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24 December 2012

Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Attn: Consultation on proposals to enhance the regulatory regime for non-corporate listed entities

BY HAND & BY E-SUBMISSION

Dear Sirs

SFC Consultation Paper on proposals to enhance the regulatory regime for non-corporate listed entities (the "Consultation Paper")

We are grateful for the opportunity to submit written comments on the Consultation Paper.

Please accept this submission as responses prepared by Simmons & Simmons on behalf of ourselves and Enhanced Investment Products Limited and Sensible Asset Management Hong Kong Limited to selected proposals in the Consultation Paper.

Since Simmons & Simmons advises around 77% of the exchange traded funds ("ETFs") currently listed on The Stock Exchange of Hong Kong Limited, we believe we are well positioned to contribute our view on the ramifications of the proposals in the Consultation Paper on ETFs, which is the focus of our submission.

We hope our comments are helpful. Should you have any queries please do not hesitate to contact.

Yours faithfully

Simmons & Simmons

Response to the SFC Consultation Paper on Proposals to Enhance the Regulatory Regime for Non-corporate Listed Entities

A. SUMMARY RESPONSE TABLE

SFC Question	SFC Proposal	S&S Response
Q1: Should Parts XIII and XIV (market misconduct provisions) cover listed entities that are not in corporate form ("NCEs")?	Add new definitions of "entity" and "unit". Amend the definitions of "corporation", "company", "share", and "associate".	Given the special nature of exchange traded funds ("ETFs") and the inherent differences between corporates and NCEs, there are legal and practical difficulties for ETFs to comply with the provisions under Parts XIII and XIV. We submit that all ETFs should be carved out from Parts XIII and XIV. Should the SFC proceed with the proposals, the Securities and Futures (Price Stabilizing) Rules (Cap. 517W of the Laws of Hong Kong) (the "Price Stabilizing Rules") should be amended as well to extend the safe harbour to NCEs.
Q2: Should Part XV (disclosure of interests provisions) cover NCEs (other than open-ended collective investment scheme ("CIS"))?	Add a new definition of "voting shares". Change the definition of "issued equity share capital" to "issued equity voting shares". Amend the definition of "underlying shares".	We agree open-ended CIS should be exempted from Part XV regime and the SFO should be amended to provide a blanket exemption. We seek clarification from the SFC on what NCEs will be covered under the proposal, and how percentage level and figure should be calculated for non-corporate structure and umbrella fund structure.
Q4: Should Part XIVA (disclosure of price sensitive information provisions) cover NCEs?	Extend the definition of "inside information". Extend the court's sanction power.	We agree that certain NCEs should be covered but we submit that all ETFs should be exempted from disclosure obligations under Part XIVA. We urge the SFC not to extend the definition of "inside information" to include information about a unitholder of the entity in particular if the entity is an ETF.
Q5: Any comments on the examples of events where the Manager of a listed CIS/other listed entity should consider disclosure obligation of price sensitive information ("PSI")?	Modify the Guidelines on Disclosure of Inside Information (the "PSI Guidelines"). Provide further guidance by way of supplement to the PSI Guidelines.	We urge the SFC to set out the examples of events or circumstances where a listed entity should consider disclosing PSI that are applicable to each of (A) ETFs (if included); (B) REITs; and (C) listed corporations in different sections, sub-sections or appendices. We suggest the SFC incorporate (if applicable) the list of examples of events or circumstances where an ETF manager should consider disclosing as set out in the joint circular entitled "List of Potential Events Triggering Ongoing Disclosure" issued by the SFC and The Stock Exchange of Hong Kong Limited (the "SEHK") on

		18 November 2012 (the "Joint Circular") into the PSI Guidelines. We suggest the SFC put an asterisk immediately after an event or circumstance which requires prior approval of the SFC.

B. PARTS XIII AND XIV OF THE SFO – MARKET MISCONDUCT

	"Question (1): Do you agree that Parts XIII and XIV of the SFO should be amended so that these Parts expressly cover listed entities that are not in corporate form?"

1. Summary

1.1 We recognise the need to enhance the regulatory framework and to protect investors of relatively new products from market misconduct in light of the inconsistent and outdated drafting of the SFO insofar as certain Parts are limited to securities of corporations. However, we respectfully submit that due to the special nature of ETFs and the inherent differences between corporates and NCEs, amending Parts XIII and XIV of the SFO to cover ETFs will create uncertainty as to the legitimacy of certain activities of ETFs which are important in the operation of ETFs. Such uncertainty may have the unwelcome effect of limiting the growth of Hong Kong's ETF market without improving investor protection.

1.2 We submit that most market misconduct offences under the current Parts XIII and XIV of the SFO already cover NCEs which renders the SFC's proposal to amend Parts XIII and XIV of the SFO (the "Market Misconduct Proposal") unnecessary.

1.3 Should the SFC determine to proceed with the Market Misconduct Proposal, we therefore submit that ETFs should be expressly carved out from the provisions of Parts XIII and XIV of the SFO.

2. Market Misconduct offences

Insider dealing

2.1 Under section 291(1)(a) of the SFO:

"*A person connected with a listed corporation and having information which he knows is relevant information in relation to the corporation shall not deal in the listed securities of the corporation.*"

Section 270(1)(a) of the SFO is a civil offence which mirrors section 291(1)(a) of the SFO.

2.2 The term "listed corporation" currently does not cover ETFs in non-corporate form. However, under the Market Misconduct Proposal, the definitions of "corporation" and "entity" will be amended so that NCEs including ETFs in non-corporate form will be covered under sections 291(1)(a) and 270(1)(a) of the SFO. We submit that such proposed amendments may have a detrimental effect on the ETF market in Hong Kong and, in fact, are unnecessary insofar as ETFs are concerned, as explained below.

2.3 The nature and operation of ETFs are substantially different from those of a company listed under Chapter 9 of the *Listing Rules governing the listing of securities of the Stock*

Exchange of Hong Kong Limited (the "Listing Rules"). The investment objective of an ETF is to track, replicate or correspond to a financial index or benchmark, with an aim of providing or achieving investment results or returns that closely match or correspond to the performance of the underlying index. Given the open-ended nature of ETFs which permits creation and redemption of shares/units except during exceptional circumstances (which is a requirement of the SFC under paragraph 14 of its Frequently Asked Questions (Code on Unit Trusts and Mutual Funds (the "Code")) (the "SFC FAQ"), the trading price of the shares/units of an ETF is tied to the net asset value of the ETF and, per paragraph 15 of the SFC FAQ, it is a responsibility of the ETF manager to seek to minimise any premium or discount to the extent possible. As such, unlike the shares of a company listed under Chapter 9 of the Listing Rules, the trading price of the shares/units of an ETF should not be materially affected by the supply and demand in the market, but rather by the performance of the underlying index. Consequently it would be very difficult for any person to take advantage of any relevant information in respect of ETF and deal in the listed securities of the ETF to gain a profit or avoid a loss.

2.4 Furthermore, given the passive nature of the ETF, it is doubtful what kind of information may amount to "relevant information" in respect of an ETF. Such uncertainty may deter investors from investing in ETFs and therefore has a detrimental effect on the ETF market in Hong Kong.

2.5 Separately, as mentioned in the IOSCO Consultation Report on Principles for the Regulation of ETF published in March 2012 ("IOSCO Consultation"), recent enforcement-related regulatory actions brought by market authorities and other regulators have not revealed widespread ETF-related wrongdoing. There are a very limited number of cases on insider dealing which involve ETFs. This is because, from a structure perspective it is difficult to gain any advantage in respect of interests in an ETF which (i) reflect a transparent and broadly based index, and (ii) trade on the SEHK at a price linked to the relevant index, compiled by a third party and independent index provider.

(A) There is an isolated case in the United States which relates to a former Goldman, Sachs & Co. employee and his father being charged by SEC with insider trading using confidential information about Goldman's trading strategies and intentions that he learned while working at the firm's ETF desk. The U.S. SEC's Division of Enforcement alleged that this former employee obtained non-public details about Goldman's plans to purchase and sell large amounts of securities underlying the SPDR S&P Retail ETF (XRT) and tipped his father. The father and son then illegally traded in four different securities underlying the XRT with knowledge of massive, market-moving trades in these securities that Goldman would later execute.[1] This case does not relate to dealing in the interests in an ETF, but rather in the constituent securities of the underlying index of an ETF. Should a similar case occur in Hong Kong, the father and son would have been caught by the existing insider dealing provisions in the SFO. In other words, it is not necessary to implement the Market Misconduct Proposals to cover this kind of situation.

(B) There is no identified insider dealing case or decision in Hong Kong that has involved, directly or indirectly, ETFs or any affiliates of ETFs.

(C) There is no case or decision of other market misconduct in Hong Kong that has involved, directly or indirectly, ETFs or any affiliates of ETFs.

2.6 In order to provide legal certainty, we would therefore suggest that the SFC carve out ETFs from the insider dealing offence to ensure the smooth operation of the ETF market in Hong Kong.

[1] http://www.sec.gov/news/press/2011/2011-188.htm

Stock market manipulation

2.7 Under section 299(1)(a) of the SFO:

"*A person shall not, in Hong Kong or elsewhere enter into or carry out, directly or indirectly, two or more transactions in securities of a corporation that by themselves or in conjunction with any other transaction increase, or are likely to increase, the price of any securities traded on a relevant recognized market [S&S' note: "relevant recognized market" means the SEHK] or by means of authorized automated trading services, with the intention of inducing another person to purchase or subscribe for, or to refrain from selling, securities of the corporation or of a related corporation of the corporation.*"

Section 278(1)(a) of the SFO is a civil offence which mirrors the above.

2.8 Since both sections 299(1)(a) and 278(1)(a) of the SFO refer to securities of a "corporation", the offence of stock market manipulation currently does not cover manipulation in respect of NCE ETF units.

2.9 Nevertheless we submit that it is unnecessary to amend the provisions of stock market manipulation to cover NCE ETFs (and it is preferable to exempt all ETFs) because:

(A) ETFs are typically constituted either by a physical commodity, such as gold, or by a basket of stocks rather than a single stock. Given the SFC's requirements in Chapter 8.6(e) of the Code, in particular (ii), it is almost impossible for any person to manipulate all of the components comprising a stock basket which replicates an index. This is also the view taken by IOSCO in the IOSCO Consultation: "*.... there also have been questions about whether the structure and operation of ETFs, in practice, would likely limit the scope of such potential wrongdoing...*". We agree;

(B) As explained in paragraph 2.3 above, given the open-ended nature of ETFs, unlike the shares of a company listed under Chapter 9 of the Listing Rules, the trading price of the shares/units of an ETF should not be materially affected by the supply and demand in the market, but rather by the performance of the underlying index. Consequently it would be very difficult for any person to manipulate the trading price of the shares/units of an ETF in the same way as manipulating the trading price of securities in a company or closed-ended NCE listed under Chapter 9 of the Listing Rules;

(C) Since there are significant overlaps between the definitions of stock market manipulation and false trading (as explained in paragraph 2.14 below) on the one hand, and significant overlaps between stock market manipulation and price rigging (as explained in paragraph 2.15 below) on the other hand, manipulation in respect of interests in an ETF may already constitute the offence(s) of price rigging and/or false trading under the existing Parts XIII and XIV of the SFO; and

(D) Any manipulation in respect of the constituent securities of an index tracked by an ETF may amount to any type of market misconduct since such shares are caught by the definition of "listed securities".

Disclosure of information about prohibited transactions

2.10 Under section 297(1) of the SFO:

"*A person shall not disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information to the effect that the price of securities of a corporation, or the price for dealings in futures contracts, that are traded on*

a relevant recognized market or by means of authorized automated trading services will be maintained, increased, reduced or stabilized, or is likely to be maintained, increased, reduced or stabilized, because of a prohibited transaction relating to securities of either the corporation or a related corporation of the corporation or to the futures contracts (as the case may be), if he, or an associate of his:

(a) has entered into or carried out, directly or indirectly, the prohibited transaction; or

(b) has received, or expects to receive, directly or indirectly, a benefit as a result of the disclosure, circulation or dissemination of the information."

Section 276(1) of the SFO is a civil offence which mirrors the above.

2.11 The purpose of this section is to prevent a person involved in market misconduct or others from spreading information that the price of the relevant listed securities will be affected by market misconduct. Similar to the stock market manipulation offence, since both sections 297(1) and 276(1) of the SFO refer to securities of a "corporation", the offence of disclosure of information about prohibited transactions currently does not cover disclosure of information about prohibited transactions which may affect the price of NCE ETF units.

2.12 As explained in paragraph 2.3 and sub-paragraphs 2.9(A) and (B) above, given the fact that ETFs are open-ended and that ETFs are collective investment schemes, the trading price of the shares/units of an ETF is tied to the net asset value of the ETF and so the scope for market misconduct in the first place is very limited. Even if there was a market misconduct, the price of its securities on the SEHK should not be easily affected by any rumours in the market.

2.13 We therefore submit that the offence of disclosure of information about prohibited transactions is not relevant in the context of ETFs and, consistent with other market misconduct provisions above, interests in ETFs should be excluded from being the subject of such an offence.

False trading, price rigging and disclosure of false or misleading information

2.14 Under section 295(1)(a) of the SFO:

"A person shall not in Hong Kong or elsewhere, do anything or cause anything to be done, with the intention that, or being reckless as to whether, it has, or is likely to have, the effect of creating a false or misleading appearance of active trading in securities or futures contracts traded on a relevant recognized market or by means of authorized automated trading services."

Section 274(1)(a) of the SFO is a civil offence which mirrors the above false trading offence.

2.15 Under section 296(1)(a) of the SFO:

"A person shall not in Hong Kong or elsewhere, enter into or carry out, directly or indirectly, any transaction of sale or purchase of securities that does not involve a change in the beneficial ownership of those securities, which has the effect of maintaining, increasing, reducing, stabilizing, or causing fluctuations in, the price of securities traded on a relevant recognized market or by means of authorized automated trading service."

Section 275(1)(a) of the SFO is a civil offence which mirrors the above price rigging offence.

2.16 Under section 298(1) of the SFO:

"A person shall not in Hong Kong or elsewhere, disclose, circulate or disseminate, or authorize or be concerned in the disclosure, circulation or dissemination of, information that is likely:

(a) to induce another person to subscribe for securities, or deal in futures contracts, in Hong Kong;

(b) to induce the sale or purchase in Hong Kong of securities by another person; or

(c) to maintain, increase, reduce or stabilize the price of securities, or the price for dealings in futures contracts, in Hong Kong,

if-

(i) the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and

(ii) the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact, or is false or misleading through the omission of a material fact."

Section 277(1) of the SFO is a civil offence which mirrors the above offence of disclosure of false or misleading information inducing transactions.

2.17 As indicated in paragraphs 2.14 to 2.16 above, the offences of price rigging, false trading and false or misleading information inducing transactions all refer to dealing in "securities". Securities is defined in section 245 of the SFO as "*rights, options or interests (whether described as units or otherwise) in, or in respect of, such shares, stocks, debentures, loan stock, funds, bonds or notes*". As such, these offences already cover interests in NCEs including units in ETFs which are in unit trust form.

2.18 In other words, the Market Misconduct Proposal in relation to these three offences is unnecessary since the existing regulatory framework already applies to NCEs.

2.19 In any event, based on our analysis as described in paragraph 2.3 and sub-paragraphs 2.9(A) and (B) above, we submit that ETFs should be carved out from these offences as well for the following reasons:

(A) *False trading*: Sections 295(1)(a) and 274(1)(a) are so widely drafted that they may be interpreted as covering the distribution, creation and redemption and market making in relation to ETF shares/units. If ETFs are not carved out from the false trading offence, these activities which are vital to the operation of an ETF will be impeded.

(B) *Price rigging*: As explained in paragraph 2.3 and sub-paragraphs 2.9(A) and (B) above, it is very hard for a person to manipulate all the components of the ETF stock basket. Furthermore, the trading price of the shares/units of an ETF is tied to the net asset value of the ETF. As such price rigging should not be relevant to ETFs.

(C) *Misleading information*: As explained in paragraph 2.3, sub-paragraphs 2.9(A) and (B) and paragraph 2.12 above, the price of ETF securities on the SEHK should not be easily affected by rumours in the market and as such the offence of disclosure of false or misleading information inducing transactions should not be relevant to

ETFs. Furthermore, the offering document and marketing materials (unless an exemption is applicable) in respect of ETFs are subject to the SFC's vetting given ETFs are regulated investment products and both the Code and the SFO already contain provisions which prohibit misrepresentation in the offering documents of ETFs. Any proposed amendments to the SFO to extend this offence to ETFs are therefore unnecessary given safeguards are already in place.

3. The Price Stabilizing Rules

3.1 The Price Stabilizing Rules prescribe a "safe harbour" for permitted stabilization from market misconduct provisions set out in Parts XIII and XIV of the SFO, including stock market manipulation. However, the safe harbour is only applicable to "relevant securities" which is defined as follow under section 1(a) of the Price Stabilizing Rules:

"(a) equity securities;

(b) debt securities; or

(c) depositary receipts of equity securities or debt securities".

3.2 The term "equity securities" is defined as "*shares issued by, or which it is reasonably foreseeable will be issued by, a corporation, but does not include any interest in any collective investment scheme*".

3.3 As such, should the SFC proceed with the Market Misconduct Proposal, we recommend the SFC to revise the definition of the "relevant securities" and/or "equity securities" to include collective investment schemes, so as to take into account the fact that the Market Misconduct Proposal will apply to NCEs.

4. Conclusion

4.1 Based on the foregoing analysis, we submit that it is counter-productive to the ETF market and unnecessary to extend the market misconduct provisions under the SFO to NCE ETFs. However should the SFC proceed with the Market Misconduct Proposal with regard to NCEs generally, we submit that all ETFs (corporate or non-corporate) should be expressly carved out from the provisions of Parts XIII and XIV of the SFO on the basis that (i) it is highly unlikely that the wrongdoing at which these provisions are targeted occurs, and (ii) the changes, despite being necessary, may create unwelcome legal uncertainties which may impede lawful and reasonable commercial ETF activity to the detriment of the markets and investors.

C. PART XV OF THE SFO – DISCLOSURE OF INTERESTS

	"Question (2): Do you agree that Part XV of the SFO should be amended so that it expressly covers listed entities that are not in corporate form?"

5. Blanket exemption for ETFs

5.1 We agree with the SFC's proposal of continuing to exempt open-ended CIS such as ETFs from the disclosure of interests provisions under Part XV under the Consultation Paper. This is consistent with the previous SFC consultations conducted in 2008 and 2010.

5.2 As the SFC proposes to revise Part XV to effectively exempt holders of interests in open-ended CIS such as ETFs (be it in corporate or non-corporate form), we agree that the amended SFO should provide for a blanket and complete exemption from Part XV for any such CIS instead of requiring each open-ended CIS to apply for a category 3 exemption as is presently the case for any ETFs in a corporate form.

5.3 Such exemption should also state clearly the criteria for determining whether or not a CIS is to be treated as open-ended for the purpose of Part XV, e.g. at least one regular dealing day per month (which is the requirement under Chapter 6.13 of the Code).

6. **Types of non-corporate entities**

6.1 We support the proposal to amend Part XV so that it expressly covers listed entities that are not in corporate form provided that the amended SFO states clearly which other non-corporate forms are covered. For instance, there should be no ambiguity as to whether or not Part XV of the SFO also applies to certain civil law contractual arrangements such as *Fonds Commun de Placement* (FCPs) which are not separate legal entities but which issue "shares". Guidance should be given by way of revising the Outline of Part XV of the Securities and Futures Ordinance (Cap. 571) - Disclosure of Interests (the "Outline") to cover limited partnerships, limited liability partnerships, limited liability corporations, business trusts and unit trusts as well as FCPs. The Outline should also address the issue of umbrella funds and segregated portfolio or protected cell entities.

7. **Calculation of percentage level and figure**

7.1 The amended SFO would also have to clarify how investors in a non-corporate form CIS should calculate the percentage level and percentage figure of their interests, given such investors will be holding "units" or "interests" instead of "shares", and taking into account the fact that there will not be any issued or authorised share capital nor any voting shares, *per se*, in such non-corporate form CIS entities.

7.2 As indicated above, the amended SFO should also state whether or not each sub-fund within an umbrella fund should be treated as a separate listed entity for the purpose of Part XV or whether they should instead be treated in the same way as different share classes of one single listed company.

8. **Trust Deeds**

8.1 If listed trusts are covered by Part XV of the SFO, the SFC authorisation of any closed-end CIS established as a trust such as a REIT should no longer be conditional upon the relevant trust deed including provisions requiring the disclosure of interests.

D. PART XIVA OF THE SFO – DISCLOSURE OF PSI

	"Question (4): Do you have any comments on the proposal to extend the statutory disclosure requirement for PSI in respect of listed corporations under Part XIVA of the SFO to listed CIS and other listed entities?" "Question (5): Do you have any comments on the examples of events or circumstances where the management company of a listed CIS/other listed entity should consider whether a disclosure obligation of PSI would arise under the SFO?"

9. **Blanket exemption for ETFs**

9.1 We believe that Part XIVA of the SFO was drafted and passed without considering its application to corporate ETFs. This is evident from the list of examples of events or circumstances where a listed corporation should consider disclosing under paragraph 35 of the PSI Guidelines issued by the SFC which are mostly irrelevant to ETFs.

9.2 Furthermore, ETFs at present are already subject to requirements to disclose price sensitive information under Chapter 11.1B of the Code, Part G of Appendix 7 to the Listing Rules and the Joint Circular.

9.3 Based on the foregoing, we submit that:

(A) there is no merit of bringing the disclosure of PSI in respect of non-corporate ETFs onto the same statutory platform as listed companies; and

(B) all ETFs (regardless of their form) should be exempted from Part XIVA of the SFO and so in making the revisions to the SFO, the SFC may take the opportunity to remove corporate ETFs from the legal ambiguity of Part XIVA and the Joint Circular.

9.4 Such an approach will clarify how ETFs are regulated (by the SFC in accordance with the Code and the SEHK under Chapter 20 of the Listing Rules). However if the SFC determines to extend Part XIVA of the SFO to all NCEs, i.e. including ETFs, we urge the SFC to issue clarification on how the different pieces of guidelines interact with each other (e.g. whether the PSI Guidelines will be re-issued and supercede the Joint Circular) and to adopt our suggestions as set out in paragraphs 10 to 12 below.

10. **List of examples**

10.1 We note from paragraph 39 of the Consultation Paper that the general principles and guidance set out in the PSI Guidelines will apply to listed CIS and other listed entities that do not take a corporate form with necessary modifications. Paragraph 40 of the Consultation Paper further provides that guidance may be provided by way of supplement to the PSI Guidelines to assist listed CIS and other listed entities to comply with their obligations to disclose PSI under the statutory disclosure requirements.

10.2 We believe that the above mentioned modifications and supplements, which aim at providing additional certainty to the events or circumstances which may trigger a disclosure obligation, will be helpful to ETF market participants. However, given the substantial differences in terms of the nature and operation of (A) ETFs, (B) REITs and (C) listed corporations, we strongly urge the SFC to set out the examples of events or circumstances where a listed entity should consider disclosing that are applicable to each of these types of entities in different sections, sub-sections or appendices to provide sufficient clarity to market participants. Otherwise, the objective of providing helpful guidance to market participants will be impeded.

10.3 Although we appreciate that the list of examples of events or circumstances where an ETF manager should consider disclosing as set out in the Joint Circular is not exhaustive, we are of the view that such a list of examples is relatively comprehensive and basically covers most of the situations which an ETF manager can envisage. We recommend that such a list of examples be incorporated into the revised PSI Guidelines, under the section, sub-section or appendix in relation to ETFs.

11. **SFC's prior approval**

11.1 We also suggest the SFC to put an asterisk immediately after an event or circumstance which requires the prior approval of the SFC under Chapter 11.1 of the Code in addition to disclosure, as there remains uncertainty as to what type of changes will require the SFC's prior approval, e.g. the change of auditors of a listed CIS.

12. **Information about a unitholder of the listed entity**

12.1 To the extent that the SFC determines to apply Part XIVA of the SFO to ETFs, we are concerned about the SFC's proposal of extending the definition of "inside information" to include information about "a unitholder of the listed entity", which basically includes information about an investor of an ETF. Given the units of almost all ETFs in Hong Kong are held by HKSCC Nominees Limited for and on behalf of the investors as the underlying beneficial owners, it is impracticable for ETF managers to monitor the activities of all of their investors and then make disclosures on their behalf in a timely manner. In this regard we would draw the SFC's attention to its existing requirements under the Code, in particular Chapter 11.1(b) which is relevant to all open-ended CIS. It is difficult to see how inside information on an investor in an open-ended listed CIS such as an ETF is necessary to be disclosed to the market. The fact that an open-ended CIS may be listed should not make such disclosure more relevant.

12.2 Furthermore, unlike substantial shareholders of a company listed under Chapter 9 of the Listing Rules, unitholders holding a substantial amount of ETF units will not have the same level of influence and control over the management of the ETF. As such, we do not see the benefit of requiring ETF managers to disclose PSI about the unitholders of an ETF.

12.3 We therefore urge the SFC:

(A) not to extend the definition of "inside information" to include information about a unitholder of the entity; or

(B) to carve out holders of interests in ETFs from such an extended definition.