



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

Revamped post authorization process - Industry Briefing

17 and 24 July 2017

Investment Products

Agenda

- **Launch of SFC's Revamped Post Authorization Process**
- **Rationale**
- **Salient features**
- **Two-stream approach**
- **Application for approved pooled investment funds offered to retail investors (“APIF I”)**
- **Approval / authorization with conditions**
- **Post-vetting after approval / authorization**
- **Guidance for preparation of applications**
- **Enhanced measures**
- **Implementation**

Launch of SFC's Revamped Post Authorization Process

- **Launch of the pilot revamped post authorization process on 30 June 2017**
- **Documents published by the SFC**
 - Circular to management companies of SFC-authorized unit trusts and mutual funds – Launch of pilot revamped process to enhance the processing of post authorization applications
 - FAQ in respect of the Revamped Post Authorization Process under the Frequently Asked Questions on Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds
 - Revised Application Forms and Filing Forms related to scheme change(s) and revised offering document(s)
 - List of confirmations of compliance related to application for approval of scheme change(s) pursuant to 11.1 of the Code on Unit Trusts and Mutual Funds
 - List of confirmations of compliance related to application for change(s) that require SFC's prior approval in relation to recognised Mainland funds
 - Confirmations of fulfilment of approval in principle ("AIP") condition(s) (*only applicable to APIF I*) and approval/authorization condition(s)



Rationale

- **Facilitate management companies to manage their SFC-authorized funds more efficiently**
 - Aim to efficiently manage the time involved in processing the approval of post authorization changes and authorization of revised offering documents for the purpose of keeping investors properly informed on a timely basis
- **Reinforce the overall compliance culture of the asset management industry in Hong Kong**
 - Product providers should ensure quality submissions, proper, substantive and timely responses at all times
- **Enable SFC to use its resources more efficiently without compromising investors' protection**
 - Sub-standard and/or non-compliant applications will be returned
 - All applications will be subject to a lapse policy and response time limit
 - SFC will take appropriate regulatory actions against non-compliance matters



Salient features

- **Scope of the Revamped Post Authorization Process**

- Applicable to applications for approval of post authorization changes including:
 - scheme changes
 - termination
 - merger
 - withdrawal of authorization
- Applicable to applications for authorization of revised offering documents (ROD)
- Not applicable to any MPF products authorized only pursuant to the SFC Code on MPF Products e.g. MPF schemes, constituent funds, pooled investment funds not offered to retail investors

- **“Two-stream” approach**

- Simple Applications
 - Subject to a maximum of 2-month processing time
- Complex Applications
 - Subject to a maximum of 6-month processing time

- **Lapse policy and response time limit**

- **Approval / authorization with conditions and post vetting by the SFC**



Two-stream approach - Complex Applications

- **Types of applications which will be processed as Complex Applications:**

- New and/or change of appointment of key operators, namely

- management company or delegated investment manager(s);
- trustee / custodian; and/or
- HK representative

each of which is not currently acting in the relevant capacity for any SFC-authorized funds

- Change of place of domicile of SFC-authorized funds

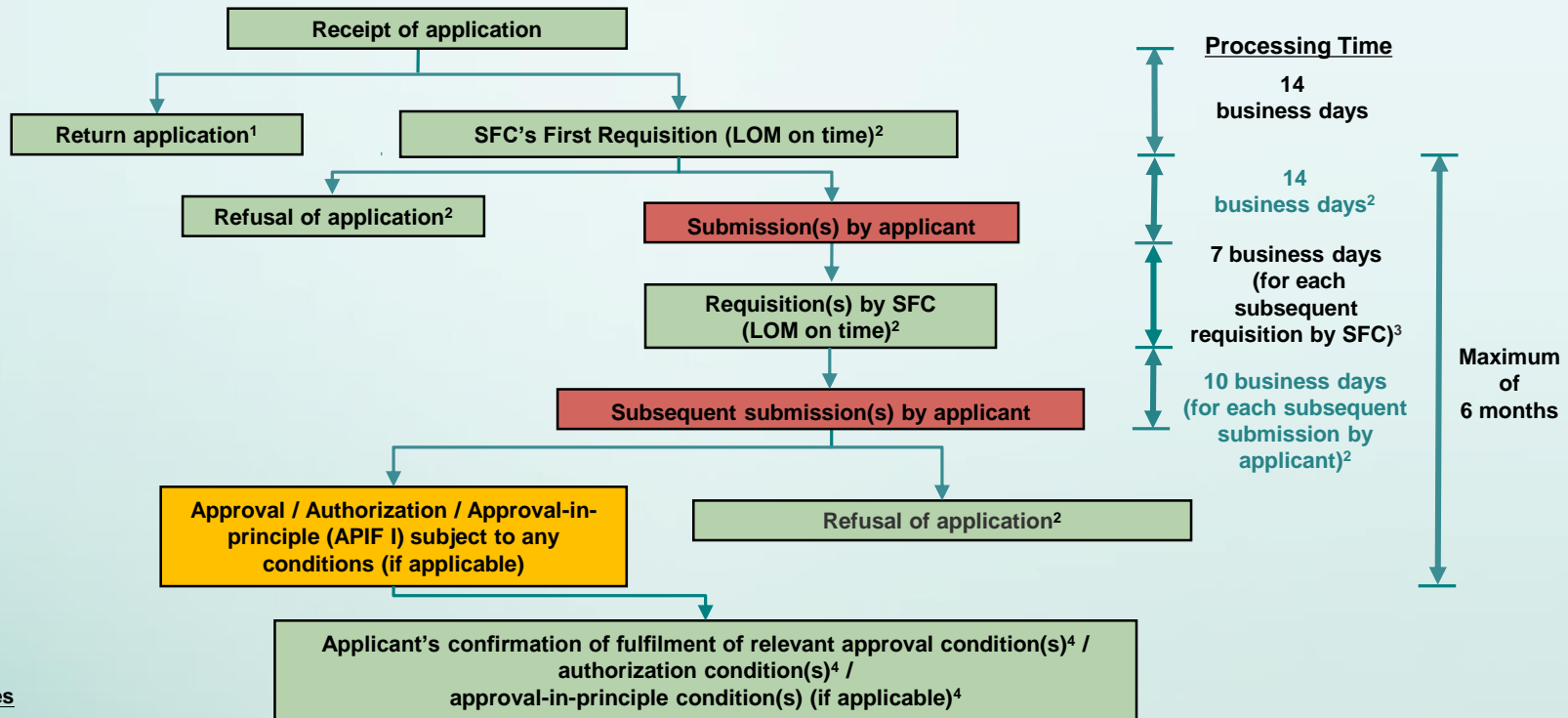
- Merger of SFC-authorized funds (also applicable to share classes)

- Termination of SFC-authorized funds involving specific issues, considerations and/or circumstances (also applicable to share classes)

- There are material issues and/or policy implications relating to the application



Revamped Post Authorization Process – Flow chart showing the process for Complex Applications



Notes

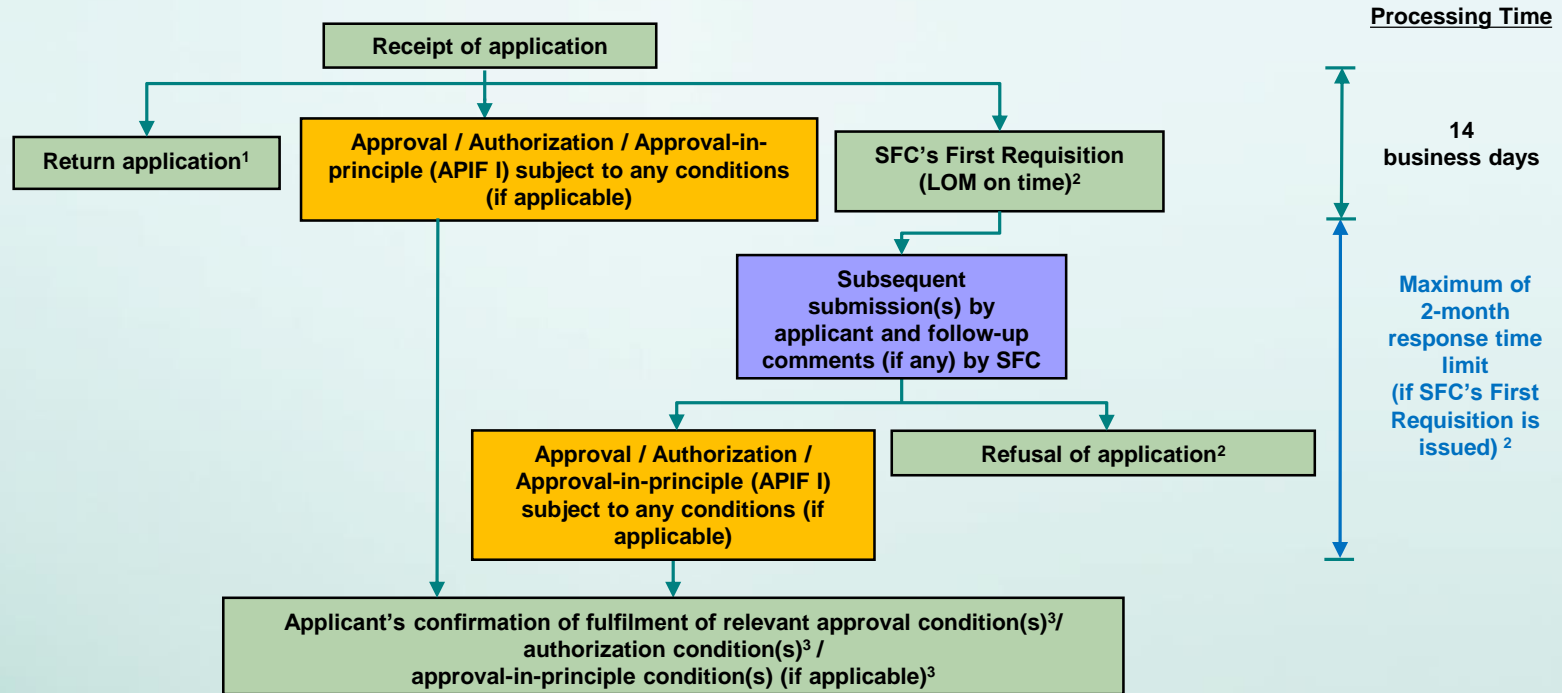
- The SFC reserves the right to return an application for the approval of post authorization changes (including scheme changes, termination, merger and withdrawal of authorization) and authorization of revised offering documents of SFC-authorized funds which is deemed to be an incomplete application and/or an application that fails to meet the applicable regulatory requirements.
- (a) Applicants are required to provide proper, complete and substantive response(s) to the SFC (i) within 14 business days from the SFC's First Requisition; and (ii) within 10 business days from all SFC's subsequent requisition(s) (if any). Applicants will be reminded of the response time limit(s) in the SFC's First Requisition and subsequent requisition(s) (if any).

(b) Complex Applications will lapse if no approval or authorization is granted within 6 months from the date of the SFC's First Requisition. In addition, the SFC reserves the right to refuse the application if the applicant fails to address the SFC's requisition(s) to the SFC's satisfaction within the applicable response time limit(s).
- This is in line with the general practice currently adopted by the SFC.
- (a) In respect of APIF I, where the approval-in-principle is granted, SFC will only proceed to grant the approval or authorization upon receipt of a duly completed and executed Confirmation of fulfilment of approval-in-principle condition(s) of approved pooled investment funds offered to retail investors ("APIF I") (a standard form of which is posted on the SFC's website) together with the required documents from the applicant.

(b) For the approval/authorization (if granted by the SFC) to become effective, where such approval/authorization is subject to conditions, applicant must submit to the SFC a duly completed and executed Confirmation of fulfilment of approval/authorization condition(s) or Confirmation of fulfilment of approval/authorization condition(s) in relation to Recognised Mainland Funds (a standard form of which is posted on the SFC's website) together with the required documents generally within 2 months from the date of the SFC's approval or authorization letter (or such extended time limit(s) that may be agreed by the SFC).



Revamped Post Authorization Process - Flow chart showing the process for Simple Applications



Notes

1. The SFC reserves the right to return an application for the approval of post authorization changes (including scheme changes, termination, merger and withdrawal of authorization) and authorization of revised offering documents of SFC-authorized funds which is deemed to be an incomplete application and/or an application that fails to meet the applicable regulatory requirements.
2. (a) In general, all applications should be well-prepared and in compliance with all applicable requirements for clearance by the SFC. Given that Simple Applications are intended to cover less complicated applications, SFC expects that these applications will be processed with an aim that SFC approval/authorization/approval-in-principle (APIF I) (if granted) will be given within 2 months from the date of the SFC's First Requisition.
 (b) In the event that approval/authorization/approval-in-principle (APIF I) is not granted within 14 business days, the SFC will issue its First Requisition. In the First Requisition, the applicant will be reminded of the 2-month response time limit within which the applicant is required to provide proper, complete and substantive responses to address all outstanding issues.
 (c) It is the SFC's policy intention to strictly refuse a Simple Application if the applicant fails to meet the 2-month response time limit (i.e. the Lapse Period), which is considered to be a reasonable period for an applicant to address all outstanding issues pertaining to the Simple Application.
3. (a) In respect of APIF I, where the approval-in-principle is granted, SFC will only proceed to grant the approval or authorization upon receipt of a duly completed and executed Confirmation of fulfilment of approval-in-principle condition(s) of approved pooled investment funds offered to retail investors ("APIF I") (a standard form of which is posted on the SFC's website) together with the required documents from the applicant.
 (b) For the approval/authorization (if granted by the SFC) to become effective, where such approval/authorization is subject to conditions, applicant must submit to the SFC a duly completed and executed Confirmation of fulfilment of approval/authorization condition(s) or Confirmation of fulfilment of approval/authorization condition(s) in relation to Recognised Mainland Funds (a standard form of which is posted on the SFC's website) together with the required documents generally within 2 months from the date of the SFC's approval or authorization letter (or such extended time limit(s) that may be agreed by the SFC).



Applications for approved pooled investment funds offered to retail investors (“APIF I”)

- **APIF I applications are also subject to the two-stream approach and the respective applicable response time limit(s) and lapse period**
- **Approval-in-principle (“AIP”) will be granted provided:**
 - the applicant has addressed all the SFC’s requisitions (if any) in a satisfactory manner;
 - the application is in compliant with the applicable requirement under the UT Code and the MPF Code
- **SFC will then grant the final approval of scheme changes and/or authorization of ROD after the applicant submitted a duly completed and executed confirmation of fulfilment of AIP condition(s) confirming that:**
 - MPFA’s approval has been obtained; and
 - there are no subsequent/additional changes which are subject to the SFC’s prior approval
- **AIP granted by SFC will cease to have effect where there are subsequent amendments or any additional changes which are subject to the SFC’s prior approval**
 - Applicant is required to re-submit the applications covering all the subsequent changes which require the SFC’s prior approval
 - Resubmission will be considered as a new application

Approval / authorization with conditions

- **SFC may approve a fund's post authorization change(s) or authorize the issue of a fund's offering document subject to conditions**
- **For approval/authorization subject to condition(s) to become effective, applicant must submit to the SFC:**
 - a duly completed and executed confirmation of fulfilment of approval/authorization condition(s) together with the required documents stated in the SFC's approval/authorization letter
 - within 2 months from the date of SFC's approval/authorization letter
- **Non-fulfillment of relevant approval/authorization conditions could result in the approval/authorization being not effective**
- **Extension of the time to fulfil the relevant conditions may be considered by the SFC:**
 - upon submission of proper justification by the applicant

Post-vetting after approval / authorization

- **Investor protection is a fundamental regulatory principle**
- **SFC will conduct post-vetting of the approved scheme changes(s) and/or authorized revised offering documents, for example:**
 - salient features as set out in the Application Form for Scheme Change(s) are properly reflected in the issued notice
 - guiding comments given by SFC upon approval of the 11.1 scheme changes and/or authorization of the revised offering documents have been properly addressed (if any)
 - proper classification of the 11.1 Immaterial Changes and 11.1B changes
- **Applicants must exercise their compliance responsibilities and ensure their SFC-authorized funds are in compliance with all applicable requirements**
- **SFC will, where applicable, take necessary regulatory actions in cases of non-compliance to ensure that investor protection is not compromised**

Some guidance for preparation of applications

Return / refusal / lapse of application

▪ **Return of application**

- SFC is not satisfied with the completeness or sufficiency of the information contained in the initial submission package
- Documents submitted are not in good order or otherwise not suitable for clearance
- Application documents do not in any material aspect meet the applicable requirements

▪ **Refusal of application**

- Applicant has not responded or provided proper, complete and substantive response to address SFC's requisition(s) to the SFC's satisfaction within the applicable response time limit(s)
- Non-compliance with any key requirement(s) under the relevant Codes and regulatory guidance during the vetting process

▪ **Lapse of application**

- Application will lapse if no approval/authorization was granted within 2 months (for Simple Applications) or 6 months (for Complex Applications)

▪ **Resubmission of application**

- Application should be well-prepared and in compliance with all applicable requirements
- Properly addressed/resolved all outstanding issues identified in the returned / refused/lapsed application

Some guidance for preparation of applications (cont'd)

Multiple / concurrent applications and multiple changes

	Approval of post authorization change(s)	Authorization of revised offering documents	Authorization of new fund
Revamped post authorization process - Lapse policy and response time limit(s)	√	√	
Revamped fund authorization process - Lapse policy and response time limit(s)			√

- Multiple or concurrent applications will be processed in accordance with the respective applicable response time limit(s) and lapse period policy



Some guidance for preparation of applications (cont'd)

Multiple / concurrent applications and multiple changes (cont'd)

- **Fund houses must practically assess the time required to:**
 - respond to the SFC's requisition(s) on multiple applications under the respective timelines
 - address all outstanding issues within the applicable response time limit(s) and lapse periods
- **If a single application contains multiple scheme changes which fall under both "Simple Application" stream and "Complex Application" stream**
 - whole application will be processed as "Complex Application"



Some guidance for preparation of applications (cont'd)

Partial withdrawal of application

- **After the initial submission, applicant may request in writing to withdraw one or some of the proposed scheme change(s) and/or revision(s) to the offering documents**
 - Supported by proper and reasonable explanation
 - Clear indication of the proposed scheme change(s) and any related / consequential changes to be withdrawn
 - Submit amended executed application form(s) reflecting the proposed change(s) that remain in the application
- **Partial withdrawal will not affect the processing of the remaining change(s) in accordance with the initial timeframe**
- **Any subsequent application for approval of the withdrawn change(s) will be treated as a new application**



Some guidance for preparation of applications (cont'd)

Scheme change notices

- **Notices currently subject to SFC's prior approval pursuant to the UT Code (i.e. notices on merger, termination and withdrawal of authorization) will still be required to be submitted to the SFC for approval**
- **Proposed 11.1 scheme changes should be approved by the SFC (except for 11.1 immaterial changes and/or 11.1B changes) prior to the distribution of the relevant notice(s) to holders**
- **Notices on matters relating to 11.1 of the UT Code need not be approved by the SFC prior to issuance**
- **Simple Applications**
 - Applicants will generally not be required to submit the draft notices to SFC
 - Applicants must set out the key salient features of the proposed 11.1 changes in the updated Application Form for Scheme Change(s)
- **Complex Applications**
 - Applicants are expected to submit the draft notice in support of the 11.1 scheme changes application
- **Specific illustrative examples of key information or disclosure expected to be set out in the Notice(s) regarding the following 11.1 scheme changes are set out in the FAQ in respect of Post Authorization Compliance Issues of SFC-authorized Unit Trusts and Mutual Funds for reference:**
 - Changes in investment objectives, policies and restrictions of the fund
 - Change in key operator(s) of the fund
 - Change in dealing or pricing arrangement of the fund
 - Change in fee structure of the fund
- **Guiding comments may be given by the SFC**
- **No revised draft notice should be submitted to the SFC for further comments**



Some guidance for preparation of applications (cont'd)

Revised forms

▪ Revised application forms

- Nature / brief details of change(s) should be set out in a clear and succinct manner in the relevant application forms
- Changes made to the offering documents to reflect 11.1 changes (including consequential amendments) subject to SFC's prior approval must be shown as mark-up and annotated clearly in the:
 - draft revised offering documents at the initial submission and throughout the application process for authorization of the revised offering documents; and
 - finalized revised offering documents at the time of submission of the Confirmation of fulfilment of approval/authorization condition(s)
- Illustrative example for revision of offering documents to reflect 11.1 changes is set out below:

Extract of the 11.1 ROD Application Form	Extract of the draft revised offering documents												
<p>5. We confirm that:-</p> <p>(a) The revised document(s) referred in paragraph 2 above has/have incorporated all changes that were approved by the Commission on ___1 Feb 2017___;</p> <table border="1" data-bbox="330 996 919 1196"> <thead> <tr> <th data-bbox="330 996 426 1053">11.1 Changes</th> <th data-bbox="430 996 595 1053">Annotation(s) in the Hong Kong offering documents[†]</th> <th data-bbox="598 996 919 1053">Nature/brief details of change</th> </tr> </thead> <tbody> <tr> <td data-bbox="330 1056 426 1139"></td> <td data-bbox="430 1056 595 1139">11.1 -1</td> <td data-bbox="598 1056 919 1139">Change of Sub-fund's investment objective from focusing on Brazil, Russia, India and China to global emerging equity markets with a potential dividend yield above the market average</td> </tr> <tr> <td data-bbox="330 1139 426 1160"></td> <td data-bbox="430 1139 595 1160">11.1- 2</td> <td data-bbox="598 1139 919 1160"></td> </tr> <tr> <td data-bbox="330 1160 426 1196"></td> <td data-bbox="430 1160 595 1196">11.1- 3</td> <td data-bbox="598 1160 919 1196"></td> </tr> </tbody> </table> <p data-bbox="353 1196 629 1213"><i>(Please use separate sheet(s), if necessary)</i></p> <p data-bbox="295 1272 958 1300">[†]Please make proper annotation(s) in the mark-up version of the Hong Kong offering documents with reference to the 11.1 Changes as set out above.</p>	11.1 Changes	Annotation(s) in the Hong Kong offering documents [†]	Nature/brief details of change		11.1 -1	Change of Sub-fund's investment objective from focusing on Brazil, Russia, India and China to global emerging equity markets with a potential dividend yield above the market average		11.1- 2			11.1- 3		<p>Investment Objective</p> <p>The investment objective is geared towards long term capital growth by investing Sub-Fund assets <u>in global emerging equity markets, with a focus on equities with a potential dividend yield above the market average, that generate a predominant share of their sales and/or their profits in Brazil, Russia, India and China.</u></p> <div data-bbox="1522 1043 1630 1082" style="border: 1px solid black; padding: 2px; display: inline-block;">11.1 - 1</div>
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	11.1- 2												
	11.1- 3												



Some guidance for preparation of applications (cont'd)

Revised forms (cont'd)

▪ Revised filing forms

- Additional confirmation to accommodate the expansion of scope of Immaterial CD Amendments for Filing Form for Notice of Scheme Change(s)
- Changes to revised offering documents not subject to the SFC's prior approval:
 - set out relevant section number/ heading reflecting these changes in a clear and succinct manner in the filing form
 - to be shown as mark-up in the revised offering documents
 - annotation is not required
- Illustrative examples are set out below (extract of the updated 11.1B ROD Filing Form):

Immaterial Change(s)

Item	Relevant heading(s) and/or section(s) of the revised offering documents ²	Nature/brief details of change(s)
1.	Prospectus - Section 3 "Administrator" KFS of the sub-funds of the Fund - "Administrator fee" under the section of "What are the fees and charges"	Reduction of administrator fees from the current level of 0.005% of the net asset value ("NAV") of the Fund to 0.004% of the NAV of the Fund

Change(s) falling within 11.1B of the UT Code

Item	Relevant heading(s) and/or section(s) of the revised offering documents ²	Nature/brief details of change(s)
1.	Prospectus - Section 8 "Liquidity Risk Management"	Insertion of liquidity risk management disclosure

(Please use separate sheet(s), if necessary)



Some guidance for preparation of applications (cont'd)

- **In the case of 11.1 changes which require SFC's prior approval:**
 - consequential changes are also subject to SFC's prior approval
 - related administrative changes (e.g. disclosure of the address of the newly appointed management company in the offering documents) are not subject to the SFC's prior approval
- **At the initial submission of the application and post-filing, the relevant application and filing forms should be duly completed and executed by:**
 - senior ranking executive of the management company; or
 - an appropriate person designated by senior ranking executive of the management company
- **Standardised templates of confirmations of compliance**
 - To facilitate initial submission by applicant
 - Applicant should submit the relevant duly completed and properly executed confirmation(s) / undertaking(s) set out in the List of Confirmations of Compliance as part of the application for approval of scheme changes including:
 - change of constitutive documents
 - change of management company and/or its delegate(s)
 - change of trustee / custodian
 - change of Hong Kong Representative



Enhanced measures

Expansion of scope of Immaterial Changes

- **Immaterial CD Amendments (11.1(a))**
 - Non-UCITS funds
 - UCITS funds
- **Change of distribution policy (11.1(c))**
 - Change of distribution policy from paying dividend out of capital / effectively out of capital to no longer paying dividend out of / effectively out of capital (i.e. solely out of net distributable income)

Filing of the issued offering documents to the SFC

- **Soft copy of the issued offering documents shall be filed with the SFC within one week after issuance**
 - Document file name shall be saved in the format as set out in the SFC's authorization letter
 - Text-searchable and virus free
 - May be submitted by way of e-mail to the case officer(s) who oversees the relevant fund group

Implementation

- **30 June 2017**
 - Launch of the pilot revamped post authorization process
 - Publication of the circular, FAQs, revised forms, standardized templates of confirmations of compliance and confirmation of fulfilment of approval/authorization condition(s)
- **1 August 2017**
 - Effective date for adoption of the revamped process
 - Subject to a pilot run of 6 months
 - May extend the pilot period and/or make changes to the revamped process where appropriate taking into account comments from the industry
- **31 January 2018**
 - End of pilot period

Q & A



Thank you

