

SECURITIES AND FUTURES ORDINANCE (Chapter 571)

Pursuant to sections 169 and 399 of the Securities and Futures Ordinance, the Securities and Futures Commission publishes the following amendments to the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct).

The amendments shall become effective on 2 October 2024.

New Schedule 11

Insert a new Schedule 11 by adding:—

“Schedule 11 Additional requirements for licensed or registered persons conducting Type 13 regulated activity

Introduction

1. This Schedule sets out additional requirements (“Additional Requirements”) that apply to a person licensed or registered for Type 13 regulated activity, namely providing depository services for relevant CISs (a “Depository”).
2. A Depository should establish and implement internal control policies and procedures to meet the Additional Requirements. The internal controls and procedures designed to meet the Additional Requirements may vary from firm to firm taking into account the size of the operation of the firm, the nature and volume of transactions undertaken and the nature of the relevant CIS property. In the case where an operation of the relevant CIS that is subject to the oversight of a Depository is in fact carried out by the Depository, it would be held primarily responsible for such activity or matter.

Note: For a relevant CIS that is a PRF, subject to the provisions under the PRF Code, where no management company is appointed for the PRF or any investment portfolio thereunder, in respect of such PRF and/or the investment portfolio(s), as the case may be, the Depository will be primarily responsible for the obligations set out under this Schedule 11 (in particular, paragraphs 9 (Subscriptions and redemptions); 10 (Valuation/price/net asset value calculation monitoring); 11 (Distribution payments); 12 (Cash flow monitoring); and 13 (Investment monitoring)).

3. In this Schedule:
 - (a) a “relevant CIS” has the meaning assigned to such term by Part 2 of Schedule 5 to the SFO;
 - (b) “relevant CIS property” has the meaning assigned to such term by Part 2 of Schedule 5 to the SFO;
 - (c) a “Product Code” means any of the following codes administered by

the Commission, as may be amended and updated from time to time:

- (i) the Code on Unit Trusts and Mutual Funds (“UT Code”);
 - (ii) the Code on Open-Ended Fund Companies (“OFC Code”)¹;
 - (iii) the Code on Real Estate Investment Trusts (“REIT Code”); and
 - (iv) the Code on Pooled Retirement Funds (“PRF Code”);
- (d) “REIT” means a real estate investment trust which is authorized by the Commission under section 104 of the SFO and pursuant to the REIT Code;
- (e) a “PRF” means a pooled retirement fund (which may comprise various investment portfolio(s)) which is authorized by the Commission under section 104 of the SFO and pursuant to the PRF Code; and
- (f) references to “relevant operator(s)” are to other parties involved in the operation of a relevant CIS, which may include a management company, the board of directors of a relevant CIS, a transfer agent, administrator, registrar and, in the case of a PRF, a product provider.

4. Unless otherwise stated, terms used in this Schedule shall have the same meaning as defined or used in the relevant Product Code(s).

Part I Depositary of a relevant CIS authorized under the UT Code or the PRF Code

Management and supervision

5. Communication with the management company of a relevant CIS

A Depositary should communicate with the management company in an effective and timely manner in the course of discharging its functions and obligations with respect to a relevant CIS. A Depositary should:

- (a) promptly report to the management company (i) actual material breaches of applicable legal and regulatory requirements which may impact the Depositary’s carrying on of its regulated activities; (ii) issues that may lead to material breaches of applicable legal and regulatory requirements which may impact the Depositary’s carrying on of its regulated activities and (iii) matters that may affect its ability to discharge its functions or obligations under the constitutive documents with respect to the relevant CIS. The Depositary should implement rectification and remedial actions, involve and coordinate with the management company in respect of such breaches or matters reported (and ensure that such breaches or matters are reported to the Commission in accordance with the relevant Product Code(s));

¹ Open-ended fund companies offered to the public in Hong Kong (public OFCs) (i.e. those which are registered and authorized under section 104 of the SFO) are authorized pursuant to both the UT Code and the OFC Code. Also, pursuant to the OFC Code, public OFCs and their key operators (including the custodians) are required to comply with all applicable requirements under the UT Code as well as Section I of the OFC Code.

Note: Where a delegate or third party is engaged to carry out the operations and functions of the Depository, the Depository is expected to have an effective arrangement in place with the delegate or third party to enable the Depository to comply with this requirement.

- (b) notify the management company of material exceptions to its business continuity plan identified during regular tests which may have a material adverse impact on the operation of the relevant CIS or the discharge of the Depository's obligations; and
- (c) upon the activation of its business continuity plan, promptly communicate with the management company if there is any material change to the extent of services to be provided to the relevant CIS.

Note: For the purpose of paragraph 5, where the relevant CIS is a PRF, references to "management company" shall be replaced by "product provider".

6. Appointment and oversight of delegates or third parties

- (a) Where a delegate or third party is appointed or engaged to carry out any activity that is relevant to the Depository, the Depository should have established internal control policies and procedures to enable it to have proper oversight over the delegate or third party so that the Depository can be reasonably satisfied that the delegate or third party is competent to carry out the relevant activity. Such internal control policies and procedures include those relating to:
 - (i) the selection of a delegate or third party, including an assessment of their competence, regulatory and financial status, capabilities and internal controls and systems in carrying out the relevant activity;
 - (ii) the ongoing monitoring (including a regular review) of the delegate or third party so that the Depository is satisfied that:
 - (1) the relevant activity is performed in compliance with the relevant legal and regulatory requirements and the constitutive documents of the relevant CIS; and
 - (2) effective internal controls and systems have been established and maintained by the delegates or third parties in carrying out the relevant activity; and
 - (iii) addressing actual or potential conflicts of interests that may arise from the appointment and oversight of delegates or third parties.
- (b) A Depository should establish an appropriate contingency plan in relation to the engagement of delegates or third parties, including actions and measures to be taken in the event of breaches and solvency matters as well as other material issues related to them.

- (c) Although a delegate may be engaged for the custody and safekeeping of relevant CIS property, the responsibilities and obligations of a Depositary in respect of such activity shall remain with the Depositary.

Note 1: For the purposes of paragraph 6, delegates or third parties include those appointed or engaged by the Depositary, the management company, the board of directors of a relevant CIS (or in the case where the relevant CIS is a PRF, the product provider) and any delegates of these persons.

Note 2: For the purposes of paragraph 6, activities that are relevant to a Depositary refer to activities that a Depositary is primarily responsible for (e.g. custody and safekeeping of relevant CIS property), and operation of the relevant CIS for which the Depositary has an oversight obligation over, in each case in accordance with the provisions under the relevant Product Code(s).

Operational controls and compliance

7. Record keeping

A Depositary should ensure that its record keeping policies comply with applicable legal and regulatory requirements as well as requirements under the constitutive documents of the relevant CIS and that it complies with all such record keeping requirements on an ongoing basis.

8. Oversight of the relevant CIS

A Depositary should have oversight of the relevant CIS to ensure that it is operated (or in the case of a relevant CIS that is a PRF, administered) in accordance with the provisions of the constitutive documents of the relevant CIS.

9. Subscription and redemption

In respect of each relevant CIS, a Depositary should have oversight of the relevant operator(s) to ensure that:

- (a) subscription and redemption transactions are processed on a timely basis;
- (b) subscription and redemption orders are carried out in accordance with the provisions of the constitutive documents of the relevant CIS;
- (c) where subscription proceeds are received by the Depositary or a relevant operator but the subscription orders relating to these proceeds have not yet been accepted (or, in the case of PRFs, placed), these proceeds are deposited on a timely basis into segregated or omnibus bank account(s) designated for holding such proceeds;
- (d) when subscription orders are accepted (or in the case of PRFs, placed), the subscription proceeds relating to such orders are

deposited on a timely basis into a segregated bank account designated as a trust account or client account for holding money which constitutes relevant CIS property;

- (e) redemption proceeds are transferred on a timely basis into segregated or omnibus bank account(s) designated for holding such proceeds for payment to the respective unit/shareholders, or in the case of a PRF, scheme participants, and held therein until such proceeds are paid out from such account in accordance with the constitutive documents of the relevant CIS;
- (f) unit or share certificates (where appropriate) are issued and cancelled in a timely manner;
- (g) reconciliation of subscription and redemption is performed (e.g. subscription or redemption orders are reconciled with the proceeds received or paid and the number of units issued or cancelled);
- (h) the frequency of reconciliation conducted is consistent with that of subscriptions and redemptions; and
- (i) it has maintained proper documentation and records of the reasons for (i) suspension of dealing of units or shares of the relevant CIS and (ii) any suspension of calculation of valuation, price or net asset value of the relevant CIS, including the consultation process and the communication between the Depository and the management company.

Note: If the segregated or omnibus bank account(s) designated for holding subscription proceeds is established and maintained by a Type 13 licensed corporation, the licensed corporation shall hold the proceeds in relation to a relevant CIS on trust for the subscribers or scheme participants until such proceeds are paid into the relevant CIS' segregated bank account designated as a trust account or client account for holding scheme money or, in the case where the proceeds are rejected or withdrawn, are returned to the potential investors. Similarly, if the segregated or omnibus bank account(s) designated for holding redemption proceeds is established and maintained by a Type 13 licensed corporation, the licensed corporation shall hold the redemption proceeds in relation to a relevant CIS on trust for the respective unit/shareholders or, in the case of a PRF, scheme participants, until the proceeds are paid out from such account in accordance with the constitutive documents of the relevant CIS.

10. Valuation/price/net asset value calculation monitoring

A Depository should:

- (a) have oversight of the relevant operator(s) to ensure that the methodology adopted to calculate the net asset value per unit or share for each type of investments held by the relevant CIS (including illiquid assets) is in accordance with the provisions of the

constitutive documents of the relevant CIS;

- (b) have oversight of the relevant operator(s) to ensure that the calculation of the net asset value of the relevant CIS, including interest income, dividend income and fee expenses, is accurate;
- (c) have oversight of the relevant operator(s) to ensure that the use of the fair value adjustments for valuing different types of properties of the relevant CIS, including the circumstances which trigger the use of fair value adjustments is in accordance with the provisions of the constitutive documents of the relevant CIS, and that the governance structure and the review process for the fair value adjustments established by the management company (in consultation with the Depositary) are appropriate;
- (d) establish a clear and comprehensive escalation mechanism for any error or exception in the pricing of the units or shares of the relevant CIS. Where there are pricing errors or exceptions, it should:
 - (i) inform the management company of the pricing errors or exceptions which have come to the attention of the Depositary;
 - (ii) report, or ensure the relevant operator(s) has reported, the pricing errors or exceptions to the Commission in a timely manner, in accordance with the relevant Product Code(s); and
 - (iii) work with the management company to ensure that the pricing errors or exceptions are dealt with in accordance with the relevant Product Code(s), including ensuring that there are appropriate compensation arrangements for the relevant CIS and/or relevant unit/shareholders or where the relevant CIS is a PRF, scheme participants; and

Note: For the purpose of paragraph 10(d), where the relevant CIS is a PRF, the reference to "management company" shall be replaced by "management company and/or product provider".

- (e) have oversight of the relevant operator(s) to ensure that it maintains proper recording of interest income, dividend income and other corporate actions in relation to each relevant CIS.

11. Distribution payments

- (a) A Depositary should have oversight of the relevant operator(s) to ensure that:
 - (i) distribution calculations are carried out in accordance with the provisions of the constitutive documents of the relevant CIS; and
 - (ii) distribution payments are timely complete and accurate.
- (b) In respect of each relevant CIS, a Depositary should ensure that

distribution proceeds are transferred on a timely basis upon instruction from the relevant operator into segregated or omnibus bank account(s) designated for holding such distribution proceeds for payment to the respective unit/shareholders, or in the case of a PRF, scheme participants, and held there until the proceeds are paid out from the account in accordance with the constitutive documents of the relevant CIS.

Note: If the segregated or omnibus bank account(s) designated for holding distribution proceeds is established and maintained by a Type 13 licensed corporation, the licensed corporation shall hold the distribution proceeds in relation to a relevant CIS on trust for the respective unit/shareholders or, in the case of a PRF, scheme participants, until the proceeds are paid out from the account in accordance with the constitutive documents of the relevant CIS.

12. Cash flow monitoring

A Depositary should:

- (a) implement proper procedures and controls in opening and maintaining any bank account for the relevant CIS; and where any bank account for the relevant CIS is opened by the management company in the name of the relevant CIS or the management company itself, the Depositary should have oversight to ensure that the relevant CIS/management company has implemented proper procedures and controls in opening any such bank account; and
- (b) identify cash flows which are inconsistent with the operations of the relevant CIS.

13. Investment monitoring

A Depositary should:

- (a) carry out the instructions of the management company of the relevant CIS with post-trade verifications in relation to investment limitations and restrictions to ensure compliance with the provisions of the offering and constitutive documents of the relevant CIS and the relevant Product Code(s);
- (b) have oversight of the relevant operator(s) to ensure that it has complied with the investment and borrowing limits set out in the offering and constitutive documents of the relevant CIS and the conditions under which the CIS was authorized;
- (c) on a regular basis, provide or make available copies of the Depositary's reconciled records relating to relevant CIS property and transactions executed on behalf of the relevant CIS, to the management company or its delegate(s) for the management company to ensure that there are no discrepancies between the records maintained by the Depositary and the management company, respectively, and where any exceptions are identified, they are followed up in a timely manner;

- (d) have oversight of the relevant operator(s) to ensure that transactions are settled, and ensure that exceptions are detected and followed up, all in a timely manner;
- (e) have oversight of the relevant operator(s) to ensure that the counterparties of all transactions (e.g. brokers or financial institutions of a transaction) are on the authorized list of the relevant CIS;
- (f) have oversight of the relevant operator(s) to ensure that the margin requirement for different types of investment are complied with; and
- (g) have oversight of the relevant operator(s) to ensure that daily mark-to-market value on collateral and reconciliation of reports provided by counterparties with regard to the collateral are prepared and/or reviewed by the relevant operator(s) appropriately.

14. Custody and safekeeping of relevant CIS property

In respect of each relevant CIS, a Depository should:

- (a) assess and manage custody risk with adequate organisational arrangements to minimise the risks of loss of the relevant CIS property;
- (b) unless the relevant CIS property are held in omnibus or individual account(s) designated as a trust account or client account, with adequate safeguards in line with international standards and best practices to ensure that the relevant CIS property are properly recorded with frequent reconciliations, segregate the relevant CIS property of each relevant CIS from the property of:
 - (i) the management company, investment delegate and their respective connected persons;
 - (ii) the Depository and any nominees, agents or delegates throughout the custody chain; and
 - (iii) other relevant CIS and clients of the Depository and its or their nominees, agents or delegates throughout the custody chain;
- (c) properly register the relevant CIS property in the name of or to the order of the Depository, unless prohibited by any relevant laws or regulations;
- (d) properly safekeep the relevant CIS property;
- (e) establish and maintain proper segregated bank account(s) designated as a trust account or client account for holding money which constitutes relevant CIS property whether in Hong Kong or overseas, unless prohibited by any relevant laws or regulations;
- (f) obtain sufficient and reliable information and conduct verification of ownership of relevant CIS property;

- (g) maintain comprehensive, up-to-date and accurate records of relevant CIS property, including cash and assets that cannot be held in custody;
- (h) ensure reconciliation is carried out on a daily basis for cash and on a regular basis for other relevant CIS property;
- (i) ensure any part of the relevant CIS property that is subject to any security interest to secure payment or repayment of financial accommodation under which credit is or is to be provided in respect of the relevant CIS ("scheme collateral") is held in safe custody in segregated account(s) solely for the purpose of holding such scheme collateral or otherwise dealt with in accordance with provisions of the constitutive documents of the relevant CIS; and
- (j) ensure payments and asset transfers or other dealings of any relevant CIS property on behalf of the relevant CIS are properly authorized in accordance with the constitutive documents of the relevant CIS.

Note: Where the relevant payments or asset transfers or other dealings of relevant CIS property need not be authorized by the Depository under the constitutive documents of the relevant CIS, the Depository should have proper oversight of the management company to ensure that the management company has properly authorized or has obtained the relevant authorization.

15. Connected party transactions entered into by or on behalf of the relevant CIS

Any reference to "connected party transactions" in Part I of this Schedule refers to "Transactions with connected persons" in the relevant provisions under the UT Code and the PRF Code, respectively.

A Depository should:

- (a) ensure that there are proper controls adopted by the relevant CIS and/or have oversight of the relevant operator(s) to ensure that it has adopted proper controls in respect of connected party transactions of the relevant CIS;
- (b) ensure that the relevant operator(s) has effective controls in place for obtaining the Depository's prior written consent for transaction(s) between the relevant CIS and the entities mentioned in the relevant Product Code(s), such transactions are executed at arm's length and in the best interests of the relevant CIS, and that the consent is supported by proper documentation of the justifications for the approval of the transactions; and
- (c) where cash forming part of the relevant CIS property is deposited with any of the management company, investment delegates, directors of the relevant CIS or any of their connected persons, have oversight of the relevant operator(s) to ensure that controls are in place to address any conflicts of interests including (i) oversight of the relevant cash management policy of the management company; and (ii) the relevant

operator(s) has effective controls in place for obtaining all necessary prior written consent from the Depositary for depositing the cash with these parties, in each case ensuring that the deposit is maintained in a manner that is in the best interests of the unit/shareholders (or in the case of a PRF, scheme participants) and in accordance with the provisions of the relevant Product Code(s) and constitutive documents of the relevant CIS.

16. Handling different classes of investors fairly

A Depositary should have oversight of the relevant operator(s) to ensure that where a relevant CIS has multiple classes of units/shares, investors of different classes of units/shares are treated fairly, such as the putting in place of control procedures by the management company to ensure accuracy in the calculation of the net asset value of a relevant CIS with multiple classes of units/shares in accordance with the constitutive documents of the relevant CIS and the valuation procedures established by the management company.

17. Professional indemnity insurance

A Depositary should maintain adequate professional indemnity insurance cover commensurate with its business.

Part II Depositary of a relevant CIS authorized under the REIT Code

Introduction

18. A Depositary of a REIT should generally observe the requirements set out under Part I of this Schedule with the modifications set out in paragraph 19 below. It should also ensure compliance with all requirements applicable to a REIT's trustee under the REIT Code.

Note: An SFC-authorized REIT is a closed-ended fund which invests primarily in real estate. A Depositary of a REIT has a fiduciary duty to hold the assets of the REIT on trust for the benefit of the unitholders of the REIT, and to oversee the activities of the management company for compliance with the relevant constitutive documents of, and regulatory requirements applicable to, the REIT. In line with the obligations of a REIT trustee as set out in the REIT Code, the requirements set out under Part I of this Schedule should generally be applicable to a Depositary of a REIT. However, in view of the particular nature, product structures and features of REITs, some of the requirements set out in Part I of this Schedule are modified in paragraph 19 below for a Depositary of a REIT.

Modifications to Part I of this Schedule for a Depositary of a REIT

19. The following requirements in Part I of this Schedule apply to the Depositary of a REIT with modifications set out below:

(a) Pricing errors

As REITs are normally traded at prevailing trading prices on The Stock Exchange of Hong Kong Limited, the requirements relating to pricing errors in paragraph 10(d) would not typically be relevant in

the context of REITs. Where there is no issue of new REIT units based on the net asset value of the relevant REIT, the requirements under paragraph 10(d) will not be triggered.

(b) Cash flow monitoring and cash reconciliation

Under the REIT Code, the management company has the obligation to manage the cash flows of a REIT. In place of the specific requirements under paragraphs 12 and 14(h) of Part I of this Schedule, the Depository of a REIT should (i) ensure that the management company has put in place proper cash flow management policy and controls and (ii) have oversight on and regular monitoring of the implementation of such policy and controls to ensure compliance with all applicable legal and regulatory requirements as well as requirements under the constitutive documents of the REIT.

(c) Custody and safekeeping of relevant CIS property

The Depository of a REIT should ensure that all the assets of the REIT are properly segregated and held for the benefit of the unitholders in accordance with the REIT Code and the provisions of the constitutive document of the REIT, including the safe custody of all title documents of the real estate owned by the REIT subject to the paragraph below and paragraph 14(i) of this Schedule.

Where in the reasonable opinion of the Depository of a REIT it is in the interests of the REIT that certain assets of the REIT (e.g. title documents of real estate and bank accounts) have to be held, maintained and/or operated by its management company in the name of the REIT or any special purpose vehicle ("SPV"), the Depository should ensure that the management company has put in place proper safeguards and controls (i) to ensure the relevant assets are properly segregated and held in safe custody in accordance with all applicable legal and regulatory requirements as well as requirements under the constitutive documents of the REIT and (ii) to enable the Depository to monitor and have an effective oversight and control on the relevant assets on an on-going basis.

(d) Connected party transactions

The requirements under paragraph 15 of Part I of this Schedule do not apply to a Depository of a REIT. The Depository of a REIT should ensure compliance with all of its obligations in respect of connected party transactions under the REIT Code and the constitutive documents of the REIT."