



Hong Kong

June 2016

HKEX PUBLISHES GUIDANCE FOR OFFSHORE RETAIL FUNDS APPLYING TO LIST IN HONG KONG

Introduction

The Hong Kong Stock Exchange (the **Exchange** or **SEHK**) updated its Guidance Letter GL79-14¹ (**GL79-14**) on 10 June 2016 to add guidance for offshore funds applying to list under Chapter 20 of the Hong Kong Listing Rules.

Background

GL79-14 was first published in September 2014 and sets out guidance on the documentary requirements and various administrative matters for retail Collective Investment Schemes (**CIS**) applying to list under Chapter 20.

Chapter 20 of the Listing Rules provides for the listing of retail funds which have been authorised for public offering by the Securities and Futures Commission (**SFC**). SFC authorisation requires that the fund complies with the requirements of the SFC's Code on Unit Trusts and Mutual Funds. The SFC is the primary regulator for Chapter 20-listed CIS and is responsible for authorisation of CIS and ensuring their offering documents are in accordance with the requirements of the applicable laws and regulations. The SFC is also the only authority for monitoring compliance with the authorisation conditions and applicable SFC requirements.

The Exchange's role in relation to CIS listed under Chapter 20 is to maintain a fair, orderly and efficient market for CIS trading in accordance with the Listing Rules and the applicable trading rules.

June 2016: Updates to GL79-14

The June 2016 update to GL79-14 introduces guidance for CIS applications involving foreign elements, namely CIS applicants who are applying to the Exchange to list interests in CIS constituted in the form of an entity incorporated outside of Hong Kong, or a trust organised under any law other than Hong Kong law or other contractual form in which the terms and conditions are governed by any law other than Hong Kong law.

According to GL79-14, CIS applicants involving foreign elements intending to list under Chapter 20 should consult Hong Kong Securities Clearing Company Limited (**HKSCC**) in advance when contemplating an application for SFC authorisation of the CIS and the issue of a CIS Disclosure Document.

Such early consultation is encouraged to ensure the CIS applicant has sufficient time to satisfy the HKSCC that:

- i) the laws of the relevant jurisdiction to which the securities/interests/instruments are subject recognise:
(a) the concept of beneficial ownership under the existing custody structure operated by HKSCC; and (b) that the transfer of such beneficial interests under the CCASS rules will enable CCASS clearing participants transacting in and custodying such securities/interests/instruments on behalf of their clients to acquire proprietary interests in such securities/interests/instruments;

¹ http://en-rules.hkex.com.hk/net_file_store/new_rulebooks/g/gl7914.pdf

- ii) any perfection requirements in the relevant jurisdictions can be complied with by CCASS participants such that they may provide the securities/interests/instruments as collateral for their exchange transactions in satisfaction of their margin requirements as envisaged by the CCASS rules;
- iii) no other legal or regulatory implications arise from the clearing and custody of any such securities/interests/instruments by or on behalf of the HKSCC which may impact the performance of HKSCC's role as a central clearing counterparty and central securities depository in accordance with the CCASS rules; and
- iv) there are no other issues which may have a legal or regulatory impact on the Exchange as a legal entity.

The Exchange will expect CIS applicants to provide a formal legal opinion to HKSCC addressing the matters set out at paragraphs (i) and (ii) above. It also reminds applicants to engage with the HKSCC early particularly where complex issues are raised by the application.

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