

# Marketing Mutual Funds in Hong Kong

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# Marketing Mutual Funds in Hong Kong

## Introduction

This note considers some of the Hong Kong regulatory issues arising from the marketing of shares in a mutual fund company incorporated outside Hong Kong (the “Fund”) to potential investors in Hong Kong. There are two principal areas to consider: (i) whether the entity marketing the Fund is required to be licensed or registered under the Securities and Futures Ordinance (the “SFO”); and (ii) the restrictions on the making of offers/invitations to the public under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (the “C(WUMP)O”) and under Part IV of the SFO.

## Summary

### *Marketing by the Fund*

The Fund can be marketed by the Fund itself without a licence under the SFO only to the limited categories of “professional investors” which are “institutional professional investors” set out in Part 1 of Annex A to this note.

### *Marketing by an Intermediary*

The Fund can be marketed by an intermediary which is licensed or registered by the Securities and Futures Commission (the “SFC”) to “deal in securities”:

- i to investors each paying a minimum consideration of HK\$ 500,000 for the shares; or
- ii in circumstances where the total consideration payable for the shares is less than HK\$ 5 million; or
- iii to unlimited numbers of “professional investors” including all types of professional investors set out in Annex A and overseas investors; or
- iv subject to meeting the requirements for reliance on the private placement exemption specified in Section 2.1 below, to up to a maximum of 50 other investors.

## **1. THE LICENSING REQUIREMENT UNDER THE SECURITIES AND FUTURES ORDINANCE (THE “SFO”)**

### **1.1 Business of Dealing in Securities**

The SFO provides that no person shall carry on a business in a regulated activity without being licensed or registered under the SFO. Carrying on a business is construed widely.

“Dealing in securities” constitutes a regulated activity and is widely defined. A person is “dealing in securities” if he, whether as principal or

agent, makes or offers to make an agreement with another person, or induces or attempts to induce another person to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities.

The marketing of the Fund in Hong Kong by the Fund itself or by an intermediary will prima facie constitute dealing in securities.

## 1.2 Marketing by the Fund

There is a limited exemption from the requirement to be licensed to deal in securities where a person, **as principal**, deals with a person who is an “institutional professional investor” as set out in Part 1 of Annex A attached hereto. (“Type 1 professionals”).

Only the Fund can rely on this exemption. All marketing activities must therefore be conducted by representatives of the Fund and not representatives of any intermediary (such as an investment manager or placing agent) and all marketing materials must be issued in the name of the Fund itself, in order that the Fund meets the requirement that it is dealing “as principal”.

In addition, the Fund may only market to Type 1 professionals. The definition of Type 1 professionals is however limited. In summary, it includes licensed investment intermediaries, authorised financial institutions, regulated insurance companies, regulated collective investment schemes, government and multilateral agencies.

The Fund may therefore market shares in itself to Type 1 professionals only without being licensed by the SFC.

## 1.3 Marketing by an Intermediary

An intermediary would need to be licensed or registered by the SFC to conduct Regulated Activity Type 1 (dealing in securities) in order to market shares in the Fund in Hong Kong, unless an exemption applies.

### (i) *Incidental Exemption*

An intermediary licensed for Type 9 regulated activity (asset management) is not required to be licensed for Type 1 regulated activity (dealing in securities), provided that this activity is carried out solely for the purposes of the intermediary’s asset management business. However, the SFC interprets this exemption narrowly. The SFC has said that where a fund manager who is already licensed for Type 9 regulated activity engages in marketing activities relating to funds under its management, it may rely on this incidental exemption. Accordingly, to conduct its fund management business plus any incidental marketing activities in relation to the funds it manages, the fund manager is only required

to be licensed/registered for Type 9.

However, this exemption will not apply if the fund manager markets other funds which are not under its management. Such marketing activities will not be regarded as incidental to the fund manager's Type 9 business, and the fund manager will need to be additionally licensed/registered for Type 1<sup>1</sup>.

This exemption is therefore available only where a fund manager holding a Type 9 licence markets shares in a fund under its management.

(ii) *Dealing through a Licensed/Registered Securities Dealer*

An exemption from the requirement to be licensed is available where a person deals through another person who is licensed or registered to deal in securities. Arrangements can therefore be made for the marketing of the Fund to be conducted by a Type 1 licensed/registered intermediary. The exemption will not however apply if the person appointing the licensed intermediary to market the Fund (e.g. the fund manager or the Fund itself) receives any form of commission, rebate or other remuneration from the licensed intermediary.

(iii) *Temporary Licence*

If an intermediary is not currently licensed under the SFO, it may be able to apply for a temporary licence for a period of up to three months. The primary requirement for the grant of a corporate temporary licence is that the entity is authorised in its home jurisdiction by a regulator which performs a similar function to the SFC and has the power to investigate and discipline the entity in respect of its conduct in Hong Kong. The SFC has indicated on an informal basis that it would normally take up to 12 weeks to process a full licence for an entity unknown to the SFC, but that it should take less time for temporary licences where the applicant is already licensed in a recognised jurisdiction. They indicated a possible timetable of around one month if the structure is not complicated and around 2 months for less straightforward cases. Marketing must not commence until the temporary licence has been granted. Any representatives of the intermediary involved in the marketing activities would also need to apply for temporary licences.

In practice, obtaining a temporary licence in Hong Kong is difficult. One of the application requirements is that the applicant has lodged an application under section 130(1) SFO for the keeping of records and documents. It is not possible to obtain a

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<sup>1</sup> Source: SFC FAQs on Licensing Related Matters, Topic 10 – Incidental Exemption, Question 10.6

temporary licence to carry out regulated activity Type 9 (asset management). A temporary licensee is also prohibited from holding client assets.

#### 1.4 Marketing from outside Hong Kong

An entity (such as a fund manager or placing agent) which markets interests in the Fund from outside Hong Kong to persons in Hong Kong is prima facie “dealing in securities” and will require a Type 1 licence in the absence of an available exemption. In practice, the SFC is unwilling to license entities operating offshore because they fall under the regulatory jurisdiction of the home regulator. Offshore funds will therefore often appoint Type 1 licensed brokers to distribute the fund in Hong Kong to rely on the exemption which allows an unlicensed person to “deal in securities” provided that they perform the dealing through a licensed third party, i.e. a licensed securities dealer.

It should also be noted that section 115 SFO expressly prohibits a person “actively marketing” from outside Hong Kong to the Hong Kong public any services which would constitute a regulated activity if provided in Hong Kong, unless that person is registered or licensed by the SFC. An offshore fund manager, or a Type 1 licensed entity appointed to market the fund, must therefore ensure that it does not actively market the offshore fund manager’s *services as a fund manager* (as opposed to the fund itself) in Hong Kong. As to what constitutes “active marketing” of a service, there is considerable uncertainty. According to the FAQs on the SFC website, “actively markets” may include, for example, those who frequently call on Hong Kong investors and market their services (including offering products) and running a mass media programme or internet activities targeting the Hong Kong investing public. However, enforcement cases brought by the SFC have seen the SFC argue that the term’s meaning is broader than suggested by its FAQs and that actual sales resulting from advertising activities are sufficient to establish active marketing. The SFC’s interpretation as set out in the FAQs was also dismissed by the SFAT as being merely “straws in the interpretative wind”. This dismissal was subsequently affirmed by the Court of Appeal.<sup>2</sup> Unfortunately, neither the SFAT nor the Court of Appeal provided any definitive guidance on the meaning of “actively marketing”, noting only that it will depend on “the particular facts and circumstances ... in any given case.” It is worth noting that section 115 prohibits actively market services “to the public”. There is no brightline test as to what constitutes the “public” under the SFO, although industry practice is to take this as 50 persons or less.<sup>3</sup> Actively marketing to a small number of persons should not therefore breach section 115.

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<sup>2</sup> *Ng Chiu Mui & Anor v SFC* Unreported, CACV 141/2009, 26 May 2010

<sup>3</sup> The number of offerees allowed under the C(WUMP)O exclusion from the definition of “prospectus” in paragraph 2 of Part 1 of the Seventeenth Schedule to C(WUMP)O

## 2. THE PROSPECTUS REGIME

Any prospectus distributed in Hong Kong which offers for subscription or purchase shares in or debentures (other than structured products<sup>4</sup>) of a company incorporated outside Hong Kong must comply with the content and registration requirements set out in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (the “CWUMPO”)<sup>5</sup>.

A prospectus is defined as any prospectus, notice, circular, brochure, advertisement or other document which:

- **offers** any shares or debentures of a company to **the public** for subscription or purchase; or
- **is calculated to invite offers by the public** to subscribe for or purchase any shares or debentures of a company.

Accordingly any documents distributed to the “public” which contain an offer or invitation to acquire shares in the Fund will be subject to the C(WUMP)O prospectus requirements unless a specific exemption applies.

The prospectus requirements do not apply to public offers of shares which are made verbally, although verbal advertisements and invitations are subject to the prohibition on unauthorised investment advertisements in Section 103 SFO.

### 2.1 Exemptions

The Seventeenth Schedule to the C(WUMP)O (the “Seventeenth Schedule”) sets out twelve safe harbours which exclude certain categories of offers from the prospectus regime. The most important of these in terms of the offer of shares in the Fund are the following:

(i) *Professionals Exemption*

The offering documentation for offers to professional investors (as defined in Section 1 of Part 1 of Schedule 1 to the SFO) is excluded from the C(WUMP)O “prospectus” definition and hence from all the C(WUMP)O prospectus requirements.

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<sup>4</sup> Broadly speaking, structured products are any products with a derivative element. They are defined in Section 1 of Part 1A of Schedule 1 to the SFO to include: a) instruments where some or all of the return or amount due (or both the return and amount due) or the method of settlement is determined by reference to one or more of: (i) changes in the price, value or level (or a range within the price, value or level) of any type of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; (ii) changes in the price, value or level (or a range within the price, value or level) of a basket of more than one type of securities, commodity, index, property, interest rate, currency exchange rate or futures contract; or (iii) the occurrence or non-occurrence of an event or events specified in the instrument (excluding an event or events relating only to the issuer or guarantor of the instrument or to both of them); or (b) regulated investment agreements.

<sup>5</sup> Section 342C C(WUMP)O

The definition of professionals which applies for the purposes of this exemption includes all the categories of investors listed Annex A.

It is therefore possible to market shares in the Fund to the categories of high net worth investors referred to in Parts 2 and 3 of Annex A in reliance on this exemption. However, firms offering shares to these professionals must satisfy themselves that the investors meet the relevant assets or portfolio threshold at the relevant date to qualify as a professional investor.

(ii) *Private Placement Exemption*

An exemption is available for offers made to a maximum of 50 persons in Hong Kong provided that the offer document contains in a prominent position the warning statement specified in Part 3 of the Eighteenth Schedule to the C(WUMP)O (the “specified warning statement”) which is as follows:

“WARNING”

The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.”

In counting the 50 offerees, an offer is taken with any other offer of shares by the same person within the preceding 12 months which relied on the same exemption. Accordingly, it is not possible to increase the number of offerees by staggering placements of the shares.

Where the private placement exemption is to be relied on, the following steps should be taken:

- (a) Each information memorandum issued should be numbered in series and individually addressed to each offeree;
- (b) The information memorandum should include the specified warning statement on the front cover;
- (c) The information memorandum should contain a warning that the addressee may not copy or pass the information memorandum to any other person;
- (d) Subscriptions for shares in the Fund should only be accepted from the offeree and the offeree should only be able to purchase shares in the Fund as principal;

- (e) Placees should be required to agree not to sell their shares in Hong Kong in the 6 months following the allotment of the shares, except in circumstances which do not constitute an “offer to the public” within the meaning of the C(WUMP)O. This is to ensure that the anti-avoidance provisions of Section 343(1) C(WUMP)O are not triggered; and
- (f) There should be no public advertising at all in Hong Kong in relation to the offer of shares in the Fund. This issue of promotional material must be strictly limited to offerees.

It is also possible to combine the professionals exemption and the private placement exemption so that documents offering shares in the Fund to unlimited numbers of professional investors and to a maximum of not more than 50 other persons (who do not qualify as professional investors) will be exempt from the C(WUMP)O prospectus requirements. If reliance is to be placed on both exemptions, no more than 50 copies of the information memorandum should be issued to persons who do not qualify as professional investors and the steps specified at (a) to (f) above should also be taken in respect of any offers to such persons.

(iii) *Small Offer Exemption*

Offers for which the total consideration payable for the relevant shares does not exceed HK\$ 5 million (or its foreign currency equivalent) are also exempt from the C(WUMP)O prospectus requirements.

In determining whether the HK\$ 5 million condition is satisfied, offers are taken together with any other offer of shares by the same person within the preceding 12 months which relied on the same exemption.

The offer documentation must also contain the specified warning statement in a prominent position.

(iv) *Sophisticated Investor Exemption*

There is an exemption for offers where the minimum consideration payable by any person for the shares is not less than HK\$ 500,000 (or its foreign currency equivalent). The specified warning statement must be included in the offer documentation in a prominent position.

To rely on this exemption, **every** investor must pay a minimum of HK\$ 500,000. If they do so, investors do not additionally need to be “professionals” within the definition referred to above.

(v) *Offers to Persons outside Hong Kong*

References in the safe harbours to an “offer” do not include an offer to the extent that it is made to persons outside Hong Kong<sup>6</sup>. Offers made to persons outside Hong Kong can therefore be disregarded in determining whether any relevant exemption applies. For example, when determining whether the number of offerees are within the 50 person limit allowed under the private placement exemption, it is only necessary to count the number of offerees in Hong Kong.

### **3. PART IV OF THE SECURITIES AND FUTURES ORDINANCE**

#### **3.1 Investment Advertisements**

It is an offence under Section 103 SFO for a person to issue in Hong Kong an advertisement, invitation or document which is or contains an invitation to the public:

- to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities: or
- to acquire an interest in or participate in, or offer to acquire an interest in or participate in, a collective investment scheme,

unless the issue is authorised by the SFC under Section 105(1) SFO or an exemption applies.

“Collective investment scheme” is the term used in the SFO to cover mutual funds, unit trusts and other pooled investment arrangements. The Fund will constitute a collective investment scheme for the purpose of the SFO. It is the SFC’s policy intention that the public offering of both open-ended and closed-end funds should be subject to SFC authorization under the SFO unless specifically exempted.

It should be noted that the SFO regime covers advertisements and invitations made verbally as well as written documents<sup>7</sup>.

#### **3.2 Public Offer**

In order for shares in a fund to be marketed to the public in Hong Kong, the fund must be authorised by the SFC under Section 104 SFO. The conditions for authorisation are set out in the Code on Unit Trusts and Mutual Funds. In addition, any invitation to the public to acquire shares in the fund, must be authorised by the SFC under Section 105 SFO.

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<sup>6</sup> Paragraph 1(b) of Part 4 of the Seventeenth Schedule.

<sup>7</sup> See the definitions of “advertisement” and “invitation” in Section 102 SFO.

### **3.3 Exemptions**

There are a number of exemptions from the investment advertisements requirements.

Most importantly in terms of the Fund, any invitation to the public which relates to an offer within the safe harbours of the Seventeenth Schedule to the C(WUMP)O, is also exempt from the prohibition on unauthorised investment advertisements by virtue of Section 103(2)(ga) SFO. Accordingly, SFC authorisation is not required for invitations relating to an offer:

- (i) to investors each paying a minimum consideration of HK\$ 500,000 for the shares; or
- (ii) in circumstances where the total consideration payable for the shares is less than HK\$ 5 million; or
- (iii) to unlimited numbers of “professional investors” within Annex A, overseas investors and up to a maximum of 50 other investors.

#### **3.3.1 Advertisements issued to professional investors**

This exemption is available in respect of advertisements for securities and for collective investment schemes.

The definition of professionals which applies for the purposes of this exemption includes all the categories of investors listed in Annex A to this note.

It is therefore possible to market interests in the Fund to the categories of high net worth investors referred to in Parts 2 and 3 of Annex A in reliance on this exemption as well as institutional professionals with Part 1 of Annex A. However, the offeror must use appropriate methods to establish that persons other than institutional professional investors meet the relevant assets or portfolio threshold at the relevant date<sup>8</sup> to qualify as a professional investor. Firms should keep proper records of their assessment process so as to demonstrate that they have exercised professional judgement and have reached a reasonable conclusion that their clients meet the relevant thresholds.

## **4. INTERNET MARKETING**

The SFC has stated that the provisions of the SFO and C(WUMP)O relating to the advertisement, offering and dealing of collective investment schemes

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<sup>8</sup> “Relevant date” for these purposes means in the case of any advertisement, invitation or document to enter an agreement to acquire or subscribe for securities, the date of issue of the advertisement, invitation or document (Section 2 of the Securities and Futures (Professional Investor) Rules).

(i.e. funds) apply equally to activities conducted over the internet. The sending of marketing material over the internet is therefore subject to the same restrictions under the C(WUMP)O and the SFO.

The SFC's primary concern is to regulate activities which are targeted at persons residing in Hong Kong or are detrimental to the interests of the Hong Kong investing public or to the market integrity of Hong Kong. Factors which will be taken into account in determining whether an advertisement is targeted at Hong Kong investors include:

- (i) Whether the information is targeted via "push" technology (such as e-mail) to persons residing in Hong Kong;
- (ii) Whether the information provided over the internet appears to target Hong Kong residents (such as the use of local distribution agents; references to Hong Kong dollars; the use of Chinese language and the publication in a Hong Kong newspaper or publication of the internet address where such information can be accessed).

#### **4.1 THE LICENSING REQUIREMENT**

As mentioned in Section 1.4 above, marketing activities conducted from outside Hong Kong which target Hong Kong investors may trigger the SFO's licensing requirements. The SFC's Guidance Note on Internet Regulation published in 1999 (the "SFC Guidance Note") states that the SFC will require persons who use the internet to induce people residing in Hong Kong to deal in securities to be registered or licensed by the SFC.

#### **4.2 THE PROSPECTUS REGIME AND PART IV OF THE SFO**

The SFC Guidance Note also states that the requirements of the C(WUMP)O prospectus regime and the prohibition on unauthorised invitations to the public apply to invitations and offers made by means of the internet.

In addition, internet advertisements to acquire shares in a fund are likely to be caught by Section 103(10) SFO which contains deeming provisions whereby:

- (i) any advertisement, invitation or document which consists of or contains information likely to lead, directly or indirectly, to the doing of any act referred to in Section 103(1) is regarded as an advertisement, invitation or document which is or contains an invitation to do such act; and
- (ii) any advertisement, invitation or document which is or contains an invitation directed at, or the contents of which are likely to be accessed or read (whether concurrently or otherwise) by, the public is deemed to be or contain an invitation to the public.

Where the information memorandum is to be sent via the internet, it should therefore be sent by individual e-mails (rather than by posting on a website) and include the appropriate Hong Kong selling restrictions and, where the private placement exemption is relied on, legends warning the addressees not to pass the information to any other person.

*This note is intended for information purposes only. Specific advice should be sought in relation to any particular situation.*

**JUNE 2022**

## ANNEX A

### DEFINITION OF “PROFESSIONAL INVESTORS”

There are 3 principal categories of professional investors – Institutional Professional Investors, Corporate Professional Investors and Individual Professional Investors.

The categories of Institutional Professional Investors are set out in Part 1 of Schedule 1 to the Securities and Futures Ordinance, while the definitions of Corporate Professional Investors and Individual Professional Investors are set out in the Securities and Futures (Professional Investor) Rules.

#### 1. Institutional Professional Investors

Institutional Professional Investors are persons falling under paragraphs (a) to (i) of the definition of “professional investor” in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (the **SFO**). These are:

- a. any recognized exchange company, recognized clearing house, recognized exchange controller or recognized investor compensation company, or any person authorized to provide automated trading services under section 95(2) of the SFO;
- b. any SFC-licensed corporation or SFC-registered institution, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
- c. any authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
- d. any insurer authorized under the Insurance Companies Ordinance (Cap. 41), or any other person carrying on insurance business and regulated under the law of any place outside Hong Kong;
- e. any scheme which-
  - i. is a collective investment scheme authorized under section 104 of the SFO; or
  - ii. is similarly constituted under the law of any place outside Hong Kong and, if it is regulated under the law of such place, is permitted to be operated under the law of such place,or any person by whom any such scheme is operated;
- f. any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), or its constituent fund as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), or any person who, in relation to any such registered scheme, is an approved trustee or service provider as defined in section 2(1) of that Ordinance or who is an investment manager of any such registered scheme or constituent fund;
- g. any scheme which-

- i. is a registered scheme as defined in section 2(1) of the Occupational Retirement Schemes Ordinance (Cap 426); or
  - ii. is an offshore scheme as defined in section 2(1) of that Ordinance and, if it is regulated under the law of the place in which it is domiciled, is permitted to be operated under the law of such place,
- or any person who, in relation to any such scheme, is an administrator as defined in section 2(1) of that Ordinance;
- h. any government (other than a municipal government authority), any institution which performs the functions of a central bank, or any multilateral agency; or
  - i. any corporation which is-
    - i. a wholly owned subsidiary of-
      - A. an SFC-licensed corporation or SFC-registered institution, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
      - B. an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
    - ii. a holding company which holds all the issued share capital of-
      - A. an SFC-licensed corporation or SFC-registered institution, or any other person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong; or
      - B. an authorized financial institution, or any bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; or
    - iii. any other wholly owned subsidiary of a holding company referred to in subparagraph (ii).

## 2. Corporate Professional Investors

Corporate Professional Investors are trust corporations, corporations or partnerships falling under sections 4, 6 or 7 of the Securities and Futures (Professional Investor) Rules (the **PI Rules**). These are:

- a. **Trust Corporations** - a trust corporation which has been entrusted under the trust or trusts of which it acts as a trustee with total assets of not less than **HK\$40 million** or its foreign currency equivalent.

A “trust corporation” is:

- i. any trust company registered under Part 8 of the Trustee Ordinance (Cap. 29); or

- ii. any other corporation which carries on a business which is of a nature similar to that of a trust company referred to in paragraph (i) and is regulated under the law of any place outside Hong Kong.

**b. Corporations** – the following corporations:

- i. a corporation which has:
  - A. a portfolio<sup>9</sup> of at least **HK\$8 million** or its equivalent in any foreign currency; or
  - B. total assets of at least **HK\$40 million** or its foreign currency equivalent;
- ii. a corporation whose principal business is to hold investments and which is wholly owned by one or more of the following:
  - A. a trust corporation referred to in section 4 of the PI Rules (see paragraph 2(a) above);
  - B. an individual referred to in section 5(1) of the PI Rules (see paragraph 3 below);
  - C. a corporation referred to in this paragraph (ii) or paragraph (i);
  - D. a partnership referred to in section 7 of the PI Rules (see paragraph (c) below);
  - E. a professional investor within the meaning of paragraph (a), (d), (e), (f), (g) or (h) of the definition of “professional investor” in section 1 of Part 1 of the SFO (as set out in Part 1 above);
- iii. a corporation which wholly owns a corporation referred to in paragraph (i) above.

**c. a partnership which has:**

- i. a portfolio<sup>10</sup> of at least **HK\$8 million** or its equivalent in any foreign currency; or
- ii. total assets of not less than **HK\$40 million** or its equivalent in any foreign currency.

**Ascertaining total assets or portfolio of Corporate Professional Investors**

The total assets entrusted to a trust corporation, or the portfolio or total assets of a corporation or partnership should be ascertained by referring to one or more of the following:

- a. the most recent audited financial statement prepared within 16 months before the relevant date of the trust corporation (or a trust of which it acts as trustee), corporation or partnership; or

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<sup>9</sup> “portfolio” means a portfolio comprising any of the following: (a) securities; (b) a certificate of deposit issued by: (i) an authorized financial institution; or (ii) a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong; (c) in relation to an individual, corporation or partnership, money held by a custodian for the individual, corporation or partnership.

<sup>10</sup> See note 2 above.

- b. any one or more of the following documents issued or submitted within 12 months before the relevant date:
  - i. a statement of account or a certificate issued by a custodian
    - a “custodian” is:
      - A. a corporation whose principal business is to act as a custodian of securities or other property for another person, whether on trust or by contract; or
      - B. any of the following persons whose business includes acting as a custodian custodian of securities or other property for another person, whether on trust or by contract authorized financial institution;
      - C. a bank which is not an authorized financial institution but is regulated under the law of any place outside Hong Kong;
      - D. a licensed corporation; or
      - E. a person carrying on the business of the provision of investment services and regulated under the law of any place outside Hong Kong;
  - ii. a certificate issued by an auditor or a certified public accountant; or
  - iii. a public filing submitted by or on behalf the trust corporation (whether on its own behalf or in respect of a trust of which it acts as a trustee), corporation or partnership.
    - A “public filing” is a document that, pursuant to legal or regulatory requirements in Hong Kong or in a place outside Hong Kong, has been submitted to a person or body that is under a duty to publish the document to, or otherwise make the document available for inspection by, members of the public in Hong Kong or in a place outside Hong Kong.

### 3. Individual Professional Investors

Individual Professional Investors are individuals who have a portfolio<sup>2</sup> of at least **HK\$8 million** (or its foreign currency equivalent) when any one or more of the following are taken into account:

- a. a portfolio in his or her own account;
- b. a portfolio in a joint account with his or her associate;
  - an “associate” is a spouse or child.
- c. his or her share of a portfolio on a joint account with one or more persons who are not associates.
  - an individual’s share is the share specified in a written agreement between the accountholders, or if none, an equal share of the portfolio;

- d. a portfolio of a corporation which, at the relevant date, has as its principal business the holding of investments and is wholly owned by the individual.

#### **4. Ascertaining portfolio of Individual Professional Investors**

The portfolio (including a share of a portfolio) of an individual is ascertained by reference to one or more of the following documents issued or submitted within 12 months before the relevant date:

- i. a statement of account or a certificate issued by a custodian;
- ii. a certificate issued by an auditor or a certified public accountant; or
- iii. a public filing submitted by or on behalf the individual.

A “public filing” is a document that has been submitted by or on behalf of the individual pursuant to legal or regulatory requirements in Hong Kong or elsewhere to a person or body that is under a duty to publish the document to, or otherwise make the document available for inspection by, members of the public in Hong Kong or elsewhere.