13 May 2011

Circular to management companies / product issuers of SFC-authorized schemes

Preparation for the full implementation of the Code on Unit Trusts and Mutual Funds ("UT Code") commencing 25 June 2011

Background

1. The purpose of this circular is to provide guidance to the fund managers of Existing Schemes[1] who intend to continue to market such schemes to the public in Hong Kong on or after 25 June 2011.

2. Existing Schemes that continue to be marketed to the public in Hong Kong on or after 25 June 2011 are required to produce (i) a product key facts statement ("KFS") and (ii) a revised offering document to satisfy the other disclosure requirements[2] as contemplated in the SFC Handbook ("Handbook") for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products ("ROD").

3. To help them to meet these requirements, the Commission has held 8 briefing sessions to explain to the industry the new requirements under the revised UT Code, issued 9 FAQs and 2 circulars/letters to provide the industry with guidance and clarification and given directional comments on more than 140 draft KFS submitted by more than 60 fund houses. In addition, we have held numerous telephone discussions with fund houses to answer their questions and enquiries regarding the revised UT Code. These discussions are still ongoing.

4. As long as fund managers of Existing Schemes follow our guidance and comments given and our KFS templates, they need not submit their KFS and RODs for our review in order that they may be provided to investors.

Existing Schemes that continue to be marketed to the public in Hong Kong

5. The Commission wishes to remind fund managers of Existing Schemes that commencing 25 June 2011, any Existing Scheme that does not have a KFS and/or

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1 "Existing Schemes" means (a) collective investment schemes which have been authorized by the Commission prior to 25 June 2010 and remain authorized on that date; and (b) collective investment schemes for which applications for authorization were submitted to the Commission before 25 June 2010, but which are authorized on or after 25 June 2010.

2 As to the guidance on what falls within the scope of "other disclosure requirements" as contemplated in the Handbook, please refer to the FAQ no. 30 of the Frequently Asked Questions on the Code of Unit Trusts and Mutual Funds which can be found on the Commission's website.

ROD shall not continue to be marketed to the public in Hong Kong. **As such, these funds shall not accept subscriptions from new investors[3] as from 25 June 2011 regardless of the distribution or subscription channels used.** Fund managers should also ensure that they provide all necessary and appropriate notice, training and clarification to the front-line sales staff and their distributors as soon as possible and preferably well before 25 June 2011.

Additional 11.1 Changes to offering documents of Existing Schemes

6. During our continuous discussions with the industry, some industry participants advised us that for their own business reasons they would like to take this opportunity, as they prepare their ROD, to introduce other amendments to the structure or mechanics of their schemes such as change in investment objectives, policies and restrictions, fee structure and dealing and pricing arrangements ("Additional 11.1 Changes"). These Additional 11.1 Changes require the Commission's prior approval pursuant to 11.1 of the UT Code.

7. We have over 2,000 SFC-authorized funds. As an ongoing part of our work, we regularly receive applications for approval of changes to existing offering documents under 11.1 of the UT Code. These applications will be, and have all along been, processed according to our established procedures.

8. However, we understand that some fund houses would want us to approve their applications for Additional 11.1 Changes before 25 June 2011 so that when they roll out their KFS and RODs, the RODs will include Additional 11.1 Changes. In our circular dated 16 December 2010, we strongly urged these fund managers to submit their applications by 1 March 2011 so that we could make all reasonable efforts to deal with these applications in order that when they continue to market on or after 25 June 2011, these fund houses could include in their RODs the Additional 11.1 Changes as well.

9. Responding to our request, 53 applications for Additional 11.1 Changes came in on or before 1 March 2011. In respect of these 53 applications, 26 have been approved. We are making all reasonable efforts to have the remaining 27 applications processed in time. However, there may well be a number of applications that because of quality and other fundamental issues may not be in a position to satisfy all our requirements before 25 June 2011. We will contact the relevant fund managers individually with a view to helping them to resolve these issues.

10. If the Additional 11.1 Changes are not able to meet our requirements and receive our approval by 25 June 2011, the fund managers still have an option not to proceed with the Additional 11.1 Changes until a later time but to nevertheless continue to market the relevant Existing Schemes to the public in Hong Kong with a KFS and a ROD. This will give them additional time to resolve the outstanding issues regarding Additional 11.1 Changes.

[3] For the avoidance of doubt, in the absence of marketing, these funds may continue to accept subscriptions from existing investors whether by way of a monthly investment plan or topping-up.

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Effect of breach of the Handbook

11. The Commission wishes to remind fund managers of Existing Schemes that commencing 25 June 2011, it is a breach of the Handbook to continue to market, and accept subscriptions from new investors for, Existing Schemes that do not have KFS and/or ROD. There could be serious regulatory consequences for breach of the Handbook, including but not limited to causing the Commission to consider whether such failure might adversely impact the fitness and properness of persons licensed or registered under the Securities and Futures Ordinance and those set out in 1.6 of the Overarching Principles Section of the Handbook. The Commission therefore urges fund managers of Existing Schemes to act in a timely manner and devote sufficient resources to ensure compliance with the requirements in the revised regulatory regime.

12. The Commission would note that if distributors of Existing Schemes are in doubt about whether a fund needs to have, and in fact has, a KFS and/or a ROD commencing 25 June 2011, they should get clarification from fund managers so as to ensure that they conduct their activities in compliance with the requirements in the revised regulatory regime.

13. Should you have any questions, please contact your case officer in charge.

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