HONG KONG

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Clear Thinking

Streamlining publication approval for collective investment schemes

By Tim Manefield and Andrew Shiu

Overview: In January 2008, the Hong Kong Securities and Futures Commission released a consultation paper that proposed the removal of current pre-publication approval requirements on certain notices and advertisements issued by collective investment schemes. Tim Manefield and Andrew Shiu look at what will change.

The Hong Kong Securities and Futures Commission (SFC) currently requires all notices, letters, advertisements and public announcements issued by collective investment schemes (CIS) to investors to be vetted and approved before issue. The SFC indicates in the consultation paper that this practice has become burdensome and is inconsistent with equivalent overseas regulations. Proposals to streamline this practice were set out in the consultation paper and have been submitted to the SFC. A final set of proposals and relevant changes will be published upon consideration of the comments received.

Which investment schemes?

The proposal set out in the consultation paper is intended to apply to CIS authorised under the following codes:

- the Code of Unit Trusts and Mutual Funds;
- the Code on Investment-Linked Assurance Schemes;
- the Code on Pooled Retirement Funds; and
- the SFC Code on MPF Products.

(collectively, the Product Codes).

Exceptions: The SFC proposes to amend its codes, guidelines and administrative practices so that the requirement to submit notices for prior approval will be removed for the Product Codes other than significant notices. Release of significant notices would still require prior approval, but notices that are not significant notice would only be required to be filed with the SFC within two weeks from the date of issuance.

The Product Codes would be revised to allow advertisement issuers to utilise the exemptions under section 103 of the Securities and Futures Ordinance (Cap 571) such that pre-vetting of an advertisement by the SFC will not be necessary.

Content responsibility: A new provision would be inserted into the Product Codes to remind the management companies and product issuers that they bear the responsibility of ensuring that notices do not contain incomplete, inaccurate or misleading information. Advertisement issuers will also be responsible for ensuring their advertisements do not breach the revised advertising guidelines which, among other things, will set out presentation and disclosure requirements. Listed CIS would be required to continue to comply with the disclosure requirements under the Hong Kong listing rules.

The SFC will also retain the power to monitor notices and advertisements and may take enforcement action if necessary. Advertisement issuers will have to retain records of issued advertisements for three years from the last date of issue of the advertisement.

Efficiency: Among other benefits, the consultation paper cites that market practitioners expect the proposed amendments to minimise, by up to five working days, the time it takes to produce and publish an advertisement. At the same time, investors will receive communications and notifications in a more timely fashion and the time period between the production of an advertisement and its issue or publication would be reduced.

If responses to the consultation process support the proposal and the SFC decides to adopt the amendments, the SFC intends to cease the pre-vetting of notices and advertisements once the revised Codes are gazetted, with the revised advertising guidelines to come into effect approximately six months after the gazettal.

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