



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

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

Hong Kong
January 2008

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

The Securities and Futures Commission (the “Commission” or “SFC”) invites market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals **no later than 29 February 2008**. Any person wishing to submit comments on behalf of any organization should provide details of the organization whose views they represent.

Please note that the names of the commentators and the contents of their submissions may be published on the Commission website and in other documents to be published by the Commission. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.

You may not wish your name and/or submission to be published by the Commission. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.

Written comments may be sent:

by mail to: Investment Products Department
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

by fax to: (852) 2877-0318

by on-line submission: <http://www.sfc.hk/sfc/html/EN/speeches/consult/consult.html>
(or, enter into the subsection “Consultation papers and Conclusions” under the section “Speeches & Publications” on the Commission’s website at <http://www.sfc.hk>)

by e-mail to: ipconsult@sfc.hk

For further information, please contact the Investment Products Department at (852) 2840-9259.

Additional copies of the consultation paper may be obtained from the above address of the Commission. A copy of this paper can also be found on the Commission website at <http://www.sfc.hk>.

Investment Products Department
Securities and Futures Commission
Hong Kong

January 2008

PERSONAL INFORMATION COLLECTION STATEMENT

1. This Personal Information Collection Statement (“PICS”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the Commission’s use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap 486) (“PDPO”).

Purpose of Collection

2. The Personal Data provided in your submission to the Commission in response to the Consultation Paper on the Proposed Streamlining of the Pre-vetting of Notices and Advertisements of Relevant Authorized Collective Investment Schemes (the “Consultation Paper”) may be used by the Commission for one or more of the following purposes:
 - to administer the relevant provisions², codes and guidelines made or promulgated pursuant to the powers vested in the Commission;
 - for the purpose of performing the Commission’s statutory functions under the relevant provisions;
 - for research and statistical purposes; or
 - other purposes permitted by law.

Transfer of Personal Data

3. Personal Data may be disclosed by the Commission to members of the public in Hong Kong and elsewhere as part of the public consultation on the Consultation Paper. The names of persons who submit comments on the Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing such information on the Commission website and in documents to be published by the Commission throughout and at the conclusion of the consultation period.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on the Consultation Paper. The Commission has the right to charge a reasonable fee for processing any such data access request.

¹ Personal Data means personal data as defined in the PDPO.

² Defined in Schedule 1 to the Securities and Futures Ordinance (Cap 571) (the “SFO”) to mean provisions of the SFO and subsidiary legislation made under it; and provisions of Parts II and XII of the Companies Ordinance (Cap 32) insofar as those Parts relate, directly or indirectly, to the performance of functions relating to prospectuses; the purchase by a corporation of its own shares or a corporation giving financial assistance for the acquisition of its own shares, etc.

Retention

5. Personal Data provided to the Commission in response to the Consultation Paper will be retained for such period as may be necessary for the proper performance of the Commission's functions.

Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on the Consultation Paper, requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

A copy of the Privacy Policy Statement adopted by the Commission is available upon request.

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

INTRODUCTION

1. The Commission proposes to amend 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 objectives of the proposed changes are (i) to shift the Commission’s focus from pre-vetting towards post-vetting and monitoring in so far as the law permits, and (ii) to harmonize the requirements and guidelines applicable to advertisements of schemes authorized under the Product Codes.
3. The purpose of this consultation paper is to solicit market feedback on the proposals that would enable issuers to issue most notices of authorized schemes and their advertisements falling within the exemptions under section 103 of the Securities and Futures Ordinance (Cap 571) (the “SFO”) without having to submit them to the Commission for pre-vetting and prior approval or authorization. Further, we also seek to establish a common set of advertising guidelines (the “revised Advertising Guidelines”) applicable to all authorized schemes. The revised Advertising Guidelines are proposed in order to give better and clearer guidance to the industry.
4. The proposed amendments are marked up against the current version of the Product Codes and the existing advertising guidelines in Appendix F of the UT Code (the “existing Advertising Guidelines”) and set out in the Annexes to this paper.
5. A summary conclusion will be published after the end of the consultation period and all comments from the public will be carefully considered before the revisions are finalized and incorporated into the codes and guidelines.

BACKGROUND

6. The Commission is committed to adopt a pragmatic and flexible approach to better regulate and assist with market development and product innovation. The Commission recognizes that the current practice of detailed pre-vetting of notices and advertisements of authorized schemes could impose a regulatory and cost burden on the market.

7. For the respective years ended 31 March 2005, 2006 and 2007, the Commission approved 3,300, 3,700 and 2,700 sets of revisions of scheme's documents and related notices to investors. For the same respective periods, the Commission pre-vetted and authorized 6,000, 6,600 and 8,200 advertisements. Such advertisements were of a variety of forms, ranging from fact sheets, print ads, web pages, outdoor displays and radio and television broadcasts, etc. The global and local investment product market is growing at an accelerated pace and the number and variety of advertisements is expected to be ever increasing.
8. The Commission notes that the regulations of retail products and regulatory practices of major overseas jurisdictions, including the United Kingdom (the "UK"), the Republic of Ireland ("Ireland"), the United States of America (the "US"), Australia and Singapore, do not generally require pre-vetting of notices and advertisements by regulators, although there are detailed rules and guidelines governing the issue and content of such documents.
9. Promoting and strengthening the position of Hong Kong as an asset management hub in Asia is a strategic objective of the Commission. In order to facilitate the market for more timely notification to investors and speedier promotion of products and to align the Hong Kong regulatory regime on notices and advertisements of authorized schemes with international standards and practices, the Commission proposes to cease pre-vetting almost all notices of authorized schemes and their advertisements falling within the exemptions under section 103 of the SFO. Market practitioners have estimated that the streamlining of the pre-vetting requirements on advertisements could possibly save them two to five working days per advertisement in the production process.
10. At the same time, the Commission takes this opportunity to modernize the advertising guidelines to take into account market and international regulatory developments and to codify existing regulatory practices of the Commission since the last major revision with a view to providing better guidance to the industry.

THE PROPOSED REGULATORY APPROACH

Notices

11. Currently, one of the standard authorization conditions imposed by the Commission on authorized schemes requires all notices, letters and public announcements to investors to be submitted to the Commission for prior approval unless otherwise determined by the Commission.
12. There is no doubt that the responsibility for code compliance and information disclosure in the notices lies firmly with the scheme's key operators, such as the management company or the product issuer. When issuing a notice, letter or public announcement to its investors, the relevant operator should take reasonable care to ensure that information disclosed thereon is complete, accurate, not misleading and in compliance with the Product Codes and constitutive and offering documents.

13. The Commission proposes to revoke the standard condition on authorized schemes as referred to in paragraph 11 above to remove the prior approval requirement on notices, other than those related to withdrawals of authorization, mergers or terminations, and to add a new provision in the Product Codes to require the filing of such notices within two weeks from the date of issuance. Under this proposed approach, the Commission would continue to monitor compliance with the Product Codes through subsequent reviews of filed notices and may make follow-up enquiries, require clarification notices to be issued or take other regulatory actions as considered appropriate. However, the Commission would retain its power to require issuers to submit draft notices for review where the Commission considers it appropriate.
14. The Commission does not propose to extend the application of the streamlined approach to notices in relation to withdrawals of authorization, mergers or terminations given these events are normally of significant impact to investors and the Commission shall continue to monitor closely the whole process of such events and pre-vet all related documents.
15. Notwithstanding the proposed change of the pre-vetting requirement on notices, the requirements under 11.1 of the UT Code, 10.1 of the ILAS Code, 10.1 of the PRF Code and 8.2 of the MPF Code are proposed to remain unchanged. As such, all proposed alterations or additions to the offering or constitutive documents must be submitted to the Commission for prior approval, and the Commission will determine whether investors should be notified and the period of notice that should be applied before the changes are to take effect.
16. The Commission also proposes to harmonize the notice period required for fee increases under the Product Codes. It is proposed that all schemes authorized under the Product Codes would generally be required to provide one month's prior notice for a fee increase. Longer periods may be imposed if required by law, by the home regulator, under the offering or constitutive documents, or as determined by the Commission on a case-by-case basis in exceptional circumstances.

Advertisements

17. Part IV of the SFO provides that a person commits an offence if he issues an advertisement which contains an invitation to the public to acquire an interest in a collective investment scheme, unless the issue is authorized by the Commission or exempted under the SFO.
18. However, the Product Codes (11.11 of the UT Code, 10.7 of the ILAS Code, 10.7 of the PRF Code and 8.6 of the MPF Code) require all advertisements of authorized schemes to be submitted to the Commission for authorization prior to their issue or publication in Hong Kong. Accordingly, under the current regulatory practice of the Commission, all advertisements are pre-vetted and authorized by the Commission notwithstanding any applicable exemptions provided under the SFO.
19. The Commission proposes to revise the Product Codes to permit advertisement issuers to make use of the exemptions provided under section 103 of the SFO such that their issues of advertisements would no longer be subject to pre-vetting by the Commission.

20. The onus of compliance with the advertising guidelines and other relevant regulations rests entirely with the advertisement issuers. For the purpose of promoting compliance with the relevant regulations, the Commission proposes to impose the following new authorization condition on all authorized schemes:
- For schemes authorized after the adoption of the revised Product Codes, the Commission proposes to impose a new authorization condition to the effect that the management company or product issuer of an authorized scheme shall cease or procure its agent to cease issuing an advertisement upon the request of the Commission.
 - For existing authorized schemes, the Commission proposes to impose a new authorization condition to the effect that the management company or product issuer of an authorized scheme shall cease or use its best endeavours to procure its agent to cease issuing an advertisement upon the request of the Commission.
21. This new authorization condition is expected to have similar effect as the authorization condition currently imposed upon the authorization of advertisements under the existing pre-vetting regime where authorization of an advertisement may be withdrawn pursuant to section 106 of the SFO as the Commission thinks fit and the relevant advertisement may no longer be issued.
22. For surveillance and enforcement purposes under the proposed streamlined approach, the Commission proposes to require advertisement issuers to retain records of the advertisements issued for three years from the latest date of issue of an advertisement. Such records should be made available to the Commission upon request. This proposal is in line with the record keeping requirements as imposed by overseas regulators in major jurisdictions such as the UK and the US.
23. The above proposal for streamlining the pre-vetting regime for advertisements of authorized schemes is devised under the current framework of the SFO, where advertisements falling within the scope of the exemptions under the SFO would not be subject to pre-vetting and authorization by the Commission. For example, 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”* where the term *“securities”* is defined under the SFO to include interests in any collective investment scheme but excludes mandatory provident fund schemes (*“MPF schemes”*) and their constituent funds, occupational retirement schemes and insurance contracts. Hence, the exemption of the prior authorization requirement under section 103(2)(a) of the SFO does not apply to the following:
- advertisements of MPF schemes or their constituent funds, pooled retirement funds and investment-linked assurance schemes; or
 - advertisements issued by persons who are not licensed or registered for Type 1, Type 4 or Type 6 regulated activity, unless they appoint a representative or distributor who are licensed or registered for one or more of the above-mentioned

regulated activities to issue advertisements on their behalf and responsible for such advertisements.

24. Subject to the results of this consultation and the implementation of the proposed regulatory approach, the Commission will monitor the implementation situation and may consider seeking appropriate legislative amendments to be made to the SFO to further streamline the authorization requirement for advertisements of authorized schemes.
25. The Commission also seeks to harmonize the advertising guidelines in respective Product Codes by establishing a common set of advertising guidelines applicable to all authorized schemes. The revised Advertising Guidelines are developed primarily based on the provisions in the present advertising guidelines in the Product Codes and are intended to provide clearer guidance to the market and to promote a fair presentation and disclosure in advertisements of authorized schemes and to reflect international regulatory developments.
26. The Commission includes ten proposals to simplify or relax the existing requirements in respect of advertisements of authorized schemes. The key proposals are:

Codification of current practices of the Commission

- (a) The revised Advertising Guidelines would codify the disclosure requirements in advertisements in relation to the use of comparative indices and operational changes of a scheme.

Performance information

- (b) The revised Advertising Guidelines would set out a minimum standard for disclosure of performance information which requires the performance of the immediately preceding five years (or, the period since launch if shorter) to be presented based on complete 12-month periods (“minimum standard performance information”).
- (c) The restriction from presenting more than one less-than-one-year performance figures in an advertisement would be removed, provided that the minimum standard performance information as referred in the preceding paragraph is disclosed in the advertisement.
- (d) Print media advertisements would be permitted to contain performance information of no more than 3 months old, extending from the 2 months old requirement in the present advertising guidelines in the Product Codes.

Advertising on radio, television, cinema and other time-limiting media

- (e) All authorized schemes, including all types of schemes authorized under the UT Code, investment-linked assurance schemes under the ILAS Code, pooled retirement funds under the PRF Code and MPF products under the MPF Code, would be permitted to advertise on radio, television, cinema and other time-limiting media.

Warning statements

- (f) The warning statement disclosure requirement for audio-visual advertisements and display-only materials would be simplified.

Please refer to paragraphs 41 to 78 below for the details of the revised Advertising Guidelines.

27. Upon implementation of the proposed approach, the Commission will issue, and update from time to time, Frequently Asked Questions and Answers (“FAQ”) on Advertising Materials of Authorized Schemes to include practical applications of the Product Codes, in particular, the revised Advertising Guidelines.

Reasons for the Proposal

28. In essence, the proposal is intended to bring the following benefits to the market:
- facilitating more speedy promotion of investment products and more timely communication with investors by the industry;
 - convergence of the Hong Kong regulatory regime with international standards and practices;
 - harmonization of the requirements applicable to advertisements for schemes authorized under different Product Codes;
 - provision of clearer and more specific guidance to the market in terms of disclosure and presentation in advertisements;
 - reducing over-reliance by certain scheme operators on the pre-vetting process of the Commission; and
 - enabling more efficient allocation of resources within the Commission to focus on matters that pose a higher regulatory risk and to cope with the rapid development of the industry in order to serve the market and the public better.

PROPOSED AMENDMENTS TO THE PRODUCT CODES

29. The proposed amendments to the Product Codes reflecting the above new regulatory approach on notices to investors and advertisements are set out in the Annexes to this consultation paper. A summary of the proposed amendments and, where appropriate, the background and rationale for such amendments are discussed below.

Interpretation

30. A definition of “registered person”, consistent with that defined in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, is proposed to be included in the UT Code as the revised Advertising Guidelines would apply to issuers of advertisements of schemes authorized under the

UT Code, which include both licensed and registered persons acting as distributors of such schemes.

Changes to Documentation / Notices to Investors

31. The Product Codes (11.1 and 11.2 of the UT Code, 10.1 of the ILAS Code, 10.1 of the PRF Code and 8.2 of the MPF Code) are proposed to be amended to clarify the typical prior notice period that would be required by the Commission in respect of changes to be made to the offering or constitutive documents of the authorized schemes. The existing policy of the Commission is proposed to be codified to provide that:
- normally, one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the offering or constitutive documents) should be provided to the investors but the Commission may permit a shorter period of notice if the change is not significant.
 - the Commission may, on the other hand, require a longer period of notice in exceptional circumstances. The required notice period may be up to three months so as to allow investors to have more time to consider the changes and be able to take any action (e.g. redemption / surrender) before such changes are to take effect.
 - any general meeting of holders of schemes authorized under the UT Code at which a special resolution is to be proposed shall be convened on at least 21 days' notice and that any general meeting at which an ordinary resolution is to be proposed shall be convened on at least 14 days' notice. This requirement is in line with the relevant requirements applicable to companies incorporated in Hong Kong under the Companies Ordinance (Cap 32) and public companies listed on the Hong Kong Stock Exchange.
32. A new provision is proposed to be added to the Product Codes (11.2A of the UT Code, 10.11 of the ILAS Code, 10.12 of the PRF Code and 8.3A of the MPF Code) to reflect the streamlined approach on notices to investors. This new provision specifies that 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.
33. In respect of the contents of the notices, a new provision (11.2B in the UT Code, 10.12 in the ILAS Code, 10.13 in the PRF Code and 8.3B in the MPF Code) is proposed to expressly remind that the management company / product issuer of an authorized scheme has the responsibility to ensure that the notices are not misleading and contain accurate and adequate information to keep investors informed. This new provision is further proposed to require all notices to contain a Hong Kong contact number for investors to make enquiries. The Commission also takes this opportunity to remind the issuers not to 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.

Withdrawal of Authorization / Merger and Termination

34. As discussed above, the Commission does not propose to extend the application of the streamlined approach to notices in relation to withdrawals of authorization, mergers or terminations. Thus, the prior approval requirement as set out 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 of the MPF Code) shall remain unaltered. In addition, in order to harmonize the requirements on mergers and terminations, a new provision 8.5A is proposed to be added in the MPF Code to govern the notice requirement of schemes authorized under the MPF Code in such circumstances.
35. The Commission further proposes to codify additional key content requirement applicable to such notices as currently required under existing practices. For example, a notice of withdrawal of authorization, merger or termination should include the consequences of the event and the effects on existing investors.

Mention of SFC Authorization

36. The Commission also takes this opportunity to codify in the Product Codes (11.14 of the UT Code, 10.13 of the ILAS Code, 10.14 of the PRF Code and 8.9 of the MPF Code) the disclosure requirement for documents where a scheme is described as having been authorized by the Commission. Such documents should state that authorization does not imply official recommendation.

Increase in Fees

37. The Product Codes (11.3 of the UT Code, 10.4 of the ILAS Code, 10.4 of the PRF Code and 8.4 of the MPF Code) are proposed to be amended to reduce the prior notice requirement in relation to an increase in fees of an authorized scheme from three months to one month. Longer periods may be imposed if required by law, by the home regulator, under the offering or constitutive documents, or as determined by the Commission on a case-by-case basis in exceptional circumstances.

Advertising Materials

38. Included in a 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) are current provisions set out in the present advertising guidelines of the Product Codes. This amendment is intended to move the provisions in relation to authorization conditions and practices from the present advertising guidelines to the main body of the Product Codes. As a result, the revised Advertising Guidelines would mainly contain requirements in relation to the presentation and disclosure, which are applicable to all advertisements irrespective of whether prior authorization by the Commission is required.
39. The Commission also proposes to clarify in this new provision (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) that, where authorization is required, an advertisement, once authorized, may be used in any distribution media. The Commission also proposes to allow performance information and general market commentary on an authorized advertisement to be updated for subsequent issues of the same advertisement without further authorization, provided

that the content and the format of such advertisement remain fundamentally the same as the version submitted for authorization. This represents an extension of the current policy applicable only to regular publications such as newsletters and fact sheets for existing investors.

40. In addition, the Commission proposes to introduce a new provision in the Product Codes (11.13 of the UT Code, 10.9 of the ILAS Code, 10.9 of the PRF Code and 8.8 of the MPF Code) to set out the record keeping requirement for advertisements. Advertisement issuers would be required to keep adequate records of the advertisements issued and the relevant supporting documents for at least three years from the latest issue date. Such records should be made available to the Commission upon request.

Advertising Guidelines

41. As mentioned above, the proposed revised Advertising Guidelines are intended to harmonize the requirements applicable to schemes authorized under different Product Codes. Hence, for the sake of standardization, the Commission proposes to remove the present advertising guidelines appended in each of the Product Codes and set out the revised Advertising Guidelines as a standalone document which would be commonly applicable to schemes authorized under the respective Product Codes.
42. The revised Advertising Guidelines contain requirements mainly in relation to the presentation and disclosure in advertisements of authorized schemes. The general principles included therein shall remain largely the same. The revised Advertising Guidelines, which are developed primarily based on the present advertising guidelines in the Product Codes, mainly seek to clarify and/or codify certain existing requirements, to revise the disclosure requirements for convergence with international regulatory trends and to impose new requirements to meet the regulatory needs upon streamlining the pre-vetting requirement. The proposed amendments are marked up against the existing Advertising Guidelines, set out in Annex 5 and discussed in detail below.

Application of the revised Advertising Guidelines

(introductory paragraphs of the revised Advertising Guidelines)

43. The revised Advertising Guidelines shall apply to all advertisements of schemes authorized under any of the Product Codes, irrespective of whether prior authorization of the Commission is required. In this connection, the Commission proposes to clarify in the revised Advertising Guidelines that all issuers of advertisements of authorized schemes, including licensed and registered persons acting as distributors of the schemes, are required to follow the advertising guidelines.
44. The Commission also proposes to make clear that the responsibility of the advertisements and the onus of compliance lies with the issuers. Issuers of advertisements are responsible for the contents of the advertisements and the monitoring of their publication / distribution and under no circumstances may an issuer disclaim its liabilities in respect of the accuracy of the contents of the advertisements. In respect of information quoted from external sources, issuers

should also have reasonable belief that such information is accurate, complete and up-to-date.

45. While the Commission proposes to remove from the existing Advertising Guidelines the paragraphs specifying that corporate advertisements, press releases and advertisements in international or regional media are not subject to authorization, an FAQ will be published to include these and to provide more examples of materials that do not generally require authorization, unless such materials can be construed as product advertisements. Examples include:
- corporate advertisements which only advertise the expertise or services of the issuer without referring to any particular product;
 - souvenirs or corporate gifts containing only the product name without any additional information of the product;
 - publication of prices of an authorized scheme pursuant to 11.7 of the UT Code without any additional information of the scheme;
 - press releases (but issuers should ensure that the information provided to the press in such releases or otherwise should not contain product information which would contravene the provisions in the revised Advertising Guidelines); and
 - advertisements in international or regional media, including the Internet, that are not targeted at Hong Kong investors and contain no reference to a Hong Kong representative / distributor or their contact details.

It should however be noted that the above are merely examples and that each case needs to be considered in light of its own particular circumstances. Issuers should refer to section 103(10) of the SFO in order to determine whether materials are advertisements, invitations or documents that contain information likely to lead to the doing of any act referred to in section 103(1)(a) or (b) of the SFO or an invitation to the public, and seek legal advice where appropriate.

General principles

(paragraphs 1-2 of the revised Advertising Guidelines)

46. The fundamental principle that advertisements should not be false, biased, misleading or deceptive shall remain unaltered. The Commission proposes to elaborate that advertisements of an authorized scheme should:
- be clear, fair and present a balanced picture of the scheme with adequate risk disclosures; and
 - contain information that is timely and consistent with the scheme's offering document.

Statistics / performance information
(paragraphs 8-16 of the revised Advertising Guidelines)

Reference date

47. With the increased popularity of the internet and other interactive systems and the general investors' demand for more up-to-date information, the Commission proposes to allow the presentation of performance information as of the most recent dealing day, instead of the month beginning / end date, on regular publications.

Peer group comparisons

48. Where peer group comparisons are made in an advertisement, in addition to the requirement that such comparison may only be quoted from a single source, the Commission proposes to codify the requirement of the disclosure of a clear description of the peer group.

Prospective yield

49. The Commission proposes to allow only schemes that invest substantially in fixed income or money market instruments to present a substantiated prospective yield given such investments usually provide a more stable and predictable distribution which can support a more reliable basis for the yield calculation. The Commission also proposes to require the disclosure of such calculation basis on the advertisement so that investors are well informed of any assumptions involved.

Minimum performance information

50. Currently, performance information for periods of any length of time may be presented on advertisements. It lacks standardization and makes it possible for advertisement issuers to cherry-pick preferred performance periods for marketing purpose. Also, the basis of presentation of performance information may be cumulative or annualized, which may not be easily comparable, and under either basis, the performance information is unable to reflect the volatility of the schemes. Although some advertisements have included the standard deviation of the scheme prices as a measure of volatility, this measure is not easily understandable among the investing public.
51. In order to deter cherry-picking of performance information to be presented or not to be presented on advertisements and to enable public investors to make better comparisons among schemes and appreciate the volatility underlying such performance, the Commission proposes a minimum standard for performance information if any such information is included in an advertisement. Performance information, if presented, should at a minimum include that of the immediately preceding five years, or the period since launch if shorter, presented based on complete 12-month periods. For example, if an issuer issues an advertisement of an authorized scheme in early 2008 and chooses to present performance information thereon, the proposed provision would require the actual annual performance of the scheme for the years of 2007, 2006, 2005, 2004 and 2003 be presented. This proposal is in line with the recommended investment performance presentation standards

adopted in the US and member states of the European Economic Area. Further performance information may be presented in addition to the proposed minimum standard.

Short-term performance

52. Under the existing Advertising Guidelines, performance information of an authorized scheme may be presented only after attaining a track record of at least six months, and only one less-than-one-year's figure may be shown on advertisements other than regular publications. The rationale behind these requirements is to discourage the use of short-term performance for marketing purpose as such performance may not be representative and may give an unfair emphasis on recent performance.
53. It is generally observed in the industry that there is an increasing demand from investors for more information. Market practitioners have suggested that investors should be provided with as much information as possible to allow them to make informed decisions. In this connection, the Commission proposes to remove the limit on less-than-one-year's figures provided that (i) such figures are of at least three months in duration and presented in the same format as and no more prominently than the most recent 1-year figure (or the since launch figure if the scheme has a track record of shorter than 1 year) and (ii) the minimum standard performance information as proposed in paragraph 51 above is included in the same advertisement.
54. Some market practitioners have also suggested relaxing the track record requirement from six months to three months. However, the Commission notes that overseas regulations such as those applicable in the UK, the US and Australia adopt a more stringent approach and require schemes to have at least a track record of one year before any performance information may be presented. Hence, the Commission proposes to keep the six-month requirement as in the existing Advertising Guidelines.

Up-to-date information

55. Under the existing Advertising Guidelines, performance information on print media advertisements should be no more than 2 months old. Some market practitioners have expressed concerns as to the cost burden arising from the frequent updating of performance information for such advertisements. They also pointed out that there are circumstances where performance information may be sourced from third parties which may not be available on a basis that is sufficiently timely for inclusion on these advertisements. Having considered the above concerns, the Commission proposes to extend the 2-month requirement to a 3-month requirement, which would be applicable to print media advertisements, broadcasts (such as radio, television, cinema, etc) and interactive systems (such as the internet, interactive voice message systems, etc). The overriding provision that information should be updated if more recent information is significantly different shall continue to apply in all circumstances.

Back-tested and simulated performance information

56. The Commission would like to consult the public on the use of back-tested and simulated performance.

57. The present advertising guidelines do not permit the presentation of simulated performance. The Commission has received feedback from market practitioners suggesting that back-tested performance should be allowed for all formula funds, where payouts and returns are based on a specific pre-determined formula.
58. The Commission has been cautious in considering this matter because the presentation in the offering documents and advertisements of back-tested performance, which is not actual performance, poses an inherent risk of misleading investors. In addition, such information may potentially be subject to manipulation and may involve cherry picking of a preferred performance period, which is unlikely to be repeatable in the future. Whether the use of non-actual performance is misleading may depend on all the circumstances, including how it is presented and the assumptions behind.
59. In this connection, the Commission notes that the regulations of some major overseas jurisdictions, such as those applicable in the UK, Ireland, France, the US and Australia, allow the presentation of non-actual performance under restricted circumstances.
60. The common principles adopted in the relevant overseas regulations in respect of simulated past performance can be summarized as follows:
- The scheme's strategy follows a rigid and pre-determined mathematical process (such as index matching).
 - The scheme is not actively managed.
 - The prices on the relevant markets are unlikely to have been influenced by the operation of the scheme had it been in existence.
 - The advertisement / document must (i) indicate that such information is merely hypothetical or simulated and clearly describe the basis of simulation, and (ii) contain a prominent warning to the effect that the hypothetical or simulated figures used are for illustrative purposes only and are not indicative of future return or actual return likely to be achieved.
61. Even if back-tested or simulated performance were allowed to be presented in relation to passively managed formula funds, it would be appropriate for the Commission to set out certain detailed rules on the presentation of back-tested or simulated results in order to minimize the chance of manipulation and cherry picking which is liable to produce misleading information. For example, it would be useful to set out the requirements on (i) the time periods over which back-tested information should be performed (e.g. five years, ten years, a worst period over a specific historical period of time or a period proportion to the duration of the formula fund); (ii) the basis of back-testing or simulation (e.g. daily rolling basis); (iii) disclosure (e.g. annual returns, tabular or graphical presentation, specific warning statements); (iv) the time period for which such back-tested or simulated performance information may be presented (e.g. up to six months or one year after the launch date of the scheme); and (v) whether the back-tested or simulated information and the detailed assumptions should be presented in the offering documents as well.

62. On the other hand, there are views that the use of back-tested and simulated performance in the marketing of investment products would likely be misleading and susceptible to abuse notwithstanding any risk warnings used. Hence, the Commission wishes to take this opportunity to seek comments from the public on the above.

Annualized returns

63. Under the existing Advertising Guidelines, annualized returns are acceptable if the actual returns for all the individual years are shown in addition. For convergence with international regulatory standards which commonly require the disclosure of annualized returns, the Commission proposes to remove the requirement of accompanying such returns with all individual years' returns provided that the minimum standard performance information as referred in paragraph 51 above is presented on the advertisement.
64. The Commission, however, proposes to codify the existing practice that performance information of less than one year shall not be annualized on the basis that such extrapolated performance information is similar to forecast performance. This is also in line with international standards.

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

65. Currently, the FAQ on the Presentation of Benchmark Performance in Advertising Materials of SFC-authorized Unit Trusts and Mutual Funds as published on our website¹ elaborates on the “like with like” comparison requirement as set out in the existing Advertising Guidelines.
66. The Commission proposes to codify the key principles governing the use of comparative indices in advertisements in order to give clearer guidance to the industry. A new provision is proposed to require a comparative index of a scheme to be:
- the benchmark of the scheme as disclosed in the offering document or an index which most closely reflects the investment focus of the scheme;
 - transparent and published; and
 - applied consistently and any change thereto be supported by adequate justification.
67. The proposed new provision also permits the use of a customized index provided it is created 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.

¹ http://www.sfc.hk/sfc/doc/EN/faqs/products/FAQ%20-%20UTMF%20Benchmark%20310306%20_2006.10.04_%20Eng.pdf

Performance information denominated in a foreign currency
(paragraph 20 of the revised Advertising Guidelines)

68. The existing Advertising Guidelines require performance information of an authorized scheme to be shown in its base currency although performance information denominated in other currencies may be shown for comparison purposes. Such requirement may sometimes lead to confusion arising from information overflow. Hence, the Commission proposes to give advertisement issuers greater flexibility and allow performance information to be presented in other currencies for comparison purpose provided that its base currency and the basis of currency conversion are disclosed.

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

69. Changes to a scheme, such as a merger, a restructuring, a change of management companies or the delegates, or a change in its investment objectives or policies or comparative index, may cast significant impact on the scheme's performance. A new provision is proposed to require any presentation of performance information prior to a change of an authorized scheme to be accompanied by a prominent explanation that is appropriate in the context of the advertisement to ensure such presentation is not misleading.

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

70. The Commission proposes to clarify that performance information of an unauthorized scheme is only permitted if the relevant authorized scheme being advertised is newly launched with a past track record of less than six months.
71. Further, in order to assist investors in interpreting the relevance of the performance information of the unauthorized scheme, the Commission proposes to codify the existing practice to require the advertisement to state whether such unauthorized scheme is subject to any different terms (e.g. different / lower fees and charges) when compared to the authorized scheme being advertised.

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

72. Where an advertisement is exempted from pre-vetting and authorization by the Commission pursuant to any of the exemptions under the SFO, the Commission proposes to require the disclosure that the advertisement has not been reviewed by the Commission.
73. The existing requirement for warning statements and footnotes to be printed in the same size as the rest of the text in the advertisement is generally regarded as unrealistic and impractical. The Commission proposes to replace this requirement by a general principle that requires warning statements and footnotes to be well positioned and properly referenced and, in any event, must be legible in the context of

(i) font sizes used; (ii) format and layout of the advertisement; and (iii) where the advertisement is displayed or published.

74. The industry has been developing in a fast pace. The types and complexity of authorized schemes are ever increasing and some may have special features or involve specific risks. In order to enable investors to continue to be well informed of such features and the risks involved, the Commission proposes to codify the existing policy requiring issuers to include disclosures of special features and additional warning statements in the advertisements of individual or specific types of schemes. The Commission has not set out the specific circumstances that require additional warning statements or prescribed the text of such statements. Issuers are expected to make disclosure appropriate to the degree of risk inherent in the scheme. The Commission reserves the right to require additional warning statements to be included in the advertisements of a scheme and may include such requirement as an authorization condition of the scheme.
75. Product issuers and distributors may issue display-only materials that are not distributed to investors (e.g. posters, exhibition panels, outdoor displays, etc) and regular publications that list out the facts and latest performance information of an array of authorized schemes for comparison or information purposes. Such displays and publications need not include warning statements or disclosures that are specific to a particular scheme referred therein.

Information of the advertisement issuer

(paragraph 28 of the revised Advertising Guidelines)

76. In order to ensure that the issuer of advertisements is publicly identifiable and for effective regulatory review purposes, a new provision is proposed in the revised Advertising Guidelines to require the disclosure of the full name of the issuer on all advertisements, except that such disclosure shall be optional in audio advertisements with no visual display.

Rules applicable to radio, television, cinema or other time-limiting advertisements

(paragraph 29 of the revised Advertising Guidelines)

77. The present advertising guidelines permit only schemes authorized pursuant to Chapter 7 of the UT Code, money market funds and unit portfolio managed funds under Chapter 8 of the UT Code and schemes authorized under the MPF Code to advertise on radio, television or cinema. The Commission has received feedback from market practitioners suggesting relaxing this restriction to allow greater flexibility in the use of different advertising media for all authorized schemes which is expected to facilitate the growth of the industry in Hong Kong. Having considered their suggestion and assessed the regulatory risk, the Commission proposes to remove entirely the existing restriction and hence permitting all authorized schemes to advertise on radio, television, cinema or other time-limiting media.
78. The Commission also proposes to simplify the warning statement disclosure requirement for audio-visual advertisements broadcast on radio, television, cinema or other time-limiting media. In summary, the Commission proposes:

- to remove the requirement for displaying the contact telephone number of the Hong Kong representative or authorized distributor. However, as proposed in paragraph 76 above, the full name of the advertisement issuer should be disclosed instead.
- to enhance the timing requirement for displaying warning statements from the rule-based approach to a more principle-based approach which requires warning statements and the full name of the advertisement issuer to 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.
- to require warning statements to be audibly and clearly read out in a voice-over only if the advertisement is purely audio with no visual display. Hence, an audio-visual advertisement would only be required to display the warning statements for sufficient time in the context of the advertisement and would not need to read out such statements in a voice-over.

Appendix I of the UT Code: Guidelines for Regulating Index Tracking Exchange Traded Funds

79. Paragraph 14 of Appendix I of the UT Code refers to modifications to certain provisions under Chapter 11 of the UT Code that are applicable to exchange traded funds. Amendments are proposed to remove references to 11.11 of the UT Code and to remove paragraph 14(d) given that 11.11 of the UT Code are no longer required to be modified for application by exchange traded funds following the proposed streamlining of the pre-vetting requirement for notices, letters and announcements to holders applicable to all authorized funds. In addition, amendments to paragraph 14(b) are proposed to correspond to the changes proposed for 11.3 of the UT Code.

PROPOSED IMPLEMENTATION TIMETABLE

80. Subject to the result of this consultation, the Commission proposes to cease pre-vetting of eligible notices and advertisements upon gazettal of the revised Product Codes.
81. In respect of the advertising guidelines, in order to allow sufficient lead-in time for the industry to comply, the Commission proposes that the revised Advertising Guidelines be effective on the first business day immediately following the expiry of six months from gazettal. Advertisement issuers would be free to adopt the revised Advertising Guidelines during the transitional period prior to the effective date.

CONSULTATION QUESTIONS

82. The Commission is seeking comments on the above proposal and particularly in the following areas. Please provide reasons for your views.
- Do you agree that the Commission should cease pre-vetting notices, letters and announcements to investors, other than those relating to withdrawals of authorization, mergers or terminations, as proposed in paragraph 13 above?

- Do you agree that advertisement issuers should be permitted to make use of the current exemptions under section 103 of the SFO such that eligible advertisements would not be subject to authorization by the Commission, as proposed in paragraphs 19 to 20 above?
- Do you agree that the present advertising guidelines under the respective Product Codes be harmonized?
- Do you have any comments on the revised Advertising Guidelines as set out in Annex 5?
- Do you think back-tested or simulated performance information, as discussed in paragraphs 56 to 62 above, should be allowed under restricted circumstances? What disclosures do you think are helpful for the interpretation of back-tested or simulated performance information?
- Do you have any comments on the implementation timetable as proposed in paragraphs 80 and 81 above?

CONCLUSION

83. The Commission welcomes any comments from the public and the industry on the proposals made and issues raised in this paper. Please submit comments to us in writing by no later than 29 February 2008. A final set of proposals and the relevant changes to the Product Codes will be published upon consideration of the comments received in the consultation.

ANNEXES

- | | |
|---------|--|
| Annex 1 | Proposed Amendments to the UT Code |
| Annex 2 | Proposed Amendments to the ILAS Code |
| Annex 3 | Proposed Amendments to the PRF Code |
| Annex 4 | Proposed Amendments to the MPF Code |
| Annex 5 | Revised Advertising Guidelines
(as marked up against the existing Advertising Guidelines) |

Annex 1 Proposed Amendments to the UT Code

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 11: Documentation and Reporting

Changes to Documentation

11.1 All proposed alterations or additions to the offering or constitutive documents must be submitted to the Commission for prior approval. 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.

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. Such notice period would not normally exceed three months, but individual cases will be considered on their merits. [see also 6.7]

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

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 11.1.

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 and 11.3 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 In respect of any increase ~~of the management~~ 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, ~~at least three~~ one month's prior notice must be given to all holders, unless otherwise determined by the Commission on a case-by-case basis in exceptional circumstances.

~~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 ~~liquidation~~ termination, the relevant provisions under the constitutive documents that enable such merger or termination, the consequences of the merger or termination and their effects on existing investors, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized scheme), the estimated costs of the merger or ~~liquidation~~ termination 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 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, the issuer of advertisements should 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 for as long as the information it contains remains current, and the performance information of schemes and general market commentary thereon may be updated without further authorization provided that the content and the format of such advertisement remain fundamentally the same as the version submitted for authorization. ~~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

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 in ~~Chapter 11.3~~*: The prior notice requirements ~~to issue a three months' prior notice and to seek the SFC's prior approval for such notice under Chapter 11.3~~ 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(ed) ~~(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.~~

(e)(d) 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~~ 11.4 and 11.5 of the Code.

Annex 2 Proposed Amendments to the ILAS Code

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

Changes to Documentation

10.1 All proposed alterations or additions to the principal brochure and constitutive documents must be submitted to the Commission for prior approval. 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.~~

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 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 10.1, significant changes would include, for example, changes in investment objectives or major investment policies, and mergers.

Increase in Fees

10.4 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~~ one month's prior notice must be given to all scheme participants, unless otherwise determined by the Commission on a case by case basis in exceptional circumstances.

~~De-authorization~~ **Withdrawal 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-authorization~~ 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 reasons for the 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 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, the applicant company should 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 for as long as the information it contains remains current, and the performance information of schemes and general market commentary thereon may be updated without further authorization, provided that the content and the format of such advertisement remain fundamentally the same as the version submitted for authorization. ~~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 10.1.

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 and 10.4 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.

Annex 3 Proposed Amendments to the PRF Code

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

Changes to Documentation

10.1 All proposed alterations or additions to the principal brochure and constitutive documents must be submitted to the Commission for prior approval. 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.~~

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 10.1, significant changes would include, for example, changes in investment objectives or major investment policies, and mergers.

Increase in Fees

10.4 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~~ one month's prior notice must be given to all investors, unless otherwise determined by the Commission on a case by case basis in exceptional circumstances.

~~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 reasons for the 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 the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.
- 10.8 Where authorization by the Commission is required, the applicant company should 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 for as long as the information it contains remains current, and the performance information of funds and general market commentary thereon may be updated without further authorization, provided that the content and the format of such advertisement remain fundamentally

the same as the version submitted for authorization. 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 10.1.

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 and 10.4 above should be approved by the Commission prior to the distribution of the relevant notices to scheme participants.

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

10.14 ~~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 – Proposed Amendments to the MPF Code

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

Changes to Documentation

8.2 All proposed alterations or additions to the offering document of an MPF scheme or pooled investment fund must be submitted to the Commission for prior approval. 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. 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 8.2, significant changes would include, for example, changes in investment objectives or major investment policies, and mergers.

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 and 8.4 should be approved by the Commission prior to the distribution of the relevant notices to 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 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 one~~three month's prior notice must be given to all participants of the MPF scheme or holders of the pooled investment fund, unless otherwise determined by the Commission on a case-by-case basis in exceptional circumstances.

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 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, the applicant should 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 for as long as the information it contains remains current, and the performance information of the MPF schemes or pooled investment funds and general market commentary thereon may be updated without further authorization, provided that the content and the format of such advertisement remain fundamentally the same as the version submitted for authorization.

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)

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 accompanied with a disclosure of its calculation basis is generally acceptable only for schemes that invest substantially in fixed income or money market instruments.
 - (a) ~~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 that 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.

~~(b) Except as permitted in (c), 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 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 ~~fund~~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, any presentation of performance information prior to the 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 in Hong Kong and not available to Hong Kong investors ~~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
- (c) (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

~~21. 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~~arning 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.~~