

SECURITIES AND FUTURES COMMISSION

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cc:

From: e-workflow/IR/SFC@SFC
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Subject: Consultation Paper Comment - Consultation Paper on Proposals to Enhance
Protection for the Investing Public (Ref: 20091222.1710.59807)

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Q13 : Background:

CACEIS Hong Kong Limited (CACEIS HK) is a wholly owned subsidiary of CACEIS Bank Luxembourg (CACEIS BL) and became a newly incorporated company under the Companies Ordinance in Hong Kong on 4 July 2008.

CACEIS BL is a banking institution and provides a full range of securities services to institutional customers, including depository bank, securities custody functions, as well as fund administration and registrar and transfer agency services, through its subsidiary. CACEIS BL decided to create a local subsidiary in Hong Kong for the provision of administrative support to distribution services to its existing and perspective clients for their fund ranges being marketed throughout Asia.

CACEIS HK is currently appointed by the fund's manager/global distributor or administrator of the fund as sub-contractor to handle administration services comprising handling applications/queries and passing them to the Funds- official Transfer Agent. Such services are strictly limited to administrative back-office activities, and in the performance of such activities CACEIS HK is in no circumstance whatsoever involved either in effective and active fund marketing and promotion of its clients- funds authorised by the SFC.

CACEIS HK is not involved in the processing of cash flows related to payment of subscriptions, redemptions, dividends.

CACEIS HK already obtained confirmation from the SFC Licensing Department that a Type 1 Licence would not be required by CACEIS HK given the solely administrative nature of the activities CACEIS HK will be engaged in.

Some existing and prospective clients of CACEIS BL have or are in the process of having their non-Hong Kong domiciled funds authorised by the SFC for public distribution in Hong Kong and therefore need to appoint a HK Representative to process only the minimum necessary administrative services as requested by law for a Representative Agent. Some of those clients either do not have a local presence in HK or they have a local presence in HK which organisation, capacities or expertise do not meet the requirement for a Representative.

Those clients therefore would wish to directly appoint CACEIS HK as Hong Kong Representative. In this scenario, the range of services provided by CACEIS HK would remain the same: CACEIS HK will provide administrative support to distribution services and will not be involved in the fund marketing and promotion of its clients- funds authorised by the SFC.

Comments:

With reference to the SFC Consultation Paper on Proposals to Enhance Protection for the Investing Public issued by the SFC on Friday 25 September 2009, we would like to raise the following questions on article 9.4 of Appendix A - Section II. Article 9.4 concerns the Criteria for Appointment of the Representative for non HK based schemes.

1) "The management company is encouraged to appoint a Representative within the management group".

- Could you please clarify the intended perimeter or definition of -management group-? Is reference made solely to an investment management entity or to large financial groups, within which intra-group delegations are commonplace?

- What would be the options for a management company whose management group does not have a local presence in HK? Likewise, what would be the options for a management company whose management group has a local presence in HK, but the local entity does not satisfy the requirement to be appointed as Representative?

2) "The Representative must be licensed or registered under the SFO".

- We understand that the objective of this clause is to grant the SFC with sufficient comfort that no matter what kind of licence the selected Representative holds, the company is subject to the supervision of a financial authority in HK.

3) The -Representative must be a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of the laws of Hong Kong) and such company is an affiliate of an authorised financial institution defined under the SFO and is acceptable to the Commission".

- We think that the SFC should have sufficient comfort in a set-up whereby the Representative, would be held primarily by a financial institution located in a cooperative country and is subject to the supervision by a local regulator recognised by the SFC.

- We see in principle no impediment to extend this condition to a standard company rather than a trust company.

- Could you please clarify which criteria would be taken into account by the SFC when assessing if a trust company is acceptable or not to be appointed as Representative?

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Attachment :