interests.

10.1A For changes to a scheme that require the Commission’s prior approval pursuant to 10.1, ~~the~~ the Commission will determine whether investors should be notified and the period of notice (if any) that should be applied before the

changes are to take effect. Such notice period would not normally exceed six months, but individual cases will be considered on their merits. The revised principal brochure as a result of such changes should be submitted to the Commission for prior authorization.

Note: (1) Normally, the Commission will expect that one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the principal brochure or constitutive documents) should be provided to investors in respect of the changes. However, the Commission may permit a shorter period of notice if the change is not significant or may require a longer period of notice (up to three months) in exceptional circumstances.

(2) For the purposes of 10.1A, significant changes would include, for example, changes in investment objectives or major investment policies, and fee structure.

(3) For any increase in fees and charges from the current level as stated in the principal brochure up to the maximum level permitted by the constitutive documents, prior approval from the Commission is not required, but no less than one month's prior notice must be given to investors.

10.1B For changes to a scheme that do not require the Commission's prior approval pursuant to 10.1, unless there is a specified minimum prior notice period in this Code, the applicant company should inform investors as soon as reasonably practicable of any information concerning the scheme which is necessary to enable investors to appraise the position of the scheme. The principal brochure may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. The revised principal brochure must be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.

Increase in Fees

10.4 (Repealed)

~~In respect of any increase of the fees and charges from the current level as stated in the principal brochure, up to the maximum level permitted by the constitutive documents, at least three months prior notice must be given to all investors.~~

De-authorization/Withdrawal of Authorization

10.5 Following the authorization of a pooled retirement fund, the applicant company should, subject to 10.6 below, give at least ~~six~~ three months' notice to investors of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain reasons

for the ~~de-withdrawal of~~ authorization, consequences of the withdrawal, any proposed changes in the operation of the pooled retirement fund and their effects on existing investors, and the alternatives available to investors in the event of de-authorization (including, if possible, a right to switch without charge into another authorized pooled retirement fund) and, where applicable, an estimate of any relevant expenses and who is expected to bear them.

Merger or Termination

- 10.6 When a pooled retirement fund or any of its fund options is to be merged or terminated and there are investors remaining in the fund, in addition to following any procedures set out in the constitutive documents or governing law, notice shall be given to those investors. Such notice should be submitted to the Commission for prior approval and shall contain the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger or termination, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized pooled retirement fund or fund option), the estimated costs of the merger or termination and who is expected to bear ~~these~~them.

Advertising and Public Announcements**Materials**

- 10.7 Advertisements and other invitations to invest in a pooled retirement fund, ~~including public announcements,~~ must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.
- 10.8 Where authorization by the Commission is required, it is recommended that the applicant company nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines. ~~The criteria for authorization of advertisements are set out in Appendix D.~~

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

~~10.8 No radio, television or cinema advertising of a pooled retirement fund is permitted in Hong Kong.~~

10.9 The applicant company must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least 3 years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Notices to Investors

10.11 Notification to investors must be made in the language(s) in which the pooled retirement fund is offered to investors in respect of any changes or proposed changes to the principal brochure or constitutive documents as determined by the Commission pursuant to 10.1A.

10.12 Subject to 10.5 and 10.6 above, notices to investors need not be approved by the Commission prior to issuance but are required to be filed with the Commission within two weeks from the date of issuance of the notice. The Commission, however, retains its power to require the applicant company to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 10.1 above should be approved by the Commission prior to the distribution of the relevant notices to investors.

10.13 The applicant company has the responsibility to ensure that the notices to investors are not misleading and contain accurate and adequate information to keep them informed. All notices should contain a Hong Kong contact number for investors to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of the changes made to the principal brochure or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

Mention of SFC Authorization

10.914 ~~If~~ ~~Where~~ a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official approval or recommendation.

Appendix A: Information to be disclosed in the Principal Brochure

(n) *Authorization Statement*

~~If~~ ~~Where~~ a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official approval or recommendation.

Annex 4 Revisions to MPF Code

(as marked up against the existing MPF code and shaded to reflect further amendments made following the public consultation)

Chapter 3: Interpretation

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

3.1B “Applicant” means the company which applies to the Commission, directly or through an authorized representative, to have an MPF scheme or pooled investment fund authorized pursuant to the relevant legislation.

3.8 “Commission” or “SFC” means the Securities and Futures Commission referred to in section 3(1) of the SFO.

3.18A “Product Code” means any of the following codes administered by the Commission:

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

Chapter 8: Post-Authorization Requirements

Scheme Changes ~~to Documentation~~

8.2 ~~All The~~ proposed changes to ~~alterations or additions to~~ the offering document of an MPF scheme or pooled investment fund as a result of the following must be submitted to the Commission for prior approval:

(a) changes to constitutive documents:

Note: Where the change in the offering document results from changes in the constitutive documents, the revised offering document should be submitted to the Commission and be accompanied by a copy of the approval notice for the change in constitutive documents issued by the MPFA.

(b) changes of key operators (including the applicant, trustee / custodian and investment manager and its delegates) and their regulatory status and controlling shareholder:

(c) changes in investment objectives, policies and restrictions (including the purpose or extent of use of derivatives), fee structure and dealing and pricing arrangements; and

(d) any other changes that may materially prejudice rights or interests of scheme participants or fund holders.

8.2A For changes to the offering document of an MPF scheme or pooled investment fund that require the Commission's prior approval pursuant to 8.2, the Commission will determine whether the scheme participants or fund holders should be notified and the period of notice (if any) that should be applied before the changes are to take effect. Such notice period would not normally exceed three months, but individual cases will be considered on their merits.

Note: (1) Normally, the Commission will expect that one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) should be provided to scheme participants or fund holders in respect of the changes. However, the Commission may permit a shorter period of notice if the change is not significant or may require a longer period of notice (up to three months) in exceptional circumstances.

(2) For the purposes of 8.2A, significant changes would include, for example, changes in investment objectives or major investment policies, and fee structure.

(3) For any increase in fees and charges from the current level as stated in the offering document, prior approval from the Commission is not required, but no less than one month's prior notice must be given to scheme participants or fund holders.

8.2B For changes to the offering document of an MPF scheme or pooled investment fund that do not require the Commission's prior approval pursuant to 8.2, unless there is a specified minimum prior notice period in this Code, the management company should inform scheme participants or fund holders as soon as reasonably practicable of any information concerning the MPF scheme or pooled investment fund which is necessary to enable scheme participants or fund holders to appraise the position of the MPF scheme or pooled investment fund. The offering document may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. The revised offering document must be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.

Notices to Scheme Participants and Fund Holders

8.3A Subject to 8.5 and 8.5A below, notices to scheme participants or fund holders need not be approved by the Commission prior to issuance but are required to

be filed with the Commission within two weeks from the date of issuance of the notice. The Commission, however, retains its power to require the applicant to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 8.2 should be approved by the Commission prior to the distribution of the relevant notices to scheme participants or fund holders.

8.3B The applicant has the responsibility to ensure that notices to scheme participants or fund holders are not misleading and contain accurate and adequate information to keep investors informed. All notices should contain a Hong Kong contact number for investors to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of the changes made to the offering or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

Increase in Fees

8.4 (Repealed)

~~In respect of any increase in fees and charges of an MPF scheme or pooled investment fund from the current level as stated in the offering document, at least three months prior notice must be given to all participants of the MPF scheme or holders of the pooled investment fund.~~

Withdrawal of Authorization

8.5 Following the authorization of an MPF scheme or pooled investment fund, the applicant should, subject to 8.5A below, give at least three months' prior notice to scheme participants or fund holders ~~notify the Commission of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain the reasons for~~ will determine on a case by case basis whether scheme participants or fund holders should be notified and the period of notice (if any) that should be applied before the withdrawal of authorization, consequences of the withdrawal, any proposed changes in the operation of the MPF scheme or pooled investment fund and their is to take effects on existing scheme participants or fund holders, the alternatives available to scheme participants or fund holders (including, if possible, a right to switch without charge into another authorized MPF scheme or pooled investment fund) and, where appropriate, an estimate of any relevant expenses and who is expected to bear them.

Merger or Termination

8.5A If an MPF scheme or pooled investment fund is to be merged or terminated, in addition to following any procedures set out in the scheme's constitutive documents or governing law, notice must be given to investors as determined by the Commission. Such notice should be submitted to the Commission for prior approval and contain the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger

or termination, the consequences of the merger or termination and their effects on existing scheme participants or fund holders, the alternatives available to scheme participants or fund holders (including, if possible, a right to switch without charge into another authorized MPF scheme or pooled investment fund), the estimated costs of the merger or termination and who is expected to bear them.

Advertising Materials and Public Announcements

8.6 Advertisements and other invitations to invest in an MPF scheme or pooled investment fund, must comply with the Advertising Guidelines including marketing brochures, leaflets and public announcements, etc.; All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant must still ensure that the advertisement or invitation complies with the Advertising Guidelines. Any advertisement or announcement which concerns the trustee must be accompanied by its written consent. The criteria for authorization are set out in Appendix D.

8.7 Where authorization by the Commission is required, it is recommended that the applicant nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of MPF schemes or pooled investment funds and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines.

Note: For radio, television, cinema or other time-limiting advertisements / broadcasts, the script of any verbal statements in such advertisements should be submitted for the Commission's advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

8.8 The applicant must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least 3 years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Mention of SFC Authorization

8.9 Where an MPF scheme or pooled investment fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation.

Annex 5 Revised Advertising Guidelines
(as marked up against the existing Advertising Guidelines
code and shaded to reflect further amendments made
following the public consultation)

Advertising Guidelines Applicable to Collective Investment Schemes
Authorized under the Product Codes

DEFINITIONS

Unless otherwise defined, words and expressions used in this set of Advertising Guidelines are as defined in the Securities and Futures Ordinance (Cap 571) (the “SFO”) and the following codes, as appropriate:

- (a) Code on Unit Trusts and Mutual Funds (“UT Code”)
 - (b) Code on Investment-Linked Assurance Schemes (“ILAS Code”)
 - (c) Code on Pooled Retirement Funds (“PRF Code”)
 - (d) SFC Code on MPF Products (“MPF Code”)
- (collectively, the “Product Codes”)

APPLICATION OF THE ADVERTISING GUIDELINES

~~As a general principle, every advertisement for a collective investment scheme must have the prior authorization of the SFC. This requirement is derived from the Ordinance, and is a provision of this Code. The issue of an unauthorized advertisement may be an offence under s.103 of the Ordinance.~~

This set of Advertising Guidelines is applicable to collective investment schemes authorized by the Commission under any of the Product Codes (“schemes”).

Issuers of advertisements for a scheme (including, for the avoidance of doubt, licensed and registered persons acting as distributors of the scheme), whether the advertisements are authorized by the Commission pursuant to section 105 of the SFO or the advertisements fall within any exemption from authorization under the SFO, are required to follow the guidelines as set out below. These guidelines should be interpreted as guidance rather than rigid rules, and issuers are expected to be guided by their spirit, as well as the content.

Issuers are responsible for the contents of their scheme advertisements and the monitoring of their publication / distribution. Under no circumstances may an issuer disclaim its liabilities in respect of the accuracy of the contents of its advertisements. Where the information is sourced externally and disclosed as such, the issuer should have reasonable belief that such information is accurate, complete and up-to-date.

These guidelines are intended to apply to all forms of product advertisements, including but not limited to distribution materials (such as print media advertisements, brochures, fact sheets, newsletters and any other regular updates, direct marketing, “fax on demand” services, etc), display-only materials (such as posters in public places, exhibition panels, outdoor displays, etc), broadcasts (such as radio, television, cinema, etc) and interactive systems (such as -and advertising of authorized funds on the internet, interactive voice message systems, etc). In the latter case, a hard copy of the relevant pages of the Internet website should be submitted to the SFC.

Examples of practical applications of these guidelines can be found in the Frequently Asked Questions on Advertising Materials of Collective Investment Schemes Authorized under the Product Codes as published by the Commission on the website from time to time.

Issuers are welcome to consult the Commission where there is doubt as to the applications of these guidelines on specific issues. While the Commission will respond to questions on interpretation of the guidelines, it should not be expected to answer purely hypothetical questions.

To facilitate efficient processing of advertisements, it is recommended that a management company nominate one person, either the Approved Person or the Hong Kong Representative or any other persons acceptable to the SFC based in Hong Kong, to liaise with the SFC.

Authorization may be varied or withdrawn by the SFC as it deems fit. Once authorized, the advertisement may be used for as long as the information it contains remains current.

Corporate Advertisements

A corporate advertisement, which only advertises the expertise or services of a fund management company without referring to any particular product, does not generally require authorization, unless it can be construed as a product advertisement. (Example: Where an advertisement refers to specific characteristics when products with such characteristics are being offered by the company.)

Newsletters/Updates

Newsletters, monthly updates or fact sheets may be sent to existing investors on a regular basis. Where such materials are issued in a standard format, there is no need to submit every issue once the standard format has been approved. Any subsequent changes in the format should be submitted.

Press Releases

Press releases need not be submitted, but issuers should ensure that they are not likely to result in the publication of incorrect or misleading information about the scheme.

CONTENT OF ADVERTISEMENTS

General Principles

1. ~~The general principle is that no a~~Advertisements for a scheme should:
 - ~~(a) can be made not be~~ that is false, biased, misleading or deceptive;~~The following statements and examples are designed to illustrate this principle.~~
 - (b) be clear, fair and present a balanced picture of the scheme with adequate risk disclosures; and
 - (c) contain information that is timely and consistent with its offering document.
2. Advertisements may not refer to unauthorized schemes, except as permitted in paragraph 22~~15~~.

Language & Graphics

3. A statement of opinion regarding a scheme or management company's level of performance must be reasonable.
Example: "Our XYZ Far East Fund is one of the best performing funds in Asia" is a misleading statement if it is not placed in the top quartile of Asian funds in any independent performance report.
4. An advertisement should not contain words or phrases that may give investors the impression that they cannot lose money or that profits are guaranteed, unless the scheme ~~is an authorized~~ has a guaranteed fund feature.
Examples: safe, secure, protected, no risk, guarantee, promise.
5. An advertisement should not focus on the potential return of a scheme without some balancing reference to the risks involved. An advertisement should not give the impression that an investor could profit without risk.
6. An advertisement should not contain language, artwork or graphics that is inaccurate or inconsistent with its offering document.
Examples: An advertisement for a fund scheme, which carried a special risk warning in its offering document, that suggests it is of low risk would be misleading.
7. An advertisement should not seek to denigrate a scheme's competitors 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.

Statistics / Performance Information Figures

8. ~~All advertisements using p~~Performance information data, including charts, graphs and tables, should use either the first or last business day of each month or the first or last dealing day of the ~~fund~~scheme in each month as the reference date. For regular publications that are updated on a weekly or more frequent basis (e.g. website), performance information may use the most recent dealing day as the reference date. ~~which i~~In any case, the reference date should not be arbitrary. The computation basis should ~~also~~ be stated (e.g. offer-to-offer or NAV-to-NAV, with or without dividends reinvested).
9. All performance information data (including awards and rankings,) should be referenced to the sources and dated, and supporting documents should be submitted to substantiate the data or the calculation. Performance statistics Rankings and award winnings may can be quoted from any internationally recognized or published statistical external source. For peer group comparisons, only one source should be used, ~~although companies may quote award winnings from any statistical source~~ and a clear description of the peer group should be included in the advertisement.
10. No forecast of the scheme's performance can ~~may~~ be presented, made, although a ~~A~~ substantiated prospective yield is generally acceptable only for schemes that invest substantially in fixed income securities, money market instruments, real estate investment trusts or other investments that provide regular and stable distributions. The disclosure of prospective yield must be accompanied by a disclosure of its calculation basis as well as a warning statement to the effect that a positive distribution yield does not imply a positive return.
 - (b) ~~In the case of newly launched schemes, figures "since inception" may be given only after at least a 6 months' track record, with the launch date clearly stated.~~
11. Performance information of a scheme may be presented only if it has an investment track record of not less than 6 months.
12. Performance information, if presented, should at a minimum include the returns (e.g. NAV / price returns, where applicable) of the immediately preceding 5 years (or, subject to paragraph 11 above, the period since launch if shorter), presented based on complete 12-month periods (or shorter periods for the earliest / latest period presented). Such information constitutes the "minimum performance information" and further performance information may be presented in addition.

Note: (1) Minimum performance information may be made up to a recent reference date, the last calendar year end date or the last financial year end date of the scheme. If the calendar or financial year end date is used, performance information of the latest part-year (being year-to-date) should also be presented to ensure that the information is up-to-date.

(2) Subject to paragraph 14 below, minimum performance information may be included in the notes to the advertisements.

~~(e)~~ Except as permitted in (e), for schemes which have been in existence for 1 year or more, less than one year's past performance can only be shown if:-

- (i) only one less than one year's figure is quoted in the advertisement;
- (ii) it is of at least 3 months in duration;
- (iii) it is accompanied by the most recent 1-year or 3-year figure (as available); and

~~(iv)~~ 13. Less than one year's figure(s) quoted in an advertisement it is should be of at least 3 months in duration, except as required in paragraph 12 or permitted in paragraph 14, and presented in the same format as and no more prominently than the most recent 1-year longer term figure (or since launch figure if the scheme has a track record of shorter than 1 year).

~~(e)~~ 14. Regular publications such as a monthly regularly issued fact sheet may contain performance figures of the latest periods (e.g. one latest month, latest quarter, or year-to-date, etc) figure, provided such figures are clearly for information purposes and are presented in the same format as and not displayed no more prominently than other figures.

~~10.~~ 15. Performance data information on an advertisement should be up to date and no more than 6 months old except for print media advertisements, broadcasts or interactive systems, which should be no more than 2-3 months old. In all circumstances, either case data information should be updated if more recent data are information is significantly different.

Example: A variation of 10% or more from that last published statistics to the current performance figure would be considered significant.

~~11.~~ 16. Performance data information must be actual rather than based on simulated results. Hypothetical figures may be permitted for schemes with complicated mechanisms for the purpose of explaining those mechanisms to investors, in which case, such figures must be conservative, and the worst-case scenario of the payout mechanism, if any, must be presented. Also, it must be clearly stated to the effect that the figures used are for illustrative purposes only and are not indicative of the actual return likely to be achieved by the investor. Annualized returns are generally only acceptable if the actual returns for all the individual years are shown in addition for presentation of performance figures for periods of more than 1 year.

Comparison of Performance and Use of Comparative Indices

17. When a scheme is compared to an index, such index should be the benchmark for the scheme as disclosed in the offering document or, if no such benchmark is disclosed in the offering documents, an index which most closely reflects the investment focus of the scheme. The index used should be transparent and

published. A customized index is only acceptable if it is created based on multiple indices for the purpose of reflecting more fairly the composition of the scheme's investment portfolio and its creation basis is disclosed clearly in the advertisement. A comparative index, once adopted, should be applied consistently and any change should be supported by adequate justification.

12.18. A comparison of performance figures should be fair, accurate and relevant, comparing “like with like”.

Examples:

Performance of a Hong Kong equity fund against a global index or money market fund would be misleading. However, a performance comparison of different indices, such as a Hong Kong index against a global index, used in an appropriate context, would not be misleading.

For comparison against the performance of an accumulation share class of a scheme or where a scheme does not make distributions, a total return index (which includes both dividends and distributions), but not its price return version, should be used, if available. If a total return index is not available, the advertisements should disclose clearly the respective calculation bases of the scheme performance and the index used.

13.19. If graphs are shown, they should be clearly presented without distortion. If different sets of data are plotted on the same graph for comparison purpose, the same axis should be used.

Performance Information Denominated in a Foreign Currency

14.20. If non-US\$/HK\$ denominated returns are shown, the advertisement should also show the returns in US\$/HK\$ terms. Alternatively, the advertisement should include a statement to alert investors 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*”. If performance information is quoted in another currency for comparison with other funds/schemes, either the performance information in the scheme's base currency or a disclosure of the scheme's base currency and the basis of currency conversion should be given as well.

Changes to a Scheme

21. If there has been a change in the operations of a scheme, such as a merger, a restructuring, a change of management companies or their delegates, or a change in its investment objectives or policies or comparative index, where such change has a significant impact on the scheme's performance (or its presentation), any presentation of performance information prior to such change should be accompanied by a prominent explanation in the disclosure that is appropriate in the context of the advertisement to ensure such presentation is not misleading.

Example: If a scheme has changed its comparative index because there exists a new index which more closely reflects the investment focus of the scheme than the old index, its advertisements may present the performance of the old index for the past periods with a clear disclosure of the change, including a description of the old and the new indices and the effective date of the change.

Performance Information of an Unauthorized Scheme

15.22. Reference to past performance of an unauthorized scheme to indicate the management company's past track record can only be used in the following circumstances:-

- (a) the authorized scheme is newly launched with ~~short or no~~ a past track record of less than 6 months;
- (b) the investment objectives of the unauthorized scheme are substantially the same as the authorized scheme, managed by the same management team with similar investment policies and strategies and thus subject to similar level of risk; and
- (c) the advertisement makes clear that (i) the performance figures quoted are not those of the authorized scheme; (ii) whether the unauthorized scheme is subject to any significantly different terms (e.g. different/lower fees and charges); and that (iii) the unauthorized scheme is not authorized by the Commission in Hong Kong and not available to the public of Hong Kong residents.

Warning Statements / Notes to Prospective Investors

16.23. Advertisements should contain ~~Warning statements / notes are required on~~ advertisements:-

- (a) to the effect that investment involves risk; ~~and~~
- (b) that the offering document should be read for further details including the risk factors; and
- (bc) (where past performance is ~~quoted~~ presented) to the effect that the past performance figures information presented is shown are not indicative of future performance; and

Note: Where performance information is provided for discretionary benefit schemes, a statement should appear to the effect that the rates of return of the scheme are declared at the discretion of a named party (authorized insurer or other party) which may not be the same as the actual returns of the scheme's underlying assets.

(d) (where the advertisement is exempted from pre-vetting and authorization by the Commission pursuant to the SFO) that the advertisement has not been reviewed by the Commission.

24. The text of the warning statements and footnotes may be varied but the message should be clear and not disguised.

25. If a scheme is described as having been authorized by the Commission it must be stated that authorization does not imply official approval or recommendation.

17.26. Warning statements and footnotes should be well positioned and, where applicable, properly referenced if possible be printed in type of the same size as the rest of the text in the advertisement (e.g. at the first point of access of a website, by way of properly reference endnotes, etc)., and i In any event, warning statements and footnotes must be legible in the context of (i) font sizes used; (ii) format and layout of the advertisement; and (iii) where capable of being read with reasonable ease by anyone scanning the advertisement is displayed or published.

18.27. Warning requirements for aAdvertisements of a specialized scheme with special features are as follows: or involving higher risk investments (e.g. emerging markets, use of financial derivative instruments for investment purposes, etc) should include a warning statement appropriate to the degree of risk inherent in the scheme. Issuers of advertisements should also refer to relevant provisions in applicable Product Code(s) in respect of the specific disclosure requirements for special features of the scheme. The Commission may require additional warning statements to be included in the advertisements of individual or specific types of schemes, where appropriate.

Note: The following materials need not include warning statements or disclosures that are specific to a particular scheme provided that they include the warning statements referred to in paragraph 23:

(a) display-only materials that are not for distribution; and

(b) regular publications that include a listing of schemes and their factual information for comparison or information purposes only.

Warrant funds

"Price of warrants may fall just as fast as they may rise, therefore this scheme carries a significant risk of loss of capital. It is suitable only for those investors who can afford the risk involved."

The advertisement must also refer investors to the risk factors set out in the offering document.

Leveraged/futures and options funds

~~A warning statement appropriate to the degree of risk inherent in the scheme, together with a reference to the risk factors set out in the offering document.~~

~~Guaranteed funds and hedge funds~~

~~Please refer to 8.5(j) and 8.7(t).~~

Information of the Advertisement Issuer

28. The full name of the issuer must be disclosed on all advertisements, except as permitted in paragraph 29(a).

MISCELLANEOUS PROVISIONS

Advertising in International or Regional Media

~~19. Advertisements in international or regional media, including the Internet, that are not targeted to Hong Kong investors, do not require authorization. Such advertisements should however contain no reference to a Hong Kong representative or contact number.~~

Rules applicable to Radio, Television, ~~or~~ Cinema or Other Time-limiting Advertisements / Broadcasts

~~20.~~29. The following are applicable to advertisements, the recipients of which have no control over the time for information delivery (e.g. radio, television, cinema broadcasts, etc): The script of a radio, television or cinema advertisement should be submitted for the SFC's advance clearance, followed by the tape for formal authorization.

~~21. Only funds authorized pursuant to Chapter 7, money market funds and unit portfolio managed funds (UPMFs) can advertise on radio, television or cinema.~~

~~22. As a general rule, the use of performance figures is discouraged. However, they will be reviewed in context on a case by case basis. Action statements such as "invest today" or "get in now" may be considered inappropriate.~~

23.(a) For audio advertisements with no visual display, ~~W~~ warning statements referred to in paragraph 23 should be audibly and clearly read out in a voice-over at the end of each broadcast. The broadcast of the full name of the issuer under paragraph 28 is optional for such audio advertisements.

(b) ~~Warning statements only in printed form are not acceptable. For television and cinema visual advertisements, a visual display warning statements referred to in paragraph 23 and the full name of the issuer referred to in paragraph 28 directing investors to the offering document for further information together with the contact telephone number of the Hong Kong representative or authorized distributor~~ should 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 shown for at least five seconds. For radio advertisements this information must be contained in a voice-over.

- 24.(c) The advertisement should not be disguised as an authoritative report, and should be presented with courtesy and good taste. Disturbing or annoying materials such as blatant sound effects, persistent repetition, or words and phrases implying emergency should be avoided.

~~Off-the-Page Advertisements~~

~~25. Notwithstanding 6.4 of the Code, an advertisement or report for Chapter 7 schemes, money market funds or UPMF's, containing the following requirements derived from Appendix C, may incorporate an application form (an "off the page advertisement"):-~~

- ~~(a) C1 to C3, C6 to C11, C13 to C15, C17, C19, and C22;~~
- ~~(b) Where and how copies of annual and semi-annual reports can be obtained;~~
- ~~(c) Where and how to obtain the full Hong Kong offering document (in the language of the off the page advertisement) and constitutive documents; and~~
- ~~(d) Any other information which may be necessary to enable the investor to understand the nature of the investment.~~

Annex 6 List of Respondents to the Consultation Paper

Category A – The commentators below have no objection to publication of their respective names and content of their submissions (in alphabetical order).

AXA China Region Insurance Company Limited

AXA Wealth Management Asia (on behalf of Ipac Financial Planning Hong Kong Ltd)

Charles Cheng

Clifford Chance

Fidelity Investments Management (Hong Kong) Limited

Hang Seng Investment Management Limited

Hong Kong Investment Funds Association (two submissions)

Hong Kong Trustees' Association Ltd

Ipac Financial Planning Hong Kong Ltd.

Simmons & Simmons

The Hong Kong Federation of Insurers

The Law Society of Hong Kong

Timothy Loh Solicitors

Category B – Commentators who have requested their relevant submissions not to be published

Two submissions