



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

Consultation Conclusions on Proposed Amendments to the Code on Pooled Retirement Funds

28 October 2021

Contents

Executive summary	3
Section 1 – Proposals for amendments to the PRF Code	4
I. Obligations of key operators	4
II. Fund operations	7
III. Trustees’ internal control review	9
IV. Specific requirements for different types of investment portfolios	9
V. Overarching principles and disclosure requirements	11
Section 2 – Implementation	13
Conclusion and way forward	13
Appendix A – Final form of the amendments to the PRF Code	
Appendix B – Final form of the information disclosure templates for investment portfolios	
Appendix C – List of respondents	

Executive summary

1. On 18 December 2020, the Securities and Futures Commission (SFC) issued a Consultation Paper on Proposed Amendments to the Code on Pooled Retirement Funds (PRF Code). The proposals in the consultation were made to enhance the SFC's requirements for the operation of pooled retirement funds (PRFs) and the obligations of key operators.
2. The consultation ended on 19 March 2021. The SFC received five written submissions, including from product providers, industry associations and a law firm. A list of respondents (other than those who requested anonymity) is shown in **Appendix C**.

Key comments on the proposals

3. The respondents had no objection to the proposals. They mainly sought clarification of certain obligations of key operators, as well as flexibility for some operational and disclosure requirements in view of the specific nature of PRFs and the different types of investment portfolios. Details of the key comments are set out in this paper.
4. After carefully considering the comments received and for the reasons set out in this paper, the SFC will adopt the proposals with appropriate modifications or clarifications. We will also provide further guidance to the industry by way of Frequently Asked Questions, which will be updated from time to time. Details of our responses are set out in this paper.

Implementation

5. The marked-up text of the amendments to the PRF Code are set out in **Appendix A**. The amended PRF Code will become effective upon its gazettal.
6. A 12-month transitional period from the effective date will be provided for existing PRFs to allow operators to make necessary operational and system changes to comply with the enhanced requirements.
7. We would like to thank all respondents for their detailed and thoughtful comments.
8. The consultation paper, the responses (other than those requested to be withheld from publication) and this paper are available on the SFC website at www.sfc.hk.

Section 1 – Proposals for amendments to the PRF Code

I. Obligations of key operators

Question 1: Do you have any comments on the proposals to set out the obligations of key operators of PRFs?

A. Product providers

Public comments

9. Some respondents suggested that the SFC consider introducing a mechanism for each existing PRF to designate a product provider, as some of the existing PRFs were issued many years ago and it may not be possible to identify the party who submitted the original product authorisation application.
10. A respondent sought clarification of whether the product provider for a PRF in insurance policy form can require scheme participants to give prior notice and make an appointment to inspect the constitutive documents during normal office hours, as the provisions contained therein are tailor made for each employer's scheme (unlike a trust form PRF constituted by a master trust deed) and there will be practical difficulties for product providers to allow inspection at all times.
11. Some respondents noted that the definition of "constitutive documents" under 3.6 of the amended PRF Code is proposed to be amended to include "all material agreements" to align with the corresponding definition under the Code on Unit Trusts and Mutual Funds (UT Code). They asked the SFC to provide examples of material agreements which form part of the constitutive documents. In addition, they commented that the proposed amendment could result in an overly broad application of the term "constitutive documents" and asked the SFC to reconsider the consequences of this proposal.
12. A respondent sought clarification of the meaning of "relevant parties" which product providers are required to take reasonable care to ensure are properly qualified and are discharging their respective obligations under the amended PRF Code.
13. A respondent sought clarification of whether the product provider could designate a third-party website to publish the unit prices and documents for PRFs and investment portfolios.

The SFC's response

14. We have required the approved persons for all existing PRFs to submit a prescribed form to designate the product provider for each PRF.
15. We allow flexibility for the arrangements for the inspection of constitutive documents to cater for the specific nature of PRFs in insurance policy form. The notice period should be reasonable.

16. We are of the view that a product provider should exercise professional judgement to determine whether an agreement is a material agreement and is part of the constitutive documents which govern the existence and operation of a PRF and investment portfolios. As examples, material agreements may include but are not limited to investment management agreements and custodian agreements. It would not be appropriate for the SFC to provide an exhaustive list. The key operators of a PRF and investment portfolios should carefully assess the implications of the inclusion of material agreements in constitutive documents for complying with the relevant requirements under the amended PRF Code.
17. The term “relevant parties” means the relevant key operators including trustees, management companies, insurance companies and Hong Kong representatives.
18. We do not object to the appointment of a service provider to maintain a website for the publication of the unit prices and scheme documents provided that the requirements in relation to the appointment of service providers under 4.4(c) of the amended PRF Code, which incorporates 5.4 and 5.5 of the Overarching Principles Section of the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products, are complied with.

B. Trustees

Public comments

19. A respondent commented that trustees should only be responsible for those representatives or agents appointed by the trustees. A respondent also suggested that the SFC consider including custodians in the requirements for the safekeeping of scheme assets under the amended PRF Code.
20. A respondent commented that for funds investing in SFC-authorized funds where no separate management company is appointed, there is no investment activity other than investing in the underlying designated funds, and the proposed obligation to put in place proper risk management and control systems under 6.4B (and 5.6A(d)) of the amended PRF Code should not apply to the trustees. Moreover, the respondent was of the view that risk management is outside the trustees’ expertise and should be the responsibility of the management companies for the underlying designated funds.
21. A respondent commented that the proposed cash flow monitoring obligations under 6.4A(h) and Appendix E to the amended PRF Code, other than those related to settlement purposes, should not apply to the trustees of PRFs.
22. Some respondents sought clarification of whether the “annual statement to scheme participants” as mentioned in 6.4A(f) of the amended PRF Code refers to the account statement provided to members and the annual summary statement provided to employers. A respondent also queried whether there are any specific requirements as to the format and contents of the required annual statement to scheme participants.
23. A respondent sought clarification and guidance on the essential elements and principles constituting a material breach which is required to be reported to the SFC under 6.4A(k) of the amended PRF Code.

The SFC's response

24. Trustees are liable for the acts and omissions of nominees, agents and delegates in relation to scheme property. In this connection, we expect trustees to be responsible for exercising reasonable care, skill and diligence in the selection, appointment and ongoing monitoring of all nominees, agents and delegates (including any custodians appointed) who are involved in the custody of scheme assets (irrespective of whether the formal appointment of these entities is made by parties other than the trustee). Trustees should also be satisfied that on an ongoing basis such nominees, agents and delegates remain suitably qualified and competent to provide the relevant services.
25. The scope of risk management is intended to be sufficiently broad to cover risks other than those relating to investment alone (for example, operational and liquidity risks). As such, for funds investing in SFC-authorized funds where no separate management company is appointed, the risk management obligation should also apply to trustees.
26. We are of the view that the scope of cash flow monitoring should be broad enough to cover the entire scheme operation and should not be limited to settlement purposes. For example, it should include the identification of significant cash flow which could be inconsistent with the operations of PRFs, as set out under Appendix E to the amended PRF Code. As such, the proposed cash flow monitoring obligations other than those related to settlement purposes should also apply to the relevant trustees.
27. We do not prescribe the format of the annual statements to scheme participants (including employers). At a minimum, the information required under 6.4A(f) of the amended PRF Code should be provided.
28. As set out in 6.4A(k) of the amended PRF Code, a trustee is expected to (i) report to the SFC (either directly or via the product provider) any material issues or changes which may affect its eligibility or capacity to act as trustee of a PRF; and (ii) inform the SFC promptly of any material breach of the PRF Code with respect to the PRF and investment portfolios which has come to its knowledge and which has not been otherwise reported to the SFC by the product provider. As set out in Appendix E to the amended PRF Code, a trustee is required to establish (i) procedures and mechanisms to identify breaches in the course of discharging its obligations; and (ii) a mechanism to notify relevant regulatory bodies (including the SFC) of material breaches. In case of doubt, early consultation with the SFC is encouraged.

C. Insurance companies

Public comments

29. Some respondents made the same comment mentioned in paragraph 22 in relation to the “annual statement to scheme participants” for PRFs in insurance policy form.
30. For PRFs in insurance policy form, a respondent sought clarification of (i) whether the relevant period for the annual statement to be issued to scheme participants can be based on the anniversary year designated by the insurance company or the participating employer, and (ii) the timeline to make the annual confirmation to the SFC and scheme participants.

The SFC's response

31. In line with the response set out in paragraph 27, we allow flexibility as long as the information (required under 6A.2(e) of the amended PRF Code) is provided to scheme participants annually.
32. In view of the specific nature of PRFs in insurance policy form, the relevant period for the annual statement can be based on the anniversary year designated by the insurance company or the participating employer, and we allow flexibility for the timing of the confirmation to the SFC and scheme participants as long as it is made annually on the same date each year.

D. Management companies

Public comment

33. A respondent asked whether the requirements and obligations under the amended PRF Code would apply to management companies appointed for investment portfolios other than direct investment funds (ie, funds investing in SFC-authorized funds, cash management funds and guaranteed funds).

The SFC's response

34. We have revised the PRF Code to clarify that where a management company is voluntarily appointed for a fund investing in SFC-authorized funds, cash management fund or guaranteed fund, it should either be licensed or registered in Hong Kong, or based in a jurisdiction with an inspection regime acceptable to the SFC. In addition, the management company should comply with the other eligibility requirements and relevant obligations under the amended PRF Code.

II. Fund operations

Question 2: Do you have any comments on the proposals to enhance the operational requirements for PRFs?

Public comments

35. A respondent sought further guidance on the roles and responsibilities of product providers in respect of the proposed requirements for "PRF Documentation", and "Fees and Charges" under Chapter 8 of the amended PRF Code.
36. A respondent sought clarification of whether a trustee needs to fulfil the responsibilities of a management company in relation to valuation and pricing under Chapter 8 of the amended PRF Code in case no management company is appointed for such PRF or investment portfolio.
37. A respondent sought clarification of whether notices can be provided to members through their employers.

38. Some respondents queried whether the website maintained for the publication of prices and scheme documents may be accessible exclusively by scheme participants or needs to be open to the general public.
39. A respondent asked whether the information for a PRF and its investment portfolios to be made available on the website (eg, notices, circulars, announcements and unit prices) refers to those issued on and after the date immediately following the expiry of the 12-month transitional period, and the relevant retention period.
40. Some respondents asked if there were any prescriptive content and format requirements for the register of ORSO schemes, or any eligibility requirements for the person so appointed by the trustee or the insurance company to maintain such register.
41. A respondent asked whether the product provider, in addition to the trustee and insurance company, can give the written certification for the alteration of constitutive documents under 10.2 of the amended PRF Code.

The SFC's response

42. As set out under 4.2 of the amended PRF Code, a product provider should be responsible for observing, or procuring other relevant parties to observe, all the requirements of the amended PRF Code. We have revised the PRF Code to further clarify that product providers should comply with the proposed requirements for "PRF Documentation" and "Fees and Charges".
43. We have also revised the PRF Code to clarify that, for a PRF or investment portfolio where no management company is appointed, the trustee or the insurance company will have to comply with the relevant valuation and pricing requirements.
44. Notices can be provided to members through their employers.
45. The website maintained for publication of prices and documents for a PRF and its investment portfolios can be either accessible exclusively by members of the scheme or open to the general public, at the product provider's discretion.
46. The information on the website should be true and accurate and not misleading. On this basis, the product provider is expected to exercise professional judgement to determine whether the information issued before the expiry of the transition period needs to be kept and for how long.
47. The register of ORSO schemes should contain the information for each of the ORSO schemes which participate in the PRF. While there is no prescriptive format, we expect information such as the names of the ORSO scheme, employer and such other information as may be deemed relevant by the product provider to be included. Moreover, while there is no eligibility requirement for the person so appointed to maintain the register, the trustee or the insurance company is expected to exercise reasonable care, skill and diligence in the appointment.
48. For oversight purposes, we expect that only the trustee or insurance company can certify the alteration of constitutive documents.

III. Trustees' internal control review

Question 3: Do you have any comments on the proposals to enhance the requirements for the internal control review for PRF trustees?

Public comments

49. A respondent suggested that with the proposed introduction of the SFC's regulatory regime for trustees (ie, Type 13 regulated activity (RA 13)), the requirement under the amended PRF Code for PRF trustees to appoint independent auditors to periodically review their internal controls and systems should be removed, given such trustees will be subject to the SFC's supervision.
50. A respondent sought further guidance on which requirements under Appendix E to the amended PRF Code are not applicable to PRFs or investment portfolios for which no management companies are appointed.

The SFC's response

51. We agree that PRF trustees should no longer be required to submit an internal control review report under Appendix E to the amended PRF Code after the formal implementation of RA 13. We will make the necessary amendments to the amended PRF Code (for example, revising the eligibility requirements for PRF trustees and removing Appendix E from the amended PRF Code) when RA 13 comes into effect.
52. As set out in Appendix E to the amended PRF Code, trustees need to ensure that adequate policies and procedures for internal controls and systems are maintained for compliance with the requirements under Chapter 6 of the amended PRF Code, which include specific requirements for PRFs or investment portfolios for which no management companies are appointed.

IV. Specific requirements for different types of investment portfolios

Question 4: Do you have any comments on the proposed specific requirements for different types of investment portfolios?

Public comments

53. A respondent sought clarification of whether a management company might be appointed for funds investing in SFC-authorized funds where considered necessary and appropriate.
54. A respondent suggested that the SFC consider, for an investment portfolio that is a fund investing in SFC-authorized funds, whether it will be sufficient to disclose the names of the underlying funds in the principal brochure and the overall target ranges of the investment allocations for the different asset classes in the investment portfolios, rather than the investment allocation for each underlying fund. Another respondent commented that for a fund investing in SFC-authorized funds, the requirements to disclose the identities and respective proportions of the underlying funds would restrict the management company's flexibility to allocate investments.

The respondent sought clarification of the extent of the re-balancing arrangements to be disclosed.

55. A respondent asked whether forbidding the product provider to obtain any quantifiable monetary benefits in connection with investments in the underlying funds of a fund investing in SFC-authorized funds under 8.10A(e) of the amended PRF Code also applies to sponsor fees.
56. A respondent sought guidance on whether the requirements for a guaranteed fund under 8.10C and Chapter 9 of the amended PRF Code would apply to a fund investing in an SFC-authorized guaranteed fund.
57. A respondent sought clarification of whether, apart from complying with the requirements under 8.10C and Chapter 9, the requirements under 8.10A (for funds investing in SFC-authorized funds) or 8.10D (for direct investment funds) of the amended PRF Code would also apply to a guaranteed fund which (in addition to its guarantee feature) invests in SFC-authorized funds or makes direct investments.

The SFC's response

58. A management company can be appointed for funds investing in SFC-authorized funds (or any other type of investment portfolio), and that management company should comply with the requirements and obligations mentioned in paragraph 34 of this paper.
59. An investment portfolio which is classified as a fund investing in SFC-authorized funds should disclose the identities of the underlying funds and their respective proportions/ranges in the principal brochure. While any material changes to the investment objectives, policies or restrictions of the investment portfolio should be submitted to the SFC for prior approval, changes to the respective proportion of underlying funds within a disclosed range would not require the SFC's prior approval.
60. In relation to the disclosure of rebalancing arrangements, a product provider should exercise professional judgement to determine the details to be disclosed in the principal brochure in order for scheme participants to make an informed judgment. The principal brochure may include, but may not be limited to, the circumstances where rebalancing may be triggered and the rebalancing mechanism.
61. We have revised the PRF Code to clarify that charging of sponsor fees is not forbidden for funds investing in SFC-authorized funds as long as this is fully disclosed in the principal brochure.
62. The requirements for a fund investing in SFC-authorized funds under 8.10A of the amended PRF Code should apply to a fund investing in SFC-authorized guaranteed funds, rather than the requirements for guaranteed funds under 8.10C and Chapter 9.
63. For a guaranteed fund which invests in SFC-authorized funds or makes direct investments, the requirements for guaranteed funds under 8.10C and Chapter 9 of the amended PRF Code should apply, rather than the requirements for funds investing in SFC-authorized funds or direct investment funds under 8.10A or 8.10D.

V. Overarching principles and disclosure requirements

Question 5: Do you have any comments on the proposed overarching principles and disclosure requirements?

Public comments

64. A respondent commented that PRFs are different from funds authorised under the UT Code in many respects and suggested that the amended PRF Code should be a completely standalone code which does not cross-reference the UT Code provisions. In particular, the respondent commented that it is not appropriate to incorporate the UT Code provisions for risk management and cash flow monitoring in the amended PRF Code.
65. Another respondent commented that not all the necessary changes might have been made to the requirements when the relevant UT Code provisions were incorporated in Chapter 6A of the amended PRF Code.
66. A respondent sought clarification of whether information about investment portfolios which are closed for new subscriptions is required to be disclosed in the principal brochures.
67. For guaranteed funds, a respondent suggested to allow (i) the rates of return declared for the last five years, and (ii) the proportion of total distributed profits distributed to scheme participants for the last five years, to be published on websites instead of in the principal brochures, so they can be updated in a timely manner.
68. For funds investing in SFC-authorized funds, a respondent commented that there may be practical difficulties in updating the aggregate ongoing fees of underlying funds, calculated on a pro-rated basis, in a timely manner, considering that the fees and respective allocations of the underlying funds may change from time to time.
69. A respondent sought clarification of the expectation for liquidity risk management policies and procedures for PRFs and the related disclosure requirements in principal brochures.
70. Some respondents asked whether separate disclosures for each of the investment portfolios must be included in the principal brochure in the prescribed format (set out in the proposed information disclosure template).
71. Some respondents sought guidance on the information which should be disclosed in the principal brochure about the underlying SFC-authorized funds, invested by an investment portfolio, which are approved pooled investment funds not available to the retail public (non-retail AIFs).

The SFC's response

72. While we agree that PRFs are different from funds authorised under the UT Code in some respects, they also share many similarities and there are benefits in applying the UT Code provisions to the amended PRF Code. We have carefully assessed the appropriateness of applying the UT Code provisions to the amended PRF Code and made the necessary modifications to reflect the differences. Our responses in this

regard in relation to risk management and cash flow monitoring are set out in paragraphs 25 and 26. We are of the view that the current application of the UT Code provisions with modifications is appropriate.

73. In particular, we have carefully assessed the appropriateness of applying the relevant UT Code provisions to Chapter 6A of the amended PRF Code and made the necessary modifications to reflect the differences between PRFs and funds authorised under the UT Code. For example, we did not apply 4.5(a) of the UT Code to Chapter 6A of the amended PRF Code as we considered the obligations regarding custody of scheme assets are not applicable to insurance companies.
74. For the investment portfolios which are closed for new subscriptions (ie, there will be no new employers and employees participating), information may be provided to the existing scheme participants separately upon request.
75. For the historical rates of return and distributed profits of guaranteed funds, we have revised the PRF Code to allow flexibility for publishing them on websites instead of in principal brochures provided that the principal brochure clearly indicates where the information is provided.
76. For funds investing in SFC-authorized funds, in respect of changes of ongoing fees payable by an investment portfolio which do not require the SFC's prior approval (for example, an increase in fees from the current level up to the permitted maximum level as disclosed in the principal brochure), the principal brochure should be updated as soon as reasonably practical.
77. On the other hand, in respect of changes of ongoing fees payable by an investment portfolio which require the SFC's prior approval pursuant to 10.1(c) of the amended PRF Code, the revised principal brochure should be submitted to the SFC for prior authorisation.
78. A management company or (where no management company is appointed for a PRF or an investment portfolio) the trustee should at all times exercise due care, skill and diligence in managing the liquidity of the PRF under its care, and ensure that the PRF is able to meet scheme participants' redemption requests in accordance with the terms set out in the principal brochure and constitutive documents and that investors are treated fairly.
79. In addition, liquidity risk management policies and procedures (including stress testing, where applicable) should be in place for monitoring the liquidity risks of the PRF, taking into account the features of the PRF. Please refer to 5.6A(d) and 6.4B of the amended PRF Code for details.
80. Details including a summary of the liquidity risk management policy and process and a description of liquidity risk management tools are expected to be included in the principal brochure. Please refer to paragraph (p) of Appendix A to the amended PRF Code for details.
81. As stated in the consultation paper, the information disclosure templates are provided to set out the minimum disclosure requirements for each of the four types of investment portfolios in a principal brochure and are for illustrative purposes only. We allow flexibility for the format of the principal brochure. A product provider should ensure the principal brochure contains all the information necessary for scheme

participants to be able to make an informed judgment of the PRF and investment portfolios.

82. As set out in the information disclosure template for funds investing in SFC-authorized funds, if a fund investing in SFC-authorized funds invests in any non-retail APIFs, the names and key information of these APIFs (including their investment objectives and policies and the risk factors) should be disclosed in the principal brochure. We have revised the PRF Code to clarify this.

Section 2 – Implementation

Question 6: Do you agree with the proposed implementation timetable for the proposed amended PRF Code? If not, please set out your reasons and what you think is an appropriate transitional period.

Transitional period

Public comments

83. A respondent suggested extending the transitional period for implementation of the amended PRF Code from 12 months to 18 months, as more time may be needed for them to implement changes to their systems, contractual arrangements and operations.

The SFC's response

84. Given that a majority of the proposals are codifications of existing practice and we have discussed the new proposals with the industry throughout the consultation process, we are of the view that the industry should have sufficient time to implement the necessary changes and a 12-month transitional period from the effective date of the amended PRF Code, which is tentatively scheduled to be in November 2021¹, is appropriate.

Conclusion and way forward

85. The SFC will proceed to implement the proposals with the modifications and clarifications set out in this conclusions paper. The marked-up version of the amendments to the PRF Code and information disclosure templates for investment portfolios are included in **Appendix A** and **Appendix B** respectively.
86. The SFC would like to thank all respondents for their submissions.

¹ The effective date will be set out in the gazette notice to be published after the publication of this conclusions paper.



Appendix A

Final form of the amendments to the PRF Code



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

Final form of the amendments to the PRF Code

The highlighted parts indicate revisions to the PRF Code which differ from the proposed amendments set out in the consultation paper

Code on Pooled Retirement Funds

November 2021

AMENDMENT

Particulars	Paragraph	Section	Effective Date
Interpretation	3.1A, 3.1B, 3.11A	3	1 August 2008
Post-Authorization Requirements	10.1, 10.1A, 10.1B, 10.4-10.9, 10.11-10.14	10	1 August 2008
Information To Be Disclosed In The Principal Brochure	(n)	Appendix A	1 August 2008
Administrative Arrangements	2.1, 2.2	2	25 June 2010
Management Company	5.5(b)	5	25 June 2010
Authorization Procedures	1.6 and 1.6(c), (d) (f)-(h), 1.7	4	1 January 2019
Interpretation	Introduction, 3.6A, 3.7, 3.9A-3.9C, 3.10, 3.11, 3.12A, 3.13-3.16	3	1 January 2019
Management Company	5.1, 5.2, 5.4, 5.5	5	1 January 2019*
Trustee	6.1-6.4A, 6.6	6	1 January 2019*
Hong Kong Representative	7.4, 7.5	7	1 January 2019
Operational Requirements	8.3, 8.8	8	1 January 2019
Guaranteed Funds	9.1	9	1 January 2019
Post-Authorization Requirements	10.1, 10.1A, 10.1B, 10.2, 10.5, 10.6, 10.10, 10.11, 10.13, 10.14	10	1 January 2019
Information to be disclosed in the Principal Brochure	(b)	Appendix A	1 January 2019
Contents of the Constitutive Documents	(f)	Appendix B	1 January 2019
Guidelines for Review of Internal Controls and Systems of Trustees/ Custodians	1, 5	Appendix E	1 January 2019*

DELETION

Particulars	Paragraph	Section	Effective Date
Advertising Guidelines		Appendix D	1 August 2008
Administrative Arrangements	2.3–2.8	2	25 June 2010
Compliance Checklist		Appendix C	1 January 2019

*~~*The same implementation timetable for the Code on Unit Trusts and Mutual Funds will apply to the Code on Pooled Retirement Funds, where applicable.~~*

Implementation schedule

The effective date of this Code is [date].

For the purpose of the implementation of this Code:

- (a) “New schemes” refer to PRFs or investment portfolios which apply for the SFC’s authorization on or after the effective date;
- (b) “New operators” refer to (i) management companies which do not manage any PRFs or investment portfolios as at the effective date; (ii) trustees which do not act as the trustee for any PRFs or investment portfolios as at the effective date (new trustees); (iii) insurance companies which do not act as the insurance company of any PRFs or investment portfolios as at the effective date; and (iv) product providers which do not act as the product provider for any PRFs or investment portfolios as at the effective date;
- (c) “Existing schemes” refer to (i) PRFs or investment portfolios which are authorized by the SFC as at the effective date; and (ii) PRFs or investment portfolios which applied for the SFC’s authorization prior to the effective date and are authorized by the SFC on or after the effective date; and
- (d) “Existing operators” refer to (i) management companies which are managing any PRFs or investment portfolios as at the effective date; (ii) trustees which are acting as the trustee for any PRFs or investment portfolios as at the effective date (existing trustees); (iii) insurance companies which are acting as the insurance company of any PRFs or investment portfolios as at the effective date; and (iv) product providers which are acting as the product provider for any PRFs or investment portfolios as at the effective date.

As from the effective date, this Code will apply to new schemes with new operators with immediate effect.

As for existing schemes and existing operators, a transitional period of 12 months from the effective date will be provided to comply with this Code unless otherwise set out in the attached table.

<u>Topics</u>	<u>Provisions of this Code</u>	<u>New schemes with all new operators</u>	<u>New schemes with any combination of new operators and existing operators</u>	<u>New schemes with all existing operators</u>	<u>Existing schemes with existing operators</u>
<u>I. Obligations of key operators</u>					
<u>Obligations of key operators (except for overarching principles set out below)</u>	<u>Chapters 4, 5, 6 and 6A</u>	<u>Effective immediately</u>	<u>Effective immediately (new operator)</u> <u>[A date which is 12-month from the effective date] (existing operator)</u>	<u>[A date which is 12-month from the effective date]</u>	<u>[A date which is 12-month from the effective date]</u>
<u>II. Fund operations</u>					
<u>Operational matters</u>	<u>Chapters 8 and 11</u>	<u>Effective immediately</u>	<u>[A date which is 12-month from the effective date]</u>		
<u>Reporting</u>	<u>Chapter 10</u>	<u>Effective immediately</u>	<u>[A date which is 12-month from the effective date]</u>		
<u>III. Trustees' internal control review</u>					
<u>Review of internal controls and systems of trustees¹</u>	<u>Chapter 6 and Appendix E</u>	<u>Effective immediately</u>	<u>Effective immediately (new trustee)</u> <u>[A date which is 12-month from the effective date] (existing trustee)</u>		

¹ *The 12-month transitional period for the review of the internal controls and systems of trustees in accordance with Appendix E to this Code means that the review reports of trustees with a financial year starting on a date after 12 months from the effective date should comply in full with the new requirements.*

IV. Specific requirements for different types of investment portfolios				
<u>Appointment of Management Company</u>	<u>5.1</u>	<u>Effective immediately</u>		<u>[A date which is 12-month from the effective date]</u>
<u>Investment restrictions</u>	<u>Chapter 8</u>	<u>Effective immediately</u>		<u>[A date which is 12-month from the effective date]</u>
V. Others				
<u>General matters</u>	<u>Chapters 1, 2 and 3</u>	<u>Effective immediately</u>		
<u>Overarching principles</u>	<u>Chapter 4</u>	<u>Effective immediately</u>		
<u>Hong Kong Representative</u>	<u>Chapter 7</u>	<u>Effective immediately</u>		
<u>Principal brochure</u>	<u>Chapter 9 and Appendix A</u>	<u>Effective immediately</u>	<u>Effective immediately (specific requirements for different types of investment portfolios)</u> <u>[A date which is 12-month from the effective date] (fund operations and other matters)</u>	<u>[A date which is 12-month from the effective date]</u>
<u>Constitutive documents</u>	<u>Appendix B</u>	<u>Effective immediately</u>	<u>Effective immediately (specific requirements for different types of investment portfolios)</u> <u>[A date which is 12-month from the effective date] (fund operations and other matters)</u>	<u>[A date which is 12-month from the effective date]</u>

CODE ON POOLED RETIREMENT FUNDS

Explanatory Notes:

- (a) The Securities and Futures Commission is empowered under section 104(1) of the Securities and Futures Ordinance (Cap. 571) (SFO) to authorize any collective investment scheme and to impose any corresponding authorization conditions as it considers appropriate. This Code, which is published pursuant to section 399(1) of the SFO, provides guidance in relation to the authorization of a collective investment scheme that is a pooled retirement fund.**
- (b) The Commission may review its authorization at any time and may modify, add to or withdraw such authorization, as it deems fit.**
- (c) The issue of any advertisement, invitation or document to the public in Hong Kong to participate in an unauthorized pooled retirement fund may amount to an offence under section 103(1) of the SFO. The Commission is empowered under section 105(1) of the SFO to authorize any advertisement, invitation or document referred to in section 103(1) and to impose any corresponding authorization conditions as it considers appropriate.**
- (d) This Code is established having regard to the regulatory objectives of the Commission set out in section 4 of the SFO. The spirit of this Code should be observed.**
- (e) The Commission may modify or relax the application of a requirement in this Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.**
- (f) This Code does not have the force of law.**

Contents

PART I: GENERAL MATTERS.....	1
Chapter 1: Authorization Procedures.....	1
Chapter 2: Administrative Arrangements	<u>43</u>
Chapter 3: Interpretation.....	<u>54</u>
PART II: AUTHORIZATION REQUIREMENTS	<u>86</u>
Chapter 4: Applicant Company/Product Provider.....	<u>86</u>
Chapter 5: Management Company.....	<u>107</u>
Chapter 6: Trustee	<u>139</u>
<u>Chapter 6A: Insurance Company</u>	<u>16</u>
Chapter 7: Hong Kong Representative	<u>1811</u>
Chapter 8: Operational Requirements	<u>2042</u>
Chapter 9: Guaranteed Funds	<u>2614</u>
PART III: POST-AUTHORIZATION REQUIREMENTS	<u>2946</u>
Chapter 10: Post-authorization Requirements	<u>2946</u>
<u>Chapter 11: Operational Matters</u>	<u>33</u>
APPENDICES	
Appendix A	
Information to be disclosed in the Principal Brochure	<u>3519</u>
Appendix B	
Contents of the Constitutive Documents.....	<u>4022</u>
Appendix C	
{[Deleted]}	<u>4425</u>
Appendix D	
{[Deleted]}	<u>4526</u>
Appendix E	
Guidelines for Review of Internal Controls and Systems of Trustees/Custodians ...	<u>4627</u>

PART I: GENERAL MATTERS

Chapter 1: Authorization Procedures

General

- 1.1 ~~Pooled retirement funds~~ PRFs and investment portfolios are expected to comply with the provisions of this Code in order to be authorized in Hong Kong.
- 1.2 Applications for authorization which seek waivers of any of these provisions must give detailed reasons why waivers are sought.

Nomination of an individual as approved person

- 1.3 ~~1.5 of the UT Code applies. According to sections 104(2) and 105(2) of the SFO, an individual must be approved for the purposes of being served by the Commission with notices and decisions for, respectively, the pooled retirement fund and the issue of any related advertisement, invitation or document. An applicant for authorization is, therefore, required to nominate an individual for approval by the Commission as an approved person.~~
- 1.4 1.6 of the UT Code applies. An approved person should:
- (a) ~~have his/her ordinary residence in Hong Kong;~~
 - (b) ~~inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;~~
 - (c) ~~be capable of being contacted by the Commission by post, telephone, facsimile and electronic mail during business hours;~~
 - (d) ~~inform the Commission of any change in his/her contact details within 14 days after the change takes place; and~~
 - (e) ~~comply with any other requirements as the Commission considers appropriate.~~
- 1.5 1.7 of the UT Code applies. An individual approved by the Commission as an approved person for a pooled retirement fund shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that fund.

Documents to be supplied to the Commission

- 1.6 An application for authorization of a PRF and/or investment portfolio(s) ~~pooled retirement fund~~ must contain a completed Application ~~application Form~~ form as set out on the Commission's website and be accompanied by the following and such other documents as may be required by the Commission from time to time:
- (a) The ~~pooled retirement fund's~~ PRF and investment portfolio(s)'s principal brochure and constitutive documents;

- (b) ~~[Deleted] Copies of any material contracts;~~
- (c) All other sales literature, proposed advertisements and printed materials intended to be issued in Hong Kong to prospective investors scheme participants, where applicable;
- (d) A checklist of compliance with the Code;
- (e) ~~[Deleted] The latest audited report and corporate information in respect of the applicant company, management company, trustee and other relevant parties, where applicable;~~
- (f) The application fee payable in the such form of a cheque payable to the "Securities and Futures Commission" as may be required by the Commission;

Note: The current fee schedule is available on the Commission's website.

- (g) The letter nominating an individual to be approved by the Commission as an approved person [see 1.3] containing the individual's name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address; and
- (h) A written undertaking from the Hong Kong Representative, where applicable (see 7.3).

Offer of PRFs ~~pooled retirement funds and investment portfolios~~

- 1.7 ~~PRFs. Pooled retirement funds and investment portfolios shall only be made available to ORSO schemes, employers and/or members of ORSO schemes and not otherwise for any public offering.~~

Effect of breach of this Code

- 1.8 Failure by any person to comply with any applicable provision of this Code:

- (a) shall not by itself render the person liable to any judicial or other proceedings, but in any proceedings under the SFO before any court, this Code may be admissible in evidence, and if any provision set out in this Code appears to the court to be relevant to any question arising in the proceedings, it may be taken into account in determining the question;
- (b) may cause the Commission to consider whether such failure adversely reflects on the person's fitness and properness (in so far as the relevant person is licensed or registered under the SFO and its obligations are stated in this Code);
- (c) may cause the Commission to consider whether such failure adversely reflects on whether the PRF and/or investment portfolio(s), the principal brochure and/or the advertisements should remain authorized;
- (d) may cause the Commission to consider whether such failure adversely reflects on whether further PRF and/or investment portfolio(s) issued, managed and/or

originated by such person, and/or principal brochure and advertisements in relation to such PRF and/or investment portfolio(s), should be granted authorization in the interest of the scheme participants (i.e. where there is a serious breach, the Commission may refuse to authorize new PRF and/or investment portfolio(s) issued, managed and/or originated by the person in breach and/or principal brochure and advertisements in relation to such PRF and/or investment portfolio(s) for a stated period); and

- (e) may cause the Commission to impose additional authorization condition(s) which may include restricting the further offering of the PRF and/or investment portfolio(s) under 1.7 of this Code.

Chapter 2: Administrative Arrangements

Product Advisory Committee

- 2.1 According to section 8 of the SFO, the Commission is empowered to set up committees, whether for advisory or other purposes. The Commission will establish a Product Advisory Committee for the purposes of consultation and advice on matters which may relate to collective investment schemes within the scope of this Code. The remit of the Products Advisory Committee and its membership will be set out in its Terms of Reference.

Data Privacy

- 2.2 The information requested under ~~the~~this Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in section 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries should be directed to the Data Privacy Officer at the SFC.

Chapter 3: Interpretation

Unless otherwise defined, words and expressions used in this Code are as defined in the SFO.

- 3.1A “Advertising Guidelines” means the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.
- 3.1B ~~“Deleted”~~“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.~~
- 3.2 “approved person” has the meaning assigned to it by section 102(1) of the SFO.
- 3.2A “APIF” means an approved pooled investment fund as defined under the Mandatory Provident Fund Schemes (General) Regulation (Chapter 485A of Laws of Hong Kong).
- 3.2B “cash management portfolio” means an investment portfolio complying with the requirements set out in 8.10B of this Code.
- 3.3 “collective investment scheme” has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the SFO.
- 3.4 “Commission” or “SFC” means the Securities and Futures Commission referred to in section 3(1) of the SFO.
- 3.5 “connected person” in relation to a company means:
- (a) any person or company beneficially owning, directly or indirectly, 20% or more of the ordinary share capital of that company or able to exercise, directly or indirectly, 20% or more of the total votes in that company;
 - (b) any person or company controlled by a person who or which meets one or both of the descriptions given in (a);
 - (c) any member of the group of which that company forms part; or
 - (d) any director or officer of that company or of any of its connected persons as defined in (a), (b) or (c).
- 3.6 “constitutive documents” means the documents which govern the existence and operation of a ~~pooled retirement fund~~PRF and investment portfolio(s) and includes the policy document in the case of a ~~pooled retirement fund~~PRF and investment portfolio(s) which ~~is~~are the subject of or regulated by an insurance arrangement and the trust deed in the case of a ~~pooled retirement fund~~PRF and investment portfolio(s) governed by a trust and all material agreements.
- 3.6A “direct investment fund” means an investment portfolio complying with the requirements set out in 8.10D of this Code.
- 3.6B “fund investing in SFC-authorized fund(s)” means an investment portfolio complying with the requirements set out in 8.10A of this Code.

- 3.6C “guaranteed fund” means an investment portfolio complying with the requirements set out in Chapter 9 of this Code.
- 3.6D “Handbook” means the SFC Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products.
- 3.6EA “Hong Kong representative” or “representative” means the Hong Kong representative appointed pursuant to 7.1 of this Code.
- 3.7 “insurance company” means a company authorized by the Insurance Authority under the Insurance Companies Ordinance (Chapter 41 of Laws of Hong Kong) to carry on a relevant class of insurance business in Hong Kong.
- 3.8 “investment portfolio” means a constituent fund of a ~~pooled retirement fund~~ PRF into which assets of participating ORSO schemes are pooled for investment.
- 3.9 ~~[Deleted] “investors” means the relevant employers and/or members, as appropriate, of the participating ORSO schemes under a pooled retirement fund.~~
- 3.9A “investment delegate” means an entity that has been delegated the investment management function of a ~~pooled retirement fund~~ PRF and/or investment portfolio(s).
- 3.9B “management company” means the entity appointed pursuant to 5.1 of this Code.
- 3.9C “ORSO schemes” means occupational retirement schemes as defined under the Occupational Retirement Schemes Ordinance (Chapter 426 of Laws of Hong Kong).
- 3.10 “pooled retirement fund” or “PRF” or ~~“scheme”~~ has the same meaning as “pooling agreement” in the Occupational Retirement Schemes Ordinance (Chapter 426 of Laws of Hong Kong).
- 3.11 “principal brochure” or “offering document” means ~~that the offering documents (including any other documents issued together)~~ issued by an applicant company, containing information on a ~~pooled retirement fund~~ PRF and investment portfolio(s) as stipulated in Appendix A.
- 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
- 3.11B “Product Provider” means the company which applies to the Commission, directly or through an authorized representative, to have its PRF(s) and/or investment portfolio(s) authorized pursuant to this Code.
- 3.12 “regulated activity” has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the SFO.

3.12A “scheme” means a PRF or an investment portfolio thereunder.

3.12B “scheme participants”, ~~or~~ “holders” or “investors” means the relevant employers and/or members, as appropriate, of the participating ORSO schemes under a PRF.

3.12CA “SFO” means the Securities and Futures Ordinance (Chapter 571 of Laws of Hong Kong).

3.13 “substantial financial institution” means an authorized institution as defined in section 2(1) of the Banking Ordinance (Chapter 155 of Laws of Hong Kong), or a financial institution which is on an ongoing basis subject to prudential regulation and supervision, with a minimum net asset value of HK\$2 billion or its equivalent in foreign currency.

3.14 “~~t~~Trustee” means ~~the~~ an entity appointed pursuant to 6.1 of this Code.

3.15 “UF-driven changes” means changes to an investment portfolio falling within 10.1 of this Code that solely reflect changes made to the corresponding underlying SFC-authorized fund and such underlying fund changes have been approved, or are not required to be approved by the Commission pursuant to the UT Code or the SFC Code on MPF Products.

3.16 “UT Code” means the Code on Unit Trusts and Mutual Funds.

PART II: AUTHORIZATION REQUIREMENTS

Chapter 4: Product Provider Applicant Company

Regulatory Status of Product Provider Applicant Company

- 4.1 No ~~pooled retirement fund~~PRF and/or investment portfolio(s) will be authorized pursuant to this Code unless the ~~applicant company~~Product Provider is authorized:
- (a) under the Insurance Companies Ordinance to carry on the relevant class of insurance business in Hong Kong; or
 - (b) by or is subject to either the requirements of a supervisory authority in Hong Kong or any other authority which is acceptable to the Commission.

If the Product Provider applicant company ceases to be authorized by or to be subject to the requirements of its supervisory authority whether in Hong Kong or elsewhere, any existing authorization of the ~~pooled retirement fund~~PRF(s) and investment portfolio(s) will normally lapse.

Responsibilities of ~~Applicant Company~~Product Provider

- 4.2 The Product Provider applicant company will be responsible for observing, or procuring other relevant parties to observe, all requirements of ~~the~~ this Code and any conditions imposed by the Commission in granting authorization during the continued enjoyment of that authorization, except to the extent that the Commission grants waivers in writing.
- 4.3 The Product Provider applicant company is responsible for whatever information is given to the Commission on its behalf and should use its best endeavors to ensure that statements of intention in ~~printed matter~~ documents are followed.
- 4.4 The ~~applicant company~~Product Provider shall:
- (a) use its best endeavors to carry on and conduct its business in a proper and efficient manner and ~~will ensure that any~~ pooled retirement fundPRF and investment portfolio(s) to which the constitutive documents relate is conducted in a proper and efficient manner; ~~and~~
 - (b) exercise best endeavours and due diligence to ensure that the marketing of the ~~pooled retirement fund~~ PRF and/or investment portfolio(s) is carried out professionally, honestly and fairly;
 - (c) comply with the principles and requirements set out under Chapter 3 to Chapter 7 (except for 6.5 to 6.8) under the Overarching Principles Section of the Handbook;

Note: References therein to:

- (i) “product” shall be replaced by “PRF or investment portfolio”; and
- (ii) “applicable product code” shall be replaced by “this Code”.

(d) 5.10(c) of the UT Code applies;

Note: References therein to “public in Hong Kong” shall be replaced by “scheme participants”.

(e) take reasonable care to ensure that the relevant parties are properly qualified for the performance of their respective duties and functions and discharging their respective obligations under this Code, having regard to the requirements as set out in the relevant Chapters of this Code; and

(f) 5.10(g) of the UT Code applies.

Chapter 5: Management Company

Appointment of Management Company

- 5.1 Every ~~direct investment~~pooled retirement fund must have a management company acceptable to the Commission and shall comply with this Chapter on an ongoing basis, ~~unless the fund is the subject of or regulated by an insurance arrangement (see 5.11 below).~~ For the avoidance of doubt, a management company may be appointed for an investment portfolio (which is not a direct investment fund) on a voluntary basis where appropriate.

Notes (1): The management company of a direct investment fund should be licensed by or registered with the Commission to carry on a business in asset management under Part V of the SFO and should also be currently managing fund(s) authorized by the Commission under the UT Code.

(2): The voluntarily appointed management company should be licensed by or registered with the Commission to carry on a business in asset management under Part V of the SFO or based in a jurisdiction with an inspection regime acceptable to the Commission.

(23): The investment delegate (who has been delegated the investment management function of an ~~pooled retirement fund~~ direct investment fund investment portfolio) should either be licensed or registered in Hong Kong (see 5.6 below) or based in a jurisdiction with an inspection regime acceptable to the Commission.

(4): A list of acceptable inspection regimes is published on the Commission's website. The Commission will consider other jurisdictions on their merits and may accept an undertaking from the relevant management company or investment delegate that the books and records in relation to its management of ~~a pooled retirement fund~~ direct investment fund ~~the investment portfolio~~ will be made available for inspection by the Commission on request.

- 5.2 5.2 of the UT Code applies.

(a) — (deleted)

(b) — (deleted)

(c) — (deleted)

(d) — (deleted)

- 5.3 ~~5.3 of the UT Code applies. Indebtedness owed by the management company to its parent company will be considered as part of capital for the purpose of 5.2(b) in the following circumstances:~~

~~(a) — the indebtedness must not be settled without the prior written consent of the Commission; and~~

~~(b) — the indebtedness must be subordinated to all other liabilities of the~~

~~management company, both in terms of its entitlement to income and its rights in a liquidation.~~

Qualifications of Directors

- 5.4 ~~5.4 of the UT Code applies. The directors of the management company must be of good repute and in the opinion of the Commission possess the necessary experience for the performance of their duties. In determining the acceptability of the management company, the Commission may consider the qualifications and experience of persons employed by the management company and any appointed investment delegate.~~

Criteria for Acceptability of Management Company

- 5.5 5.5 of the UT Code applies.

~~(a) — (deleted)~~

~~(b) — (deleted)~~

~~(c) — (deleted)~~

~~(d) — (deleted)~~

~~(e) — (deleted)~~

Licensing Requirement

- 5.6 ~~5.6 of the UT Code applies. A management company should be properly licensed or registered under Part V of the SFO for carrying on its regulated activities.~~

General Obligations of Management Company

- 5.6A A management company must comply with the following:

(a) 5.10(a) of the UT Code applies;

Note: References therein to “constitutive documents” shall be replaced by “constitutive documents and this Code”.

(b) 5.10(b) of the UT Code applies (except for the requirements for preparation of financial reports);

(c) 5.10(e) of the UT Code applies; and

(d) 5.10(f) of the UT Code applies.

Note: Note to 5.10(d) of the UT Code applies and references therein to (i) “trustee/custodian” shall be replaced by “trustee or the insurance company”, and (ii) “4.5” shall be replaced by “6.4A/6A.2 of this Code”.

Retirement of a Management Company

5.7 ~~5.11 of the UT Code applies. The management company must be subject to removal by notice in writing from the trustee in any of the following events:~~

- ~~(a) the management company goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or~~
- ~~(b) for good and sufficient reason, the trustee states in writing that a change in management company is desirable in the interests of the investors.~~

Note: References therein to:

- (i) "trustee" shall be replaced by "trustee or the insurance company"; and
- (ii) "directors of a mutual fund corporation" shall be deleted.

5.8 ~~5.12 of the UT Code applies. In addition, the management company must retire:~~

- ~~(a) in all other cases provided for in the constitutive documents; or~~
- ~~(b) when the Commission withdraws its approval of the management company.~~

5.9 ~~5.13 of the UT Code applies. The Commission must be informed by the trustee of any decision to remove the management company.~~

Note: References therein to:

- (i) "trustee" shall be replaced by "trustee or the insurance company"; and
- (ii) "directors of a mutual fund corporation" shall be deleted.

5.10 ~~5.14 of the UT Code applies. Upon the retirement or dismissal of the management company, the trustee must appoint a new management company as soon as possible, subject to the approval of the Commission.~~

Note: References therein to:

- (i) "trustee" shall be replaced by "trustee or the insurance company"; and
- (ii) "directors of a mutual fund corporation" shall be deleted.

Pooled Retirement Funds under an Insurance Arrangement

5.11 ~~[Deleted]~~Notwithstanding 5.1, a pooled retirement fund which is the subject of or regulated by an insurance arrangement may be managed by an insurance company which is to perform the functions analogous to those of a management company and trustee, where applicable.

Chapter 6: Trustee

Appointment of Trustee

- 6.1 Every ~~pooled retirement fund~~ PRF and investment portfolio must be governed by a trust with a trustee that is acceptable to the Commission and shall comply with this Chapter on an ongoing basis, unless the pooled retirement fund PRF or investment portfolio is the subject of or regulated by an insurance arrangement.

Note: An acceptable trustee should be subject to prudential regulation and supervision on an ongoing basis. Trustee shall appoint an independent auditor to periodically review its internal controls and systems on terms of reference in compliance with this Code (see Appendix E to this Code) and should file such report with the Commission, unless such trustee is a trust company which is a trustee of any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of Laws of Hong Kong) also currently submitting an internal control review report under Appendix G to the UT Code as a trustee/custodian of SFC-authorized fund(s) and confirms to the Commission that the applicable internal control measures in respect of such SFC-authorized fund(s) also apply to the PRF and investment portfolio(s) under its trusteeship.

- 6.2 A trustee must be one of the following:
- (a) 4.2(a) of the UT Code applies;
 - (b) a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of Laws of Hong Kong) which is a subsidiary of such a bank or a banking institution falling under 6.2(d) or of an insurance company authorized in Hong Kong;

Note: In determining the acceptability of a subsidiary of a banking institution falling under 6.2(d), the Commission will take into account factors including the level of oversight and supervision from such banking institution.

- (c) 4.2(c) of the UT Code applies; or
 - (d) 4.2(d) of the UT Code applies.
- 6.3 4.3 of the UT Code applies.
- 6.4 Notwithstanding 6.3, the trustee's paid-up share capital and non-distributable capital reserves may be less than HK\$10 million if the trustee is a wholly-owned subsidiary of a bank or an insurance company (the holding company); and
- (a) 4.4(a) of the UT Code applies; or
 - (b) 4.4(b) of the UT Code applies.

General Obligations of Trustee

6.4A The trustee must comply with the following:

(a) 4.5(a) of the UT Code applies;

(b) 4.5(b) of the UT Code applies;

(c) 4.5(c) of the UT Code applies;

Note: References therein to “prices” shall be replaced by “prices and number of units (where applicable)”.

(d) 4.5(d) of the UT Code applies;

Note: References therein to “this UT Code” shall be replaced by “this Code”.

(e) 4.5(e) of the UT Code applies;

(f) confirm annually to the Commission and in the annual statement to scheme participants that, in its opinion, each management company has in all material respects managed the PRF and/or investment portfolio(s) in accordance with the provisions of the constitutive documents and this Code; if a management company has not done so, the respects in which it has not done so and the steps which the trustee has taken in respect thereof;

(g) 4.5(g) of the UT Code applies;

(h) 4.5(h) of the UT Code applies;

(i) 4.5(i) of the UT Code applies;

Note: References therein to “4.5(a)(iii)” shall be replaced by “6.4A(a) of this Code”.

(i) 4.5(i) of the UT Code applies;

Note: References therein to:

(i) “this UT Code” shall be replaced by “this Code”; and

(ii) “Appendix G” shall be replaced by “Appendix E to this Code”.

(k) 4.5(k) of the UT Code applies;

Note: References therein to:

(i) “management company” shall be replaced by “Product Provider”;
and

(ii) “this UT Code and applicable provisions of the Handbook” shall be replaced by “this Code”.

Note: Where no management company is appointed for the PRF or investment portfolio(s),

(i) 6.4A(d) and 6.4A(f) of this Code shall not be applicable;

(ii) references to “take reasonable care to ensure” in 4.5(b), (e), (g) and (h) of the UT Code shall be replaced by “ensure”; and

(iii) references to “take reasonable care to ensure that the methods adopted by the management company in calculating the value of units/shares are adequate to ensure” in 4.5(c) of the UT Code shall be replaced by “ensure that the methods adopted in calculating the value of units are adequate to ensure”.

6.4B Where no management company is appointed for the PRF or investment portfolio(s), the trustee must assume the obligations of a management company under 5.6A(a), (b), (c) and (d) of this Code.

Note: References therein to “manage” in 5.6A(a) shall be replaced by “administer”.

Retirement of Trustee

6.4AC 4.6 of the UT Code applies.

Note: References therein to “11.1” shall be replaced by “10.1 of this Code”.

Independence of Trustee and Management Company

6.5 4.7 of the UT Code applies. The trustee and the management company must be persons who are independent of each other.

Independence of Trustee and Management Company

6.6 4.8 of the UT Code applies.

(a) —(deleted)

(b) —(deleted)

(c) —(deleted)

(d) —(deleted)

Note: References therein to “4.7” shall be replaced by “6.5 of this Code”.

6.7 The trustee must satisfy the Commission:

- (a) that its chief executive and directors are persons of good reputation and character and, in particular, have not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty; and
- (b) that the chief executive and a majority of its directors have the skill, knowledge, experience and qualifications that are, in the opinion of the Commission, necessary for the successful operation of the pooled retirement fundPRF and/or investment portfolio(s).

Chapter 6A: Insurance Company

Appointment of Insurance Company

6A.1 Every PRF and investment portfolio which is constituted as an insurance policy must be issued by an insurance company.

General Obligations of Insurance Company

6A.2 The insurance company must comply with the following:

(a) 4.5(b) of the UT Code applies;

(b) 4.5(c) of the UT Code applies;

Note: References therein to “prices” shall be replaced by “prices and number of units (where applicable)”.

(c) 4.5(d) of the UT Code applies;

Note: References therein to “this UT Code” shall be replaced by “this Code”.

(d) 4.5(e) of the UT Code applies;

(e) confirm annually to the Commission and in the annual statement to scheme participants that, in its opinion, each management company has in all material respects managed the PRF and/or investment portfolio(s) in accordance with the provisions of the constitutive documents and this Code; if a management company has not done so, the respects in which it has not done so and the steps which the insurance company has taken in respect thereof;

(f) 4.5(g) of the UT Code applies;

(g) 4.5(h) of the UT Code applies;

(h) 4.5(i) of the UT Code applies (except for the note); and

Note: References therein to “this UT Code” shall be replaced by “this Code”.

(i) 4.5(k) of the UT Code applies;

Note: References therein to:

(i) “trustee/custodian” shall be replaced by “insurance company”;

(ii) “management company” shall be replaced by “Product Provider”;

and

(iii) “this UT Code and applicable provisions of the Handbook” shall be replaced by “this Code”.

Note: Where no management company is appointed for the PRF or investment portfolio(s),

(i) 6A.2(c) and 6A.2(e) of this Code shall not be applicable;

(ii) references to “take reasonable care to ensure” in 4.5(b), (e), (g) and (h) of the UT Code shall be replaced by “ensure”; and

(iii) references to “take reasonable care to ensure that the methods adopted by the management company in calculating the value of units/shares are adequate to ensure” in 4.5(c) of the UT Code shall be replaced by “ensure that the methods adopted in calculating the value of units are adequate to ensure”.

6A.3 Where no management company is appointed for the PRF or investment portfolio(s), the insurance company must assume the obligations of a management company under 5.6A(a), (b), (c) and (d) of this Code.

Note: References therein to “manage” in 5.6A(a) shall be replaced by “administer”.

Chapter 7: Hong Kong Representative

Appointment of Representative

- 7.1 9.1 and 9.2 of the UT Code apply.

Note: References therein to “management company” shall be replaced by “Product Provider”. The applicant company will be required to appoint a representative in Hong Kong if it is not incorporated in and does not have a place of business in Hong Kong. The representative must be maintained throughout the period the pooled retirement fund is authorized in Hong Kong.

Functions of a Representative

- 7.2 The representative is not required to take responsibility for the acts and omissions of the Product Provider applicant company but must be empowered to:
- (a) act for the Product Provider applicant company in all matters relating to the initial and continued authorization of the pooled retirement fund PRF and investment portfolio(s), pursuant to the relevant legislation and this Code;
 - (b) accept service of any summons or writ on behalf of the Product Provider applicant company;
 - (c) provide the Commission with such up-to-date principal brochure, constitutive documents or other documents relevant to the pooled retirement fund PRF and investment portfolio(s) as the Commission may from time to time request;
 - (d) receive notices from investors scheme participants in respect of the pooled retirement fund PRF and investment portfolio(s);
 - (e) make available for public inspection by scheme participants in Hong Kong, free of charge, and offer for sale at a reasonable price to investors scheme participants copies of all constitutive documents of the pooled retirement fund PRF and investment portfolio(s);
 - (f) provide investors scheme participants with information on the PRF and investment portfolio(s) pooled retirement fund;
 - (g) represent the Product Provider applicant company in relation to all matters in which any investor scheme participant in Hong Kong has a pecuniary interest; and
 - (h) exercise best endeavours and due diligence to ensure that the marketing of the pooled retirement fund PRF and investment portfolio(s) is carried out professionally, honestly and fairly.

Written Undertaking

- 7.3 9.7 of the UT Code applies.

Note: References therein to “this UT Code” shall be replaced by “this Code”. The

~~representative must provide the Commission with a written undertaking that it will perform the duties required of a representative under this Code.~~

Retirement or Dismissal of Representative

7.4 9.8 of the UT Code applies.

Note: References therein to “11.1(b)” shall be replaced by “10.1(b) of this Code”. Should the representative retire or be dismissed, it must be replaced as soon as possible by another representative whose appointment is subject to the approval of the Commission (see 10.1(b)).

7.5 {[Deleted]}

Jurisdiction

7.6 9.10 of the UT Code applies.

Chapter 8: Operational Requirements

The requirements under 8.1 to 8.9A shall be complied with by the Product Provider. The requirements under 8.10 to 8.18 (except for 8.13) shall be complied with by the management company, and, for the avoidance of doubt, where no management company is appointed for the PRF or investment portfolio(s), the relevant requirements applicable to a management company under this Chapter must be complied with by the trustee or the insurance company, as the case may be.

Pooled Retirement FundPRF Documentation

Matters to be Disclosed in the Principal Brochure

- 8.1 An authorized pooled retirement fundPRF and investment portfolio(s) must issue an up-to-date principal brochure, which should contain the information necessary for prospective investors scheme participants to be able to make an informed judgment of the investment proposed to them, and in particular should contain the information listed in Appendix A to this Code.

English and Chinese Principal Brochure

- 8.2 6.2 of the UT Code applies. Except as provided herein, the information required in Appendix A must be provided in the English and Chinese languages. The Commission may waive the requirement that the information be provided in both languages on a case-by-case basis where the applicant company satisfies the Commission that the pooled retirement fund will only be offered to persons fully conversant in the language in which it is intended to publish the information.

Note: References therein to:

- (i) "Appendix C" shall be replaced by "Appendix A to this Code"; and
- (ii) "management company" shall be replaced by "Product Provider".

Application Form

- 8.3 Subject to 1.7, no pooled retirement fundPRF or investment portfolio(s) application form may be provided to any member of the public unless it is accompanied by the principal brochure. To that end the application form should include a statement to the effect that it should only be issued in conjunction with the principal brochure.

Inclusion of Performance Data

- 8.4 If performance data or estimated yield is quoted, the Commission may require supporting documentation. No forecast or illustration of the investment portfolios' future performance may be made in authorized fund documents except where an investment return at a certain rate is guaranteed.

Naming of Unauthorized Collective Investment Schemes

- 8.5 As a general principle any naming of collective investment schemes in authorized fund documents should be restricted to those which are authorized by the Commission pursuant to section 104(1) of the SFO.

Contents of Constitutive Documents

- 8.6 ~~6.6 of the UT Code applies. The constitutive documents of a pooled retirement fund should contain the information listed in Appendix B.~~

Note: References therein to:

- (i) "Appendix D" shall be replaced by "Appendix B to this Code";
- (ii) "trustee/custodian" shall be replaced by "trustee or the insurance company";
- (iii) "management company" shall be replaced by "Product Provider, guarantor or management company"; and
- (iv) "directors of the scheme" shall be deleted.

Fees and Charges

- 8.7 Where an investment portfolio proposes to invest in collective investment schemes managed or distributed by the same company or group, all initial charges of the underlying funds must be waived but recurrent management fees and charges may be levied proportionate to the amount invested.
- 8.8 ~~6.16 of the UT Code applies. The level/basis of calculation of all costs and charges payable must be clearly stated, with percentages expressed on a per annum basis, where applicable. The aggregate level of fees for investment management function should also be disclosed.~~

Note: References therein to "C14 of Appendix C" shall be replaced by "paragraph (d) of Appendix A to this Code".

- 8.9 ~~6.17 of the UT Code applies. If a performance fee is levied, the fee can only be payable:~~
- ~~(a) — no more frequently than annually; and~~
 - ~~(b) — only if the net asset value per unit exceeds the net asset value per unit on which the performance fee was last calculated and paid (i.e. on a "high-on-high" basis).~~

In the case where an investment portfolio is not unitized, a certificate from an actuary must be provided to the Commission on an annual basis to certify compliance with the foregoing except where:

- (a) there exists a year-on-year guarantee on investment return where the deficiency, if any, between the guaranteed return and the actual return is credited into the investors' scheme participants' accounts not less frequently than annually; or
- (b) the investment portfolio is the subject of or regulated by an insurance arrangement in which investment returns may be declared by the policy issuer, at its discretion, at or above a stated minimum rate not less frequently than annually.

8.9A 6.18 of the UT Code applies.

Note: References therein to “D10 of Appendix D” shall be replaced by “paragraph (h) of Appendix B to this Code”.

Investment Restrictions

8.10 An investment portfolio is expected to comply with the general provisions of Chapter 7 of the Code on Unit trusts and Mutual Funds, where applicable. An investment portfolio under a PRF shall only be one of the following: (a) a fund investing in SFC-authorized fund(s); (b) a cash management portfolio; (c) a guaranteed fund; or (d) a direct investment fund.

Fund investing in SFC-authorized fund(s)

8.10A (a) A fund investing in SFC-authorized fund(s) may normally invest 90% or more of its total net asset value in one or more SFC-authorized fund(s) falling under Chapter 7 (plain vanilla funds), 8.2 (money market funds), 8.6 (unlisted index funds and index tracking exchange traded funds) or 8.10 (listed open-ended funds) of the UT Code, or APIF(s). The remaining assets shall be held in cash or cash equivalents. In addition, the name(s) of the underlying fund(s) and their respective investment allocation(s) must be disclosed in the principal brochure.

(b) Furthermore, any underlying fund must be a non-derivative fund.

Note: A non-derivative fund is one with a net derivative exposure of up to 50% of its NAV under the UT Code. Please refer to the Guide on the Use of Financial Derivative Instruments for Unit Trusts and Mutual Funds, as updated from time to time, for guidance on the calculation methodology of the net derivative exposure of a fund and the “Derivative funds” column in the list of SFC-authorized unit trusts and mutual funds shown on the SFC website, as updated from time to time, which indicates whether an underlying SFC-authorized fund is, or is not a derivative fund.

(c) A fund investing in SFC-authorized fund(s) may borrow up to 10% (by total net asset value) of its underlying assets but only on a temporary basis for the purpose of meeting redemptions or defraying operating expenses.

(d) Where a fund investing in SFC-authorized fund(s) invests in any SFC-authorized fund(s) issued by the Product Provider or its connected person(s) or delegate(s), all initial charges and redemption charges on such underlying fund(s) must be waived.

(e) The Product Provider or its delegate(s) may not obtain a rebate on any fees or charges levied by the underlying fund(s) (or their management companies), or any quantifiable monetary benefits in connection with investments in the underlying fund(s), of a fund investing in SFC-authorized fund(s).

Note: For the avoidance of doubt, fees or charges may be levied by the scheme as long as they are fully disclosed in the principal brochure in accordance with paragraph (d) of Appendix A.

Cash management portfolio

8.10B (a) A cash management portfolio may only invest in and hold cash or cash equivalents in short-term bank deposits, bank current accounts, and certificates of deposit.

(b) 8.2(f) of the UT Code applies.

Note: References therein to:

(1) “two years in case of Government and other public securities [see Notes (1) and (2) to 7.5]” shall be deleted;

(2) “security” and “securities” under Notes (1) and (2) shall be replaced by “asset” and “assets” respectively; and

(3) Note (3) shall be deleted.

(c) 8.2(h) of the UT Code applies.

Note: References therein to “Notwithstanding 7.21” shall be deleted.

(d) 8.2(n) of the UT Code applies.

Note: References therein to:

(1) “securities” under Notes (1) and (2) shall be deleted;

(2) “(iii) amount receivable and due unconditionally within one working day on pending sales of portfolio securities” under Note (1) shall be deleted;

(3) “(iii) amount receivable and due unconditionally within five working days on pending sales of portfolio securities” under Note (2) shall be deleted; and

(4) Note (3) shall be deleted.

Guaranteed fund

8.10C A guaranteed fund contains a structure in which a guaranteed amount will be paid to scheme participants at a specific date in the future and that complies with requirements under Chapter 9 of this Code.

Direct investment fund

8.10D (a) A direct investment fund may invest at the management company’s discretion, subject to the provisions of its constitutive documents and this Code.

(b) A direct investment fund must comply with the core investment requirements under Chapter 7, and where applicable, the specific investment requirements under 8.2 or 8.6 of the UT Code.

(c) A direct investment fund must be a non-derivative fund.

Note: A non-derivative fund is one with a net derivative exposure of up to 50% of its NAV under the UT Code. Please refer to the Guide on the Use of Financial Derivative Instruments for Unit Trusts and Mutual Funds, as updated from time to time, for guidance on the calculation methodology of the net derivative exposure of a fund and the "Derivative funds" column in the list of SFC-authorized unit trusts and mutual funds shown on the SFC website, as updated from time to time, which indicates whether an underlying SFC-authorized fund is, or is not a derivative fund.

- 8.11 In addition, no moneys of an investment portfolio may be invested in the securities of, or lent to, as applicable, the ~~applicant company~~ Product Provider, the management company, the guarantor, the trustee, or any of their connected persons except where any of these parties is a substantial financial institution or an insurance company. For the purposes of this provision securities do not include interests in collective investment schemes, either authorized under section 104(1) of the SFO or recognized jurisdiction schemes pursuant to 1.2 of the ~~Code on Unit Trusts and Mutual Funds~~ UT Code.
- 8.12 ~~These requirements should apply, individually, to all investment portfolios of a pooled retirement fund except for guaranteed funds (see Chapter 9). [Deleted]~~

Register of ORSO schemes

- 8.13 The trustee, insurance company or the person so appointed by the trustee or the insurance company must maintain a register of ORSO schemes. The Commission must be advised on request of the address(es) where the register is kept.

Pricing, issue and redemption

Initial offers

- 8.14 6.10 of the UT Code applies.

Valuation and pricing

- 8.15 6.11 of the UT Code applies.

- 8.15A 6.11A of the UT Code applies.

Note: References therein to "trustee/custodian" shall be replaced by "trustee or the insurance company".

- 8.15B 6.11B of the UT Code applies.

- 8.15C 6.11C of the UT Code applies.

Valuation of unquoted securities

- 8.16 6.12 of the UT Code applies.

Note: References therein to "trustee/custodian" shall be replaced by "trustee or the insurance company".

Dealing

8.17 6.13 of the UT Code applies.

Note: References therein to:

(i) “except for a closed-ended fund authorized pursuant to 8.11 of this UT Code” shall be deleted; and

(ii) “Any offer price which the management company or the distribution company quotes or publishes” shall be replaced by “Any offer price quoted or published”.

8.18 6.14 of the UT Code applies.

Chapter 9: Guaranteed Funds

~~The following criteria~~This Chapter shall apply to ~~pooled retirement funds which contain an investment portfolio in which a guaranteed amount will be paid to investors~~scheme participants at a specific date in the future.

Guarantor

- 9.1 If the guarantor is an entity other than the insurance company which issues the policy, it must be a substantial financial institution.

Disclosure

- 9.2 In addition to the requirements under Appendix A to this Code, t~~The principal brochure of the pooled retirement fund~~must contain:
- ~~(a) the name of the guarantor (if other than the insurance company which issues the policy) and the terms of the guarantee;~~
 - (b) a detailed description of the nature of the underlying investments;
 - ~~(c) where applicable, a warning statement in relation to all material conditions which affect the scope or validity of the guarantee including, where relevant, the condition that the guarantee only applies to investors who hold their investment until the date specified in the guarantee and that termination or withdrawal before such date are fully exposed to fluctuations in the value of the assets comprising the pooled retirement fund and/or subject to penalties; and~~
 - (c) an illustration or description to clearly demonstrate the capital and/or interest guarantee mechanism including:
 - (i) the key terms and conditions of the guarantee; and
 - (ii) the guaranteed amount (fixed and/or variable) that will be paid to scheme participants; - (d) details of any smoothing or other reserve mechanism and the relevant factors taken into account;
 - (e) a description of the key risk factors associated with the investments in the guaranteed fund;
 - (f) where applicable, a warning statement in relation to all material conditions which affect the scope or validity of the guarantee including, where relevant, the condition that the guarantee only applies to scheme participants who hold their investment until the date specified in the guarantee and that termination or withdrawal before such date are fully exposed to fluctuations in the value of the assets comprising the guaranteed fund and/or subject to penalties; and
 - (g) where applicable, a statement to the effect that the Product Provider or guarantor, at its sole discretion, has the right to retain investment income of

the guaranteed fund in excess of that required to be set aside to meet the guaranteed benefits under the guaranteed fund.

Guaranteed Funds with Discretionary Benefits

9.3 In relation to an insurance arrangement, if it is stated that discretionary benefits will or may be paid to investors in excess of the guaranteed amount, and the amounts of those benefits are determined at the discretion of the policy issuer, ~~the~~ principal brochure of the pooled retirement fund must contain:

- (a) ~~[Deleted] a statement to the effect that the [name of policy issuer], at its sole discretion, has the right to retain investment income of the [name of investment portfolio] in excess of that required to be set aside to meet the guaranteed benefits under the [name of investment portfolio];~~
- (b) a statement to the effect that discretionary benefits will be distributed to scheme participants if the investment income of the guaranteed fund (net of fees, charges, smoothing or other reserves) is in excess of the guaranteed amount;
- (c) a warning statement that the amount of such discretionary benefits could be nominal;
- (d) how and by whom such discretionary benefits are determined and the extent of any discretion that may be exercised in making such determination;
- (e) the rates of return declared for the last five years;
- (f) a statement that past performance should not be taken as an indication of future performance; and

Note: For a guaranteed fund with less than five years track record, figures for shorter periods may be shown, provided the date of commencement is shown.

- (g) a readily comprehensible description of the methods of determining the discretionary benefits, including the following information, to the extent applicable:
 - (I) the reporting date; and
 - (II) **(i) for a participating product where a scheme participant the policy holder has a right to participate in profits from the long term fund of the policy issuer or any part of that fund:**
 - (i) details of the fund or part fund to which the right relates;
 - (ii) the principles on which the distribution of profits among ~~policy holders and shareholders~~ scheme participants is based and whether these principles are derived from the constitution of the policy issuer or otherwise;
 - (iii) the bonus-return rates declared for the last five years

~~immediately prior to the reporting date and for the four years previous; and~~

- (iv) ~~the proportions of total distributed profits that was were distributed to ~~shareholders~~ scheme participants for the last five years immediately prior to the reporting date and for the four years previous;~~

(ii) for an investment-linked product:

- (i) a description of the method which will be used to calculate unit prices from time to time; *and*
- (ii) the percentage changes in unit prices for the five yearly intervals immediately preceding the reporting date;

(iii) for an investment account product:

- (i) a description of the method which will be used to calculate the interest rate for each period; *and*
- (ii) the rates of interest declared for the last five years immediately prior to the reporting date and for the four years previous; *and*.

Note: For the purpose of 9.3, the relevant rates, proportions and percentage changes may be published on the website of the scheme.

- ~~(c) a statement that past performance should not be taken as an indication of future performance.~~

~~Note: For investment portfolios with less than five years experience, figures for shorter periods may be shown, provided the date of commencement is shown.~~

PART III: POST-AUTHORIZATION REQUIREMENTS

Chapter 10: Post-authorization Requirements

Scheme Changes, notifications and ongoing disclosures

10.1 The proposed changes to a ~~scheme~~PRF or an investment portfolio (other than UF-driven changes) in respect of the following must be submitted to the Commission for prior approval:

- (a) ~~changes to constitutive documents (other than changes that have been certified by the trustee as provided under 10.2 of this Code or changes which do not require prior approval from the Commission)~~11.1(a) of the UT Code applies;

Note: References therein to “trustee/custodian as provided under 6.7 or approved by holders” shall be replaced by “trustee/insurance company as provided under 10.2 of this Code”.

- (b) 11.1(b) of the UT Code applies (and includes changes to the ~~applicant company~~Product Provider and insurance company);
- (c) 11.1(c) of the UT Code applies; and
- (d) 11.1(d) of the UT Code applies.

10.1A 11.1A of the UT Code applies.

10.1B 11.1B of the UT Code applies ~~and references therein to “management company” shall mean “applicant company for the purposes of this Code except that the revised principal brochure must be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.~~

Note: References therein to:

- (i) “management company” shall be replaced by “Product Provider”;*
(ii) “11.1” shall be replaced by “10.1 of this Code”; and
(iii) “11.2” shall be replaced by “10.11 of this Code”.

10.2 The constitutive documents may be altered ~~by the trustee and management company~~ without consulting ~~investors~~scheme participants, provided that the trustee ~~or the insurance company~~ certifies in writing that in its opinion the proposed alteration:

- (a) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements;
- (b) does not materially prejudice ~~investors’~~scheme participants’ interests, does not to any extent release the parties from any liability to ~~investors~~scheme participants and does not increase the costs and charges payable under the ~~peeled retirement fund~~PRF and/or investment portfolios; or

- (c) is necessary to correct a manifest error.

In all other cases involving any material changes, no alteration may be made except with the approval of the Commission.

- 10.3 ~~[Deleted]The Commission may accept undertakings from an applicant company to delay making a required amendment to a document until an opportune time, but in such cases the Commission may impose a reasonable time limit for carrying out the required amendment, and require a written undertaking from an applicant company to comply, in the interim period, with the substance of the requirement.~~

- 10.4 ~~[Deleted](Repealed)~~

Withdrawal of Authorization

- 10.5 11.4 of the UT Code applies and references therein to “management company” shall mean “applicant company” for the purpose of this Code.

Note: References therein to:

- (i) “management company” shall be replaced by “Product Provider”; and
(ii) “11.5” shall be replaced by “10.6 of this Code”.

Merger or Termination

- 10.6 11.5 of the UT Code applies and references therein to “management company” shall mean “applicant company” for the purposes of this Code.

Note: References therein to “management company” shall be replaced by “Product Provider”.

Advertising Materials

- 10.7 11.11 of the UT Code applies. ~~Advertisements and other invitations to invest in a pooled retirement fund must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.~~

Note: References therein to “issuer” shall be replaced by “Product Provider”.

- 10.8 11.12 of the UT Code applies. ~~Where authorization by the Commission is required, it is recommended that the applicant company nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines.~~

~~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 advanced clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.~~

~~Note: References therein to "issuer" shall be replaced by "Product Provider".~~

- 10.9 ~~11.13 of the UT Code applies. 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.~~

~~Note: References therein to "issuers" shall be replaced by "Product Providers".~~

Rebates

- 10.10 ~~[Deleted] 10.12 of the UT Code applies (except for 10.12(d)).~~

Notices to investors scheme participants

- 10.11 11.2 of the UT Code applies.

Note: References therein to:

- (i) "management company" shall be replaced by "Product Provider";
- (ii) "11.1 or 11.1B" shall be replaced by "10.1 or 10.1B of this Code"; and
- (iii) "11.2" shall be replaced by "10.11 of this Code".

- 10.12 ~~11.2A of the UT Code applies. Subject to 10.5 and 10.6 above, notices to investors need not be approved by the Commission prior to issuance but are required to be filed with the Commission within two weeks from the date of issuance of the notice. The Commission, however, retains its power to require the applicant company to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 10.1 above should be approved by the Commission prior to the distribution of the relevant notices to investors.~~

Note: References therein to:

- (i) "issuers" shall be replaced by "Product Providers";
- (ii) "11.4 and 11.5" shall be replaced by "10.5 and 10.6 of this Code"; and
- (iii) "11.1" shall be replaced by "10.1 of this Code".

- 10.13 ~~11.2B of the UT Code applies and references therein to "management company" shall mean "applicant company" for the purposes of this Code.~~

Note: References therein to "management company" shall be replaced by "Product Provider".

Mention of SFC Authorization

- 10.14 11.14 of the UT Code applies.

Where a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation by adding a prominent note in the following terms to the principal brochure and advertisements and other invitations to invest in the pooled retirement fund:

~~SFC authorization is not a recommendation or endorsement of a scheme nor does it guarantee the commercial merits of a scheme or its performance. It does not mean the scheme is suitable for all investors nor is it an endorsement of its suitability for any particular investor or class of investors.~~

Reporting requirements

Publication of prices of an investment portfolio

10.15 11.7 of the UT Code applies.

Note: References therein to:

- (i) “made public” shall be replaced by “made available to scheme participants by the Product Provider”; and
- (ii) “10.7” shall be replaced by “11.4 of this Code”.

Maintenance of a website

10.16 11.7A of the UT Code applies.

Note: References therein to:

- (i) “A scheme” shall be replaced by “The Product Provider”; and
- (ii) “financial reports” shall be deleted.

Chapter 11: Operational Matters

For the avoidance of doubt, where no management company is appointed for the PRF or investment portfolio(s), the relevant requirements applicable to a management company under this Chapter must be complied with by the trustee or the insurance company, as the case may be.

Valuation and pricing

11.1 10.1 of the UT Code applies.

Note: References therein to “Chapter 6” shall be replaced by “Chapter 8 of this Code”.

Pricing errors

11.2 10.2 of the UT Code applies.

Note: References therein to “trustee/custodian” shall be replaced by “trustee or the insurance company”.

11.2A If the error results in an incorrect price or value of 0.5% or more of an investment portfolio’s net asset value per unit, the Product Provider and the trustee or the insurance company must be informed. The Product Provider must inform the Commission immediately after becoming aware of such errors.

Note: For the avoidance of doubt, any error that accounts for less than 0.5% of the investment portfolio’s net asset value per unit or net asset value individually but amounts to 0.5% of the investment portfolio’s net asset value per unit or net asset value or more in aggregate for incidences that occur in a simultaneous or recurring manner, the Product Provider should report to the Commission immediately after becoming aware of such errors.

11.2B 10.2B of the UT Code applies.

Note: References therein to:

(i) “10.2A” shall be replaced by “11.2A of this Code”; and

(ii) “trustee/custodian” shall be replaced by “trustee or the insurance company”.

Suspension and deferral of dealings

11.3 10.6 of the UT Code applies.

Note: References therein to “trustee/custodian” shall be replaced by “trustee or the insurance company”.

11.4 The Product Provider or the Hong Kong representative must immediately notify the Commission after becoming aware that dealing in units ceases or is suspended. The fact that dealing is suspended must be published by the Product Provider immediately after becoming aware of such suspension and at least once a month during the period of suspension in an appropriate manner.

11.5 10.8 of the UT Code applies.

Transactions with connected person

11.6 All transactions between the scheme and the Product Provider, guarantor, management company, investment delegate or any of their connected person(s) as principal must be executed at arm's length on normal commercial terms and in the best interests of the scheme participants.

Appendix A

Information to be disclosed in the Principal Brochure

This list is not intended to be exhaustive. The principal brochure should contain the information necessary for prospective investors/scheme participants to be able to make an informed judgment of the pooled retirement fund/PRF and investment portfolio(s). For the avoidance of doubt, the principal brochure should contain all applicable disclosure as required by (i) this Code; and (ii) the information disclosure templates as published on the Commission's website which may be updated from time to time, and in particular should contain the following:

(a) Name, and Type and Other Information of Pooled Retirement Fund/PRF and investment portfolio(s)

The name and description of the pooled retirement fund/PRF and investment portfolio(s) must not be misleading to potential scheme participants and should be an accurate reflection of the type of pooled retirement fund/PRF and investment portfolio(s) and its/their objectives with information of the registered address (where applicable) and place and date of creation of the PRF and investment portfolio(s), with an indication of their duration if limited.

(b) Parties Involved

The names and registered addresses of all parties involved in the operation of the pooled retirement fund/PRF and investment portfolio(s) with a brief description of the applicant company/Product Provider.

(c) Investment Returns

Details of how the investment returns of the investment portfolios are determined. Except where the investment portfolios' investment returns are subject to a non-variable guarantee, a warning should be stated to the effect that investment involves risks.

* See Chapter 9 for additional disclosure requirements for Guaranteed Funds.

If the nature of the investment policy so dictates, a warning should be given that investment in the investment portfolios is subject to abnormal special risks, together with a description of the risks involved.

(d) Fees and Charges

Explanations of fees and charges may be abbreviated, but should be clearly identified to include:

- (i) the level of all fees and charges payable by investors; C14(a) of Appendix C to the UT Code applies;

Note: References therein to:

- (i) "6.16 to 6.18 of this UT Code" shall be replaced by "8.7 to 8.9A of this Code"; and

(ii) “(in the case of umbrella funds)” shall be deleted.

- (ii) the level of all fees and charges levied on the investment portfolios; and C14(b) of Appendix C to the UT Code applies; and

Note: References therein to “performance fees (where applicable)” shall be replaced by “guarantee charge and performance fees (where applicable)”.

- (iii) C14(c) of Appendix C to the UT Code applies. ~~details of whether charges are subject to change and the relevant notice period.~~

Notes: (1) Notes (1) and (2) apply.

(2) References therein to “11.1A, 11.1B and 11.2 of this UT Code” shall be replaced by “10.1A, 10.1B and 10.11 of this Code”.

A summary of all fees and charges in tabular form should be provided to allow scheme participants ~~investors~~ to have an overview of the fees structure at a glance. Where complex calculations are required to disclose fees and charges, illustrative examples should be given for clarity.

(e) *Investment Objectives and Restrictions*

Summary of investment objective and policy of the investment portfolios including, where applicable:

- (i) the types of intended investments, and their relative proportions in the portfolio;
- (ii) the geographical distribution of the intended investments;
- (iii) the investment and borrowing restrictions; ~~and~~
- (iv) if the nature of the investment policy so dictates, a warning that the investment portfolio is subject to special abnormal risks, and a description of the risks involved, and where appropriate, the risk management policy in place; and
- (v) details of securities financing transactions of the investment portfolio including, at a minimum, the disclosure requirements under C2(a) to (h) of Appendix C to the UT Code.

Notes: (1) For fund investing in SFC-authorized fund(s), scheme participants can be directed to the offering documents of the underlying fund(s) for such details.

(2) References therein to:

- (i) “trustee/custodian” under C2(f) of Appendix C to the UT Code shall be replaced by “trustee or the insurance company”; and
- (ii) “management company” shall be replaced by “Product Provider, guarantor, management company”.

(f) *Borrowing Powers*

The circumstances under which the investment portfolio may have outstanding borrowings and the purpose for which such outstanding borrowings were incurred.

(g) *Summary of Provisions in Constitutive Documents*

A summary of the provisions described in paragraphs (d), (f), (g) and (j) of Appendix B to this Code with respect to:

- Valuation of Property and Pricing
- Characteristics of Contributions
- Benefits
- Conditions of Termination

(h) *Rebates*

C15 of Appendix C to the UT Code applies. See 10.10 for details.

Note: References therein to “10.12 of this UT Code” shall be ~~deleted~~ replaced by “11.9 of this Code”.

(i) *Application and Withdrawal Procedures*

A summary of procedures for application and withdrawal.

C8, C9 and C11 of Appendix C to the UT Code apply.

Note: References therein to:

- (i) “11.7 of this UT Code” shall be replaced by “10.15 of this Code”; and
- (ii) “in the case of umbrella funds” shall be deleted.

(j) *Governing Law*

The governing law of the ~~pooled retirement fund~~ PRF should be disclosed and an acknowledgment that the parties concerned have the right to bring legal action in a Hong Kong court as well as in any court elsewhere which has a relevant connection with the ~~pooled retirement fund~~ PRF.

(k) *Taxation*

Where the likely tax benefits to be enjoyed by ~~scheme participants~~ investors are described, the principal brochure should also briefly explain the ~~applicant company~~ Product Provider’s understanding of the tax implications for ~~scheme participants~~ investors, based on expert advice received by the ~~applicant company~~ Product Provider.

Scheme participants ~~Investors~~ should also be advised to seek professional advice regarding their own particular tax circumstances.

(l) Date of publication of the principal brochure

C21 of Appendix C to the UT Code applies. All facts and figures in the principal brochure should be as reasonably up-to-date as possible.

(m) Responsibility Statement

A statement that the applicant company/Product Provider accepts responsibility for the accuracy of the information contained in the principal brochure, and confirms, having made all reasonable enquires, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement misleading.

(n) Authorization Statement

Where a pooled retirement fund/PRF and/or an investment portfolio is/are described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation (see 10.14 of this Code).

(o) Collateral policy and criteria

C2A of Appendix C to the UT Code applies.

Note: For fund investing in SFC-authorized fund(s), scheme participants can be directed to the offering documents of the underlying fund(s) for such details.

(p) Liquidity risk management

C2C of Appendix C to the UT Code applies.

(q) Characteristics of units/policies

C4 to C7 of Appendix C to the UT Code apply.

(r) Distribution policy

C13 of Appendix C to the UT Code applies.

(s) Warnings

C19 of Appendix C to the UT Code applies.

Note: References therein to “this UT Code” shall be replaced by “this Code”.

(t) General information

C20 and C22A of Appendix C to the UT Code apply.

(u) Termination of PRF and investment portfolio(s)

C25 of Appendix C to the UT Code applies.

(v) Custody arrangements

C26 of Appendix C to the UT Code applies.

(w) For fund investing in SFC-authorized fund(s)

- (i) a statement directing scheme participants to read the respective offering documents (including Products Key Facts Statement(s)) of the underlying SFC-authorized fund(s) for further details (including their investment objectives and policies, and risk factors), and the address/contact details in Hong Kong where such documents can be obtained free of charge;

Note: If the investment portfolio invests in APIF(s) which is/are not authorised by the SFC for public offering, relevant information of the underlying APIF(s) (including their investment objectives and policies, and risk factors) shall be disclosed in the principal brochure of the PRF.

- (ii) details of any investment portfolio re-balancing arrangements; and
- (iii) full disclosure of the identity(ies) of the underlying SFC-authorized fund(s).

(x) For cash management portfolio

A statement that an investment in a cash management portfolio (i) is not the same as placing funds on deposit with a bank or deposit-taking company; (ii) is not subject to the supervision of the Hong Kong Monetary Authority; and (iii) is not a protected deposit and therefore is not protected by the Deposit Protection Scheme in Hong Kong.

Appendix B

Contents of the Constitutive Documents

The constitutive documents should incorporate the detailed terms and conditions of the PRF and investment portfolio(s) pooled retirement fund. The paragraphs which follow illustrate the details which the Commission will look for although it is prepared to be flexible in determining which criteria should apply. For the avoidance of doubt, the contents of the constitutive documents should not be contradictory to the applicable provisions of this Code.

(a) *Name and Type of PRF and investment portfolio(s) Pooled Retirement Fund*

(b) *Parties Involved*

A statement to specify the parties involved in the operation of the PRF and investment portfolio(s) pooled retirement fund including, as applicable, the ~~applicant company~~ Product Provider, the management company, the guarantor, the trustee and the auditor, giving full particulars of their functions, duties and obligations, as well as details relating to their retirement, removal and replacement.

(c) *Investment Returns*

A detailed description of how the investment returns of the investment portfolios are determined, for example, with reference to:

- (i) a fund or funds of assets held in the name of the policy issuer or the trustee;
- (ii) any notional fund (with its basis stated); or
- (iii) a rate determined at the discretion of the policy issuer.

(d) *Valuation of Property and Pricing*

- (i) For investment portfolios which are unitized;
 - the method of determining the value of the assets and liabilities of the investment portfolio;
 - the method of calculating the issue and redemption prices;
 - how frequently prices are established;
 - the lead times for the allocation of contributions to units and the realization of units; and
 - the circumstances under which the above might change.
- (ii) For investment portfolios which are not unitized;
 - how and when the non-unitized portfolio is valued;
 - how and when the investment return is calculated and distributed amongst

the ~~investors~~ scheme participants; and

- the circumstances under which the above might change.

(e) *Guarantee*

Whether investment performance or capital is guaranteed and if so details of:

- (i) the rate or amount guaranteed;
- (ii) the conditions under which the rate or amount may be altered or discontinued;
- (iii) the nature of the guarantee, e.g. a flat guarantee, career average, year on year, or compounded;
- (iv) how and when the guarantee is invoked or revoked;
- (v) any charges or consideration for the guarantee;
- (vi) the date of expiry of the guarantee;
- (vii) if the guarantor is an entity other than the policy issuer, the provisions for appointment, retirement or removal;
- (viii) where applicable, the methods of determining the discretionary benefits to be paid to scheme participants ~~investors~~ in excess of the guaranteed amount; and
- (ix) where applicable, the extent to which, and the basis on which, the policy issuer may set up a reserve, by whatever name called, so as to smooth the progression of unit prices or rates of return.

(f) *Contributions*

- (i) The amount to be paid.
- (ii) The currency of payment.
- (iii) To whom and where paid.
- (iv) How it is paid and the options if any for payment.
- (v) The frequency, due dates and for what periods contributions must be paid.
- (vi) If there are fixed due dates, the grace period and penalties if any for late payment.
- (vii) The proportion or amount of the contributions made which will be applied for investment purposes.
- (viii) The consequences and options if any should payment of contributions be discontinued at any time.

(g) *Benefits*

- (i) The currency, dates and places of payment of benefits.
- (ii) The benefits on retirement.
- (iii) The methods of calculation of benefits.
- (iv) Any notice periods for claiming benefits.
- (v) Other settlement options or rights.
- (vi) The circumstances under which payment of benefits may be deferred or suspended.
- (vii) The maximum interval between the receipt of a properly documented request for claiming benefits and the date of payment.
- (viii) Whether interest is payable in respect of the period between the effective date of claim and the date of payment.

(h) *Fees and Charges*

- (i) All specific fees and charges under the PRF and investment portfolio(s) ~~pooled retirement fund~~ whether calculated by way of an amount, percentage or otherwise.
- (ii) All indeterminable fees and charges.
- (iii) Information as to when and on what event the fees and charges will fall due.
- (iv) Any taxes and expenses charged to the PRF and investment portfolio(s) ~~pooled retirement fund~~ or levied against the PRF and investment portfolio(s) ~~investment portfolios~~ on a basis deemed fair and reasonable by an actuary or other person of professional standing.
- (v) Any fees payable to, as applicable, the ~~applicant company~~ Product Provider, management company, trustee, guarantor or any other party.

(i) *Investment Strategy and Restrictions*

The investment strategy and restrictions (see 8.10 - 8.12~~11~~) of the PRF and investment portfolio(s) ~~investment portfolios~~ and the circumstances under which these could be changed or varied.

(j) *Termination of the PRF or investment portfolio ~~Pooled Retirement Fund~~*

The circumstances in which the PRF ~~pooled retirement fund~~ or an investment portfolio may be terminated and the relevant notice to be given to scheme participants ~~investors~~.

(k) *Transfer and Withdrawal of Interests*

The conditions governing the withdrawal of an investor's interests or its transfer to or from other pooled or individual retirement funds.

(l) *Governing Law*

The governing law of the PRF must be specified.

Note: See 8.6 and paragraph item (j) of Appendix A to this Code.

Appendix C

{[Deleted]}

Appendix D

{[Deleted]}

Appendix E

Guidelines for Review of Internal Controls and Systems of Trustees /Custodians

Pursuant to 6.1 of this Code, trustee shall appoint an independent auditor to periodically review its internal controls and systems (“internal control review”) on terms of reference in compliance with this Appendix and should file such report with the Commission, unless such trustee is also currently submitting an internal control review report under Appendix G to the UT Code as a trustee/custodian of SFC-authorized fund(s) and confirms to the Commission that the applicable internal control measures in respect of SFC-authorized fund(s) also apply to the scheme under its trusteeship. Trustees should ensure that adequate policies and procedures of the internal controls and systems are maintained to ensure compliance with the requirements of Chapter 6 of this Code.

The internal control review should comply with the provisions of Appendix G to the UT Code where references therein to:

- (i) “this UT Code” shall be replaced by “this Code”;
- (ii) “4.5” shall be replaced by “6.4A”;
- (iii) “10.2A” shall be replaced by “11.2A”;
- (iv) “10.10” shall be replaced by “11.76”;
- (v) “10.11” shall be replaced by “11.86”;
- (vi) “11.1(b)” shall be replaced by “10.1(b)”;
- (vii) “net asset value per unit/share” shall be replaced by “net asset value per unit and the number of units”; and
- (viii) item (14)(iii) in paragraph 8(A) regarding timely issuance and distribution of financial reports shall not be applicable.

INTRODUCTION

- ~~1. Pursuant to Chapter 6.1 of this Code, trustees/custodians of collective investment schemes are required to be approved by the SFC. An acceptable trustee/custodian should be subject to prudential regulation and supervision on an on-going basis. Trustee shall appoint an independent auditor to periodically review its internal controls and systems on terms of reference in compliance with this Appendix, unless such trustee is a trust company which is a trustee of any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of Laws of Hong Kong). A report of the internal control review must be filed with the Commission.~~
- ~~2. As a general guide, in determining the acceptability of an overseas supervisory authority, the SFC will have to be satisfied that either the overseas regulatory authority or its delegate carries out regular inspection of trustees/custodians within its jurisdiction or the latter is subject to regular review in a manner generally consistent~~

with the SFC requirement. In the latter case, the auditor's report should be filed with the SFC.

PURPOSE OF GUIDELINES

3. These Guidelines provide further guidance to trustees and custodians of scheme regarding compliance with the periodic internal control review requirement of the Code. These Guidelines set out the minimum best practice for trustees/custodians and auditors of scheme in order to facilitate the agreement of the scope of an internal control review on terms which will be acceptable to the SFC. These Guidelines have been developed in consultation with the Hong Kong Trustees Association and the Hong Kong Society of Accountants.
4. For the purpose of these Guidelines, the term "auditors" refers to the independent reporting accountants who are engaged in reporting on the internal controls of the trustee/custodian of scheme.

SCOPE OF REVIEW

5. The internal control review should involve all material procedural and control elements necessary to discharge the responsibilities and obligations of trustees/custodians in relation to schemes. The review should be conducted to provide reasonable assurance in accordance with internationally acceptable standards.
6. The engagement letter between the trustee/custodian and the auditor should incorporate or refer to the following Terms of Reference which sets out, as a minimum, the scope of review for compliance with the requirements of the Code. The trustee/custodian may engage the auditor to expand the scope of the review, and it is important that this is agreed with the auditor before the commencement of the review.
7. Where the trustee/custodian or an associated company carries on part of its responsibilities outside of Hong Kong in a jurisdiction in which the SFC considers that there is inadequate regulatory supervision or review (as described in paragraph 2), then the scope of the review should include those functions undertaken outside Hong Kong in a way which satisfies the auditor issuing the report. Notwithstanding that an offshore company may be appointed trustee/custodian, if the trustee/custodian confirms that all relevant functions are carried out by it or delegates in Hong Kong, the scope of the review can be so limited.

TERMS OF REFERENCE

8. The precise terms of the review engagement will be as agreed between the trustee/custodian and the auditor in each particular case. Terms of Reference for the review should be incorporated in the review engagement letter and should, as a minimum, include the following:

A. REPORT BY THE MANAGEMENT OF THE TRUSTEE/CUSTODIAN

The management of the trustee/custodian must issue a report to describe the control objectives. As a minimum, control objectives should include the following:

- Maintenance of a control environment

- ~~Compliance with applicable legal and regulatory requirements~~
- ~~Compliance with control policies and procedures~~
- ~~Safekeeping of assets against loss~~

~~The controls designed to meet the above objectives may vary from firm to firm. The SFC does not mandate specific controls to meet the control objectives. It is the responsibility of the management of the trustee/custodian to design suitable controls and ensure that these are effective and properly implemented for the purpose of achieving the control objectives so identified.~~

~~In addition, the report should describe the internal control policies and procedures designed for achieving the control objectives.~~

~~B. OBJECTIVE OF THE REVIEW ENGAGEMENT~~

~~The objective of the engagement is to review the control objectives and procedures as described in the report issued by the trustee/custodian and to report on the findings of the review to the management of the trustee/custodian.~~

~~C. REPORT BY THE AUDITOR~~

~~The auditor should issue a report, addressed to the management of the trustee/custodian, detailing the scope of the review work carried out relating to the report by management and the conclusions reached. The report should state, as a minimum:~~

- (i) ~~a summary of the terms of engagement (or attach a copy of the letter of engagement);~~
- (ii) ~~the respective responsibilities of the management of the trustee/custodian and the auditor;~~
- (iii) ~~the basis of the auditor's opinion (detailing the scope of work); and~~
- (iv) ~~the auditor's opinion.~~

~~D. AUDITOR'S OPINION~~

~~As a minimum requirement, the auditor's opinion should state:~~

- (i) ~~whether the accompanying report by the management of the trustee/custodian describes fairly the control procedures in place during the period under review; and~~
- (ii) ~~whether the specific control procedures tested (with details described) operated as described during the period under review.~~

~~Where applicable, the auditor should state the limitations to the tests performed and whether such limitations have any material impact on the auditor's opinion.~~

PERIOD UNDER REVIEW

- ~~9. The period under review should be for a period of at least twelve months and should coincide with the financial year of the trustee/custodian unless otherwise agreed with~~

the SFC.

FILING OF REPORTS WITH THE SFC

10. — ~~The management of the trustee/custodian should file a copy of the auditor's report and the trustee/custodian report (as described in paragraph 8) with the SFC within four months from the end of the period under review. Where applicable, management response to the auditor's report should also be attached. The reports should be sent to:~~

Investment Products Division
Securities & Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

FREQUENCY OF REVIEW

11. — ~~The review of internal controls and systems of trustees/custodians of scheme should be conducted on an annual basis. The SFC reserves the right to demand more frequent review of a trustee or custodian should this be deemed necessary.~~



Appendix B

Final form of the information disclosure templates for investment portfolios

Final form of the information disclosure templates for investment portfolios

The highlighted parts indicate revisions to the information disclosure templates which differ from the information disclosure templates set out in the consultation paper

Information disclosure template for a fund investing in SFC-authorized fund(s) in principal brochure

[Name of investment portfolio]

Quick facts

Product provider:	[●]
[Trustee/Insurance company:]	[●]
[Management company:] <i>[specify name and location of delegate and whether delegation is internal or external]</i>	[●]
Base currency:	[●]
Dealing frequency:	[●]
[Distribution policy:]	[●]
[Minimum investment:]	[●]

Objectives and investment policy

Objectives

- *[Include details]*

Investment policy

- *[Disclose the composition and material details of the investment portfolio (including full disclosure of the identity(ies) of the underlying SFC-authorized fund(s), and their respective proportions/range)];*
- *[Disclose details of any investment portfolio re-balancing arrangements];*
- *[Disclose details of the remaining investments of the investment portfolio other than SFC-authorized fund(s), i.e. cash and cash equivalents]; and*
- *[Disclose the mechanism by which scheme participants can obtain information on the latest composition of the investment portfolio]*

Investment and borrowing restrictions

- *[Include details]*

What are the key risks?

- *[Include a statement that the investment portfolio is subject to the risks inherent in its underlying fund(s)]*
- *[Include re-balancing risk]*
- *[Insert any other relevant risk factors]*

Information disclosure template for a fund investing in SFC-authorized fund(s) in principal brochure

[Name of investment portfolio]

What are the fees and charges?

Charges which may be payable by you

You may have to pay the following fees and charges when dealing in the investment portfolio.

Fee	What you pay
[Subscription fee]	[Up to [●]% of the amount you buy]
[Switching fee]	[●]
[Redemption fee]	[●]

[Note: If there are other fees that scheme participants have to pay, please also state here, using the same format.]

Ongoing fees payable by the investment portfolio

The following expenses will be paid out of the investment portfolio. They affect you because they reduce the return you get on your investments.

Fee	Annual rate (as a % of the investment portfolio's net asset value)
[Management fee]	[●]
[Trustee fee]	[●]

[Note 1: If there are other types of ongoing fees payable by the investment portfolio, please also state here, using the same format, where applicable.]

[Note 2: If ~~only~~ the current and maximum annual rates ~~is~~ are disclosed, please add a note stating that the current annual rate may be increased up to a the specified ~~permitted~~ maximum level ~~as set out in the principal brochure~~ by giving [period] prior notice to the scheme participants.]

Valuation, pricing and dealing arrangements

- *[Include details]*

Additional information

- *[Insert other material disclosures]*

Information disclosure template for a fund investing in SFC-authorized fund(s) in principal brochure

[Name of investment portfolio]

Important

- *[Include a statement directing scheme participants to read the respective principal brochure (including the Products Key Facts Statement(s)) of the underlying SFC-authorized fund(s) for further details (including their investment objectives and policies, and the risk factors), and the address or contact details in Hong Kong where such documents can be obtained free of charge]¹*
- *[Insert other important disclosures]*

¹ If the investment portfolio invests in approved pooled investment fund(s) which is/are not made available to the retail public, please set out relevant information of the underlying approved pooled investment fund(s) (including their investment objectives and policies, and the risk factors) in the principal brochure.

Information disclosure template for cash management portfolios in principal brochure

[Name of investment portfolio]

Quick facts

Product provider:	[●]
[Trustee/Insurance company:]	[●]
[Management company:]	[●]
<i>[specify name and location of delegate and whether delegation is internal or external]</i>	
Base currency:	[●]
Dealing frequency:	[●]
[Distribution policy:]	[●]
[Minimum investment:]	[●]

Objectives and investment policy

Objectives

- *[Include details]*

Investment policy

- *[Disclose the type of intended investments, composition and details of the investment portfolio (including the relative proportions/range (if any))]*
- *[Disclose the mechanism by which scheme participants can obtain information on the latest composition of the investment portfolio]*

Investment and borrowing restrictions

- *[Include details]*

What are the key risks?

- *[Include a description of the key risk factors associated with the investments, including a statement that an investment in the cash management portfolio (i) is not the same as placing funds on deposit with a bank or deposit-taking company; (ii) is not subject to the supervision of the Hong Kong Monetary Authority; and (iii) is not a protected deposit and therefore is not protected by the Deposit Protection Scheme in Hong Kong]; and*
- *[Insert any other relevant risk factors]*

Information disclosure template for cash management portfolios in principal brochure

[Name of investment portfolio]

What are the fees and charges?

Charges which may be payable by you

You may have to pay the following fees and charges when dealing in the investment portfolio.

Fee	What you pay
[Subscription fee]	Up to [●]% of the amount you buy
[Switching fee]	[●]
[Redemption fee]	[●]

[Note: If there are other fees that scheme participants have to pay, please also state here, using the same format.]

Ongoing fees payable by the investment portfolio

The following expenses will be paid out of the investment portfolio. They affect you because they reduce the return you get on your investments.

Fee	Annual rate (as a % of the investment portfolio's net asset value)
[Management fee]	[●]
[Trustee fee]	[●]

[Note 1: If there are other types of ongoing fees payable by the investment portfolio, please also state here, using the same format, where applicable.]

[Note 2: If ~~only~~ the current and maximum annual rates ~~is~~ are disclosed, please add a note stating that the current annual rate may be increased up to at the specified ~~permitted~~ maximum level ~~as set out in the principal brochure~~ by giving [period] prior notice to the scheme participants.]

Valuation, pricing and dealing arrangements

- *[Include details]*

Additional information

- *[Insert other material disclosures]*

Important

- *[Insert other important disclosures]*

Information disclosure template for guaranteed funds in principal brochure

[Name of investment portfolio guaranteed fund]

Quick facts

Product provider:	[●]
[Trustee/Insurance company:]	[●]
[Management company:]	[●]
<i>[specify name and location of delegate and whether delegation is internal or external]</i>	
Guarantor:	[●]
Base currency:	[●]
Dealing frequency:	[●]
[Distribution policy:]	[●]
[Minimum investment:]	[●]

Objectives and investment policy

Objectives

- *[Include details]*

Investment policy

- *[Disclose the type of intended underlying investments, and the relative proportions/range (if any) of the components in the investment portfolio] (if the investment portfolio solely invests in an insurance policy, please provide further details of the type of intended investments, and the relative proportions/range (if any) of the components in the insurance policy]*

Investment and borrowing restrictions

- *[Include details]*

What [is/are] the [capital and/or interest] guarantee mechanism [and the discretionary benefits]?

[The following information should be disclosed where applicable (the list is not exhaustive):]

- *Key terms and conditions of the guarantee*
- *The guaranteed amount (fixed and/or variable) that will be paid to scheme participants of the guaranteed fund*
- *[Details of any smoothing or other reserve mechanism and the relevant factors taken into account]*
- *[The product provider or guarantor], at its sole discretion, has the right to retain investment income of the ~~of~~ investment portfolio in excess of that required to be set aside to meet the guaranteed benefits under the investment portfolio]*
- *[Discretionary benefits will be distributed to scheme participants if the investment income of the guaranteed fund (net of fees, charges, smoothing and other reserves) is in excess of the guaranteed amount]*
- *[How and by whom such discretionary benefits are determined and the extent of any discretion that may be exercised in making such determination]*
- *[The rate of return declared for the last five years]¹*

¹ As an alternative, the relevant rates may be published on the website of the scheme.

What are the key risks?

[Include a description of the key risk factors associated with the investments, including:]

- [a statement to the effect that the amount of discretionary benefits could be nominal];
- [a statement to the effect that due to the guarantee structure, there will be a dilution of performance];
- [a statement to the effect that potential returns in excess of the guaranteed amount are subject to investment risk and are not guaranteed];
- a statement to the effect that the investment portfolio is subject to the credit risk of the guarantor [and the issuers of the underlying investments];
- a warning statement in relation to all material conditions which affect the scope or validity of the guarantee including, where relevant, the condition that the guarantee only applies to scheme participants who hold their investment until the date specified in the guarantee and that termination or withdrawal before such date are fully exposed to fluctuations in the value of the assets comprising the ~~guaranteed~~ ~~pooled retirement~~ fund and/or subject to penalties;
- [the mechanism of any up-front charging fee structure and the cost implication to scheme participants]; and
- [Insert any other relevant risk factors]

What are the fees and charges?

Charges which may be payable by you

You may have to pay the following fees and charges when dealing in the investment portfolio.

Fee	What you pay
[Subscription fee]	[Up to [●] % of the amount you buy]
[Switching fee]	[●]
[Redemption fee]	[●]

[Note: If there are other fees that scheme participants have to pay, please also state here, using the same format.]

Ongoing fees payable by the investment portfolio

The following expenses will be paid out of the investment portfolio. They affect you because they reduce the return you get on your investments.

Fee	Annual rate (as a % of the investment portfolio's net asset value)
[Management fee]	[●]
[Trustee fee]	[●]
[Guarantee fee]	[●]

[Note 1: If there are other types of ongoing fees payable by the investment portfolio, please also state here, using the same format, where applicable.]

[Note 2: If ~~only~~ the current and maximum annual rates ~~is are~~ disclosed, please add a note stating that the current annual rate may be increased up to ~~the~~ specified ~~permitted~~ maximum level ~~as set out in the offering document~~ by giving [period] prior notice to the scheme participants.]

Information disclosure template for guaranteed funds in principal brochure

[Name of investment portfolio]

Valuation, pricing and dealing arrangements

- *[Include details]*

Additional information

- *[Insert other material disclosures]*

Important

- *[Insert other important disclosures]*

Information disclosure template for direct investment funds in principal brochure

[Name of investment portfolio]

Quick facts

Product provider:	[●]
[Trustee/Insurance company:]	[●]
Management company: <i>[specify name and location of delegate and whether delegation is internal or external]</i>	[●]
Base currency:	[●]
Dealing frequency:	[●]
[Distribution policy:]	[●]
[Minimum investment:]	[●]

Objectives and investment policy¹

Objectives

- *[Include details]*

Investment policy

- *[Disclose the type of intended primary investments e.g. at least [x]% of the investment portfolio's net asset value will be invested in [types of investments]]*
- *[Disclose the mechanism by which scheme participants can obtain information on the latest composition of the investment portfolio]*

[Index (for investment portfolios complying with 8.6 of the UT Code)]

- *[Disclose the details of index and website where information on the index constituents and their respective weightings is published.]*

Investment and borrowing restrictions

- *[Include details]*

What are the key risks?²

- *[Insert any relevant risk factors.]*

¹ Please refer to "Chapter 6 – Minimum disclosure requirements for Hong Kong offering documents (including KFS)/constitutive documents" and "Annex 1 – Minimum Disclosure Requirements (Section 1)" of the Guide on Practices and Procedures for Application for Authorization of Unit Trusts and Mutual Funds ("Guide"), where applicable.

² Please refer to "Annex 1 – Minimum Disclosure Requirements (Section 2)" of the Guide, where applicable.

Information disclosure template for direct investment funds in principal brochure

[Name of investment portfolio]

What are the fees and charges?

Charges which may be payable by you

You may have to pay the following fees and charges when dealing in the investment portfolio.

Fee	What you pay
[Subscription fee]	[Up to [●]% of the amount you buy]
[Switching fee]	[●]
[Redemption fee]	[●]

[Note: If there are other fees that scheme participants have to pay, please also state here, using the same format.]

Ongoing fees payable by the investment portfolio

The following expenses will be paid out of the investment portfolio. They affect you because they reduce the return you get on your investments.

Fee	Annual rate (as a % of the investment portfolio's net asset value)
[Management fee]	[●]
[Trustee fee]	[●]

[Note 1: If there are other types of ongoing fees payable by the investment portfolio, please also state here, using the same format, where applicable.]

[Note 2: If ~~only~~ the current and maximum annual rates ~~is are~~ disclosed, please add a note stating that the current annual rate may be increased up to a the specified ~~permitted~~ maximum level ~~as set out in the principal brochure~~ by giving [period] prior notice to the scheme participants.]

Valuation, pricing and dealing arrangements

[Include details]

Information disclosure template for direct investment funds in principal brochure

[Name of investment portfolio]

Additional information

- *[Insert other material disclosures]*
- *[Additional information applicable to investment portfolios complying with 8.6 of the UT Code]*
 - *[The estimated annual tracking difference or tracking difference of the last calendar year #]*
 - *You may obtain the following information of the investment portfolio at the following website at [●] (the "Website"):*
 - *[Full portfolio information on a monthly basis (updated within one month of the end of each month) [please specify the frequency if updated on a more frequent basis]]*
 - *[Information on securities financing transactions (such as counterparty exposure and collateral information)]*
 - *[Information on financial derivative instruments (such as counterparty exposure and collateral information)]*

[#This is an estimated annual tracking difference. Investors should refer to the Website for information on actual tracking difference] or [This is the actual tracking difference of the last calendar year. Investors should refer to the Website for more up-to-date information on actual tracking difference.]

Important

- *[Insert other important disclosures]*

List of respondents

(In alphabetical order)

1. Baker McKenzie
2. Hong Kong Trustees' Association
3. The Law Society of Hong Kong
4. Submission of one respondent is published on a "no-name" basis
5. Submission of one respondent is withheld from publication