



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

**Consultation Conclusions on Investments in  
Real Estate Investment Trusts by Collective  
Investment Schemes Authorised under the  
Code on Unit Trusts and Mutual Funds**

有關根據〈單位信託及互惠基金守則〉  
獲認可的集體投資計劃投資於房地產投資  
信託基金的諮詢總結

Hong Kong  
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## **Executive Summary**

1. The Securities and Futures Commission (“Commission”) issued a Consultation Paper on Investments in Real Estate Investment Trusts by Collective Investment Schemes authorised under the Code on Unit Trusts and Mutual Funds (“Consultation Paper”) on 25 February 2005 for a period of 4 weeks. During the consultation period, eight submissions were received, including responses from industry practitioners and professional organizations. A list of the respondents is set out in Annex 1.
2. All the comments received were in support of the proposal to allow investments by schemes authorised under the Code on Unit Trusts and Mutual Funds (collectively, “SFC-authorized schemes”) to invest in listed real estate investment trusts (“REITs”). However, there were also suggestions that investments in unlisted REITs should be allowed as well, up to a limit of 10-15%. Aside from these, industry practitioners requested clarifications on technical and administrative issues.
3. Having considered the comments received, the Commission concluded that the proposed amendments to the Code on Unit Trusts and Mutual Funds (“Code”), as stated in the Consultation Paper, should be incorporated into the Code. In addition, there is no need to stipulate specific rules in respect of investments in unlisted REITs, as there are already provisions in the Code that govern investments in unlisted securities and collective investment schemes and the Commission clarifies the applicability of such provisions to unlisted REITs herein.

## **Comments Received and the Commission’s Responses**

4. *Public Comments:* All of the responses were in support of the Commission’s initiative to allow SFC-authorized schemes to invest in listed REITs. In addition, two submissions requested that the proposal be extended to include not only REITs *listed* on a stock exchange, but also those *quoted* on an exchange but the principal trading is conducted with the manager or issuer of a REIT, rather than through an exchange.
5. *Commission’s Response:* As stated in the Consultation Paper, the primary basis for allowing investments in REITs is that they are listed and traded on a stock exchange. The use of a stock exchange as a platform to trade a REIT ensures that there is a transparent process for investing in, divesting of and valuing a REIT.

In fact, the current provision already provides both industry practitioners and investors of SFC-authorized schemes with a broad range of investment choices. For instance, there are nearly 200 listed REITs in the US, 25 in Australia and 16 in Japan. The number is expected to grow as interests in publicly traded REITs increase.

In consideration of the above, the Commission maintains the original proposal that where investments are to be made by SFC-authorized schemes in listed REITs in accordance with Chapters 7.1 and 7.2 of the Code, the REITs have to be *listed* on a stock exchange.

6. *Public Comments:* Two industry bodies and a law firm recommended that the Commission also allowed SFC-authorized schemes to invest in unlisted REITs, up to a limit of 10-15% of their net asset values.
7. *Commission's Response:* Under the Code, SFC-authorized schemes are allowed to invest in unlisted investments. In particular, SFC-authorized schemes may invest in unlisted companies by way of Chapter 7.3 of the Code, and in unlisted collective investment schemes by way of Chapter 7.11 of the Code. Since an SFC-authorized scheme has to ensure that it can meet the redemption requests of its investors on a timely basis, the Commission considers that there is already ample room for SFC-authorized schemes to invest in unlisted investments, and there should not be an additional provision to allow investments in unlisted REITs.

As such, the Commission now clarifies that the unlisted investments that can be made under Chapters 7.3 and 7.11 include unlisted REITs in the form of companies and collective investment schemes respectively. As a result, market practitioners have the flexibility to invest in unlisted REITs up to the prescribed limits already laid down in the Code, without altering the liquidity profile of SFC-authorized schemes, as currently required by the Code.

8. *Public Comments:* On the issue of whether there should be specific provisions on the stock exchange on which a REIT has to be listed, the general comments were that they were not necessary.
9. *Commission's Response:* In general, SFC-authorized schemes specify the stock exchanges that they will invest, taking into account their own investment objectives and the relevant provisions of their constitutive documents. The Code has not stipulated on which stock exchanges that such schemes may invest in respect of listed securities. Therefore, the Commission does not consider it appropriate to specify stock exchanges for listed REITs.

However, the Commission is aware of the different risks and characteristics of securities listed on different stock exchanges. In this regard, the Commission reiterates the importance of the fund managers clearly disclosing to potential and existing investors the risks involved and the risk-mitigating measures that they have adopted. Such communication to investors applies whether investments are made in respect of shares of companies, bonds, REITs or any other financial instruments.

10. *Public Comments:* Some submissions sought clarifications on:
- (a) whether REITs include listed property trusts and stapled securities in Australia and other tax transparent companies that principally own and operate investment real estate;
  - (b) whether an SFC-authorized fund may invest in the initial public offering of a REIT seeking to list on a stock exchange;
  - (c) whether REITs will be “collective investment schemes” or “securities” for instrument classification purpose when making disclosures to investors;
  - (d) whether Chapter 7.11 of the Code still applies to REITs; and
  - (e) whether SFC-authorized schemes are required to obtain approval from their shareholders/unitholders and serve them advance notices if they now commence investments in listed REITs as a result of the Commission’s decision to allow such investments.
11. *Commission’s Response:*

The term “REIT” in the Code is intended to refer to investment vehicles (whether formed as companies or collective investment schemes) that primarily invest in real estate. Since different jurisdictions may adopt different names for such vehicles, for instance “REITs” in the case of the US and “listed property trusts” and “stapled securities” in Australia, and new terms may be created as other jurisdictions introduce the same product, the Commission believes it would not be appropriate to spell out what the term “REIT” should include. Instead, “REIT” for the purpose of the Code should refer to any investment vehicle that is established to invest primarily in real estate with an aim to generate a recurrent source of dividend income to investors.

Issues described in (b) to (e) in paragraph 10 are administrative matters and will be clarified by way of “Frequently Asked Questions” on the Commission’s website.

### **Implementation of the Code revision**

- 12. The revised Code will become effective upon publication in the government Gazette.
- 13. The announcement made in the circular issued by the Commission in November 2004 titled “Investment in SFC-authorized Real Estate Investment Trusts by Unit Trusts and Mutual Funds authorized under the SFC Code on Unit Trusts and Mutual Funds” will be superseded.

14. SFC-authorized schemes that have previously obtained waivers from the Commission to invest in Australian REITs by way of Chapter 7.11 of the Code may now invest in listed REITs in accordance with the revised Code provisions, subject to compliance with the investment policies of the schemes and their constitutive documents. However, they are reminded to review whether their offering documents or prospectuses have to be updated accordingly, and whether shareholders/unitholders' approval has to be sought or advance notice should be given to shareholders/unitholders.

**List of Respondents (in alphabetical order)**

**Category A – Respondent has no objection to publication of name**

Hong Kong Investment Funds Association  
INVESCO Asia Limited  
Linklaters  
National Association of Real Estate Investment Trusts  
Nelson Tang  
The Hong Kong Association of Banks

**Category B – Respondent requested submission to be published on a “no-name” basis**

Two submissions