

## HKEX GUIDANCE LETTER

HKEX-GL79-14 (September 2014) (Updated in November 2014, July and November 2015 ~~and~~, June 2016 and March 2017) Effective for CIS applications made on or after 10 November 2014

### [Update the address of HKSCC]

Subject	Guidance on Documentary Requirements and Administrative Matters for Collective Investment Schemes (“CIS”) Applications
Listing Rules and Regulations	Chapter 20 of Main Board Rules
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**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules or this letter.*

## 1. Purpose

- 1.1 This letter provides guidance on the documentary requirements and administrative matters effective from 10 November 2014 for:
- (a) new listing applicants of Collective Investment Scheme (“**CIS Applicants**”); and
  - (b) listed CIS issuers (“**Listed CIS Issuers**”).
- 1.2 This letter also provides guidance to 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 the terms and conditions of which are governed by any law other than Hong Kong law (“**applications involving foreign elements**”) (see paragraphs 4.11 to 4.12). **(Added in June 2016)**

## 2. Regulatory Overview

- 2.1 The Securities and Futures Commission (“**SFC**”) is the primary regulator for authorised CIS listed under Chapter 20 of the Listing Rules including authorisation of CIS and their offering documents in accordance with the requirements of the applicable laws and regulations from time to time. The SFC is also the authority for monitoring compliance with these authorisation conditions and applicable SFC requirements.

2.2 The Exchange's role in CIS regulation is primarily to maintain a fair, orderly and efficient market in the trading of CIS in accordance with the Listing Rules and the applicable trading rules of the Exchange.

### 3. Amendments to the Listing Rules Effective from 10 November 2014

3.1 The Exchange amended the relevant Main Board Listing Rules ("**Rules**"), namely Chapter 20 and Appendix 5, to streamline the documentary requirements and administrative matters for CIS listing applications on 12 September 2014. These amendments take effect for listing applications submitted on and after 10 November 2014.

3.2 The amended Rule 20.06 sets out the requirement to appoint a listing agent for CIS Applicants. The amended Rules 20.14, 20.16 and 20.17 set out the documentary requirements for CIS Applicants.

3.3 The amended Rule 20.15 sets out the documentary requirements for close-ended Listed CIS Issuers regarding applications for the listing of additional interests.

### 4. Guidance For CIS Applicants

#### *Appointment of a Listing Agent*

4.1 A CIS Applicant must appoint an agent for the listing of interests in any CIS (Rule 20.06).

4.2 The listing agent must demonstrate that it has the relevant experience in handling a CIS listing application. Except for circumstances mentioned in paragraph 4.3 below, the CIS Operator, or other suitably qualified persons (for example, lawyers or financial advisers) with the relevant experience and who are authorised by the CIS Operator to handle the authorisation and listing process are normally acceptable to the Exchange to act as a listing agent<sup>1</sup> (Note 1 to Rule 20.06). **(Updated in November 2014)**

4.3 Where there is an initial public offering of CIS interests ("**IPO**") by the CIS Applicant, or in other circumstances as the Exchange or the SFC may otherwise determine, the Exchange will require a listing agent to have all the necessary licences and qualifications to oversee the management of the matters in Rule 20.06(2)(a) to (e) (Note 2 to Rule 20.06). Accordingly, where the new CIS applicant is a REIT<sup>2</sup> or where the Exchange or the SFC may otherwise require, the listing agent must have the requisite licences and qualifications to act as a sponsor.

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1 The qualification required of the listing agent depends on the nature of the work it undertakes which may require appropriate licences under the Securities and Futures Ordinance.

2 Means Real Estate Investment Trusts. According to the Code on Real Estate Investment Trusts, the listing agent for a REIT applicant is in effect assuming the responsibilities of, and discharging a function no different from, the sponsor of an initial public offering.

### *Publication of Application Proof and PHIP of some CIS Applicants*

- 4.4 Where a CIS Applicant's listing agent is required to discharge the functions equivalent to those of a sponsor (whether or not the application involves an IPO, see paragraph 4.3 above), it is required to publish an Application Proof and a Post Hearing Information Pack ("**PHIP**") in accordance with Rules 20.25 and 20.26 respectively.

### *Application Process and Streamlined Documentary Requirements*

- 4.5 We have eliminated the requirement that a CIS listing application must be submitted not less than 10 clear business days prior to the issue of an in-principle approval letter ("**AIP**") to allow CIS Applicants more flexibility when designing their timetable. To facilitate CIS Applicants and their listing agents in preparing information required for a new listing application, we have set out in **Attachment 1** some administrative matters and the documents required to be submitted to us at different stages of the application process. An AIP should be issued within five clear business days if all documentation is in order and there are no material comments.
- 4.6 The application process has been streamlined to require the majority of the documents to be submitted together with the listing application (i.e. Form 5A2 in Appendix 5 of the Rules). We have also reduced the number of copies of relevant documents to be submitted. Please see **Attachment 2** for details of amendments.
- 4.7 We will send comments to the listing agent by email and by post. No fax copies of our comments will be sent unless requested.
- 4.8 Following acceptance of a new listing application, we will issue a letter to notify the CIS Applicant of the stock code allocation arrangements. The drawing of the stock code can take place prior to the issue of the AIP and a confirmation of the stock code will be issued when we issue the AIP for efficiency.
- 4.9 Where there is an IPO of CIS interests and the CIS Applicant and its listing agent outsource the process of reviewing the IPO application forms for subscription of CIS interests to a third party service provider (e.g. a share registrar), the CIS Applicant and its listing agent must discuss with the service provider the reasonable steps that are needed to identify and reject multiple or suspected multiple applications. Outsourcing to a third party service provider would not exonerate the CIS Applicant or the listing agent from their responsibilities to identify and reject multiple or suspected multiple applications.

### *Stamp Duty Remission for ETFs*

- 4.10 With effect from February 2015, stamp duty is waived for the transfer of units of all ETFs, regardless of their underlying portfolios, dates of listings or whether stamp duty has been remitted in respect of them. Procedures to facilitate CIS Applicants to obtain the stamp duty remission are no longer necessary. (**Updated in July 2015**)

### *Early consultation with HKSCC for applications involving foreign elements*

4.11 Any CIS Applicant who is 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 the terms and conditions of which are governed by any law other than Hong Kong law is encouraged to consult Hong Kong Securities Clearing Company Limited (“**HKSCC**”) in advance when it contemplates any application for SFC’s authorisation of the CIS and the issue of a CIS Disclosure Document with a view to applying to the Exchange for the listing of the interests in such CIS on the Exchange. This is to ensure that the CIS Applicant has sufficient time to satisfy HKSCC that:

- (a) the laws of the relevant jurisdiction to which such securities/ interests/ instruments are subject (which govern the creation of such securities/ interests/ instruments) recognise the concept of beneficial ownership under the existing custody structure operated by HKSCC and the transfer of such beneficial interests as envisaged under the CCASS Rules such that CCASS clearing participants transacting in and custodying such securities/ interests/ instruments on behalf of their clients are able to acquire proprietary interests in such securities/ interests/ instruments;
- (b) all perfection requirements in the relevant jurisdictions (if any) can be complied with by CCASS clearing participants as the CCASS Rules envisage that clearing participants may provide such securities/ interests/ instruments as collateral for their exchange transactions in satisfaction of their margin requirements;
- (c) there are no other legal or regulatory implications arising from the clearing and custody of such securities/ interests/ instruments by or on behalf of HKSCC which may impact on the performance of HKSCC’s role as a central clearing counterparty and central securities depository in accordance with the CCASS Rules; and
- (d) there are no other issues which may have a legal or regulatory impact on The Stock Exchange of Hong Kong Limited as a legal entity.

4.12 The Exchange expects that CIS Applicants provide a formal legal opinion addressed to and may be relied upon by HKSCC which addresses the issues set out in paragraph 4.11 (a) and (b). Relevant CIS Applicants should be aware that the process for review by HKSCC will take time depending on the complexity of the issues raised and as such are encouraged to engage HKSCC early. (**Added in June 2016**)

## **5. Guidance For Listed CIS Issuers**

### *Listing of additional interests after listing*

5.1 The amended Rule 20.15 clarifies the documentary requirements for listing additional interests in Listed CIS Issuers.

5.2 A Listed CIS Issuer may issue additional interests after listing. Where it is a close-

ended Listed CIS Issuer (e.g. REIT), it must submit a formal listing application (i.e. Form 5C3 in Appendix 5 of the Rules), together with a certified copy of its and its CIS Operator's board resolutions authorising filing of the listing application, to the Exchange as required under Rule 20.15. These requirements do not apply to open-end Listed CIS Issuer (e.g. ETF)<sup>3</sup>.

#### *Change in trading arrangements*

- 5.3 A Listed CIS Issuer (whether it is open-end or close-ended) should consult us on any proposal to change its arrangements for trading in its interests on the Exchange (e.g. a consolidation or subdivision of the CIS interests in the form of units). It should agree its proposed change and timetable with us before it announces the proposal.

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<sup>3</sup> Given the nature of open-end CIS, listing approval granted to the CIS at the time of new listing covers any additional interests it may issue after listing. Open-end Listed CIS Issuers are not required to file listing application for further issues after listing.

## FOR CIS APPLICANTS ONLY

The Exchange requires the following documents to be submitted and administrative matters to be followed at different stages of the application process. Please refer to the Rules for the actual content

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
<b><u>Before Form 5A2 submission</u></b>					
1A	Early consultation with HKSCC where the application involves foreign elements (see paragraphs 4.11 to 4.12)  Consultation should be addressed to: Manager, Stock Admission, <del>11<sup>th</sup> Floor, Infinitus Plaza, Central</del> <u>30/F, One Exchange Square, 8 Connaught Place, Central, Hong Kong</u> , and with a copy to <u>Joint Heads</u> of IPO <del>Transactions-Vetting</del> Team, 11 <sup>th</sup> Floor, One IFC ( <del>Added Updated in June 2016</del> <u>March 2017</u> )		√	√	√
1	A listing agent, if not a registered user of the Exchange's e-submission system ("HKEX-ESS"), must register as a HKEX-ESS user as soon as possible but at least three business days before any intended submission and publication of listing-related	Please visit the "ESS Registration" webpage on the	√	√	√

<sup>4</sup> Rules 20.25 and 20.26 require the publication of an Application Proof and a Post Hearing Information Pack ("PHIP") respectively where the listing agent appointed is required to discharge the functions equivalent to those of a sponsor. Such appointment is irrespective of whether there is an IPO of CIS interests at initial listing.

**Attachment 1**

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
	documents through HKEX-ESS or HKEX-EPS	Exchange's website for relevant procedures and registration forms – Home > Listing Matters > Electronic Disclosure > ESS Registration			
2	A listing agent which is required to discharge the functions of those of a sponsor must submit a sponsor engagement letter to the Exchange	Rule 3A.02B  FAQ Series 24, No.5		√	√
3	A listing agent to obtain a company case number from the Listing Department – IPO Transactions Team, using a specified form, at least one business day before filing the authorisation application with the SFC	Enclosure 4 to HKEX-GL57-13		√	√

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
4	A listing agent's confirmation in a specified form that an Application Proof for publication on the Exchange's website has been submitted at the same time it submits an authorisation application of the CIS to the SFC	Rule 20.25, Rule 2,07C, Practice Note 22  Enclosure 5 to HKEX-GL57-13  Checklists and Forms for New Applicants-Form CIS001		√	√
<b><u>At the time of Form 5A2 submission</u></b>					
5	<ul style="list-style-type: none"> <li>- Form 5A2</li> <li>- Five copies of the advanced proof of the listing document printed on double-sided paper and a CD-ROM</li> <li>- SFC's no comment letter on CIS Disclosure Document (* For ETF, the no comment letter is the conditional authorisation letter.) (* For REIT, the no comment letter is the approval-in principle letter.)</li> </ul>	Rule 20.14	√	√	√

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
5	<i>Continued from above</i> - Two copies of the Listing Agreement signed by the Covenantors <sup>5</sup> - Where available, board resolutions on the execution of Form 5A2, listing document and Listing Agreement - A copy of the most recent annual report and accounts of the CIS Applicant (unless newly formed), CIS Operator, trustee or custodian of its functional equivalent, and (if applicable) the investment adviser to the CIS Applicant	Checklists and Forms for New Applicants-Form CIS002; and Form CIS003	√	√	√
	- a final copy of any application form for the subscription of CIS interests				√
6	<b><i>(Deleted in June 2016)</i></b>				
7	<b><i>(Deleted in July 2015)</i></b>				
8	A listing agent's confirmation in a specified form that a PHIP for publication on the Exchange's website has been submitted at the same time it submits a Form 5A2	Rule 20.26, Rule 2.07C, Practice Note 22  Enclosure 5 to		√	√

<sup>5</sup> Covenantors are (1) the CIS Operator and (2) the trustee or the custodian or its functional equivalent. If the CIS is an incorporated entity, then the CIS must be included as the Covenantor.

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
		HKEX-GL57-13  Checklists and Forms for New Applicants-Form CIS001			
<b><u>On or before the issue of the listing document</u></b>					
9	- A copy of the listing document signed by each director or officer of the governing body of the CIS or the functional equivalent in discharging the officer's duties or by his agent authorised in writing and by or on behalf of the CIS Operator - Where the listing document is signed by an agent, a certified copy of the authorisation of such signature	Rule 20.16	√	√	√
	- A copy of any application form for the subscription of CIS interests				√

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
10	A listing agent's confirmation in a specified form confirming SFC's conditional authorisation of the CIS Disclosure Document and attaching a copy of SFC's authorisation <sup>6</sup> ( <b>Amended in November 2015</b> )	Checklists and Forms for New Applicants-Form CIS004	√	√	√
11	<i>Where applicable</i> , a listing agent's letter or email notifying the Exchange if the CIS Applicant will not adopt the standard transfer form		√	√	√
12	A draft Formal Notice for vetting				√
13	<b>(Deleted in June 2016)</b>				
<b><u>After the issue of the listing document but before dealings commence</u></b>					
14	<ul style="list-style-type: none"> <li>- A certified copy of the board resolutions on the execution of Form 5A2, listing document; and Listing Agreement (if not previously submitted under item 5 above)</li> <li>- A certified copy of the trust deed or memorandum and articles of association or other documents constituting the CIS</li> <li>- Any outstanding annual listing fee</li> </ul>	Rule 20.17	√	√	√
15	Submission of a "ready-to-publish" electronic copy of the CIS	Rule	√	√	√

<sup>6</sup> Not required in the case of ETF as the conditional authorisation is submitted when the listing application is submitted.

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
	Disclosure Document for publication through HKEX-EPS	2.07C(1)(b)(ii)			
16	Submission of a “ready-to-publish” electronic copy of any application form for the subscription of CIS interests (in sample format) that is referred to in the CIS Disclosure Document for publication through HKEX-EPS. Please ensure that a “SAMPLE” watermark (i.e. ghost text) or text to like effect is printed on each page of the electronic copy of the application form	Rule 2.07C(1)(b)(ii) Q 12 of FAQ Series 13			√
17	A listing agent’s letter or email, in a specified form, enclosing a cheque to settle transaction levy, trading fee and/ or brokerage, as the case may be, or notifying the Exchange that such payments have been settled through electronic transfer by crediting the Exchange’s designated bank accounts as shown in the form	Checklists and Forms for New Applicants-Form CIS005			√
18	A draft allotment results for vetting according to the ESS User Manual which should include “Search by Identity Card” function if the CIS Applicant proposes to raise HKD1.5 billion or more in the Hong Kong offering	Appendix F to e-Submission System User Manual			√
19	Relevant placee information and marketing statement in specified forms	Checklists and Forms for New Applicants-Form CIS006 and Form CIS007			√

Documentation and Administrative Requirements		Relevant rule or guideline reference	√ means the relevant procedures apply		
			For CIS where Rules 20.25 & 20.26 do not apply	For CIS where Rules 20.25 & 20.26 apply, but with no IPO of interests <sup>4</sup>	For CIS where Rules 20.25 & 20.26 apply, and there is an IPO of interests
20	Receiving banks' staffs should be made aware that potential investors are permitted to obtain both English and Chinese versions of the CIS Disclosure Document during the offer period				√

## Attachment 2

### Streamlined Documentation for New CIS Application (referred to in paragraph 4.6 above)

Rule	Before Rule Amendments	Signatory of document	After Rule Amendments	Signatory of document
<b>20.14</b>	<b><i>At the time of making an application</i></b>			
	Form 5A2	CIS Applicant	Form 5A2	CIS Applicant; CIS Operator
	An advanced proof of the listing document (in practice, five copies were requested by Exchange staff)	-	Five copies of the advanced proof of the listing document and a CD-ROM	-
	SFC's no comment letter on CIS Disclosure Document	SFC	SFC's no comment letter on CIS Disclosure Document	SFC
	A draft Listing Agreement	-	Two copies of the Listing Agreement signed by the Covenantors	CIS Applicant; CIS Operator; trustee or custodian or its functional equivalent
	-	-	Where available, board resolutions on the execution of Form 5A2, listing document; and Listing Agreement	CIS Applicant; CIS Operator; trustee or custodian or its functional equivalent
	-	-	A final copy of any application form for the subscription of CIS interests in an IPO	-
	-	-	A copy of the most recent annual report and accounts of the CIS Applicant (unless newly formed), CIS Operator, trustee or custodian of its functional equivalent and (if applicable) the investment adviser to the CIS Applicant	-
<b>20.15</b>	<b><i>Five days before the expected date of issuing an AIP</i></b>			
	Form 5C3	CIS Applicant;	Removed for CIS Applicant	-

## Attachment 2

Rule	Before Amendments	Rule	Signatory of document	After Amendments	Rule	Signatory of document
			CIS Operator; Trustee or Custodian or its functional equivalent			
<b>20.15 Cont'd</b>	Four copies of the final proof of the listing document		-	Removed for CIS Applicants		-
	Four copies of the final proof of any application form to subscribe the CIS interests in an IPO		-	Removed for CIS Applicants		-
	Two copies of the most recent annual report and accounts of the CIS Applicant (unless newly formed), CIS Operator, trustee or custodian of its functional equivalent and (if applicable) the investment adviser to the CIS Applicant		-	Removed for CIS Applicants		-
	Where available, board resolutions on the execution of Form C3; listing document; Listing Agreement		CIS Applicant; CIS Operator; trustee or custodian or its functional equivalent	Removed for CIS Applicants		-
	SFC's no comment letter on the CIS Disclosure Document		SFC	Removed for CIS Applicants		-
	A signed Listing Agreement		CIS Applicant; CIS Operator; trustee or custodian or its functional equivalent	Removed for CIS Applicants		-
	Two specimens of		-	Removed for CIS		-

## Attachment 2

Rule	Before Rule Amendments	Signatory of document	After Rule Amendments	Signatory of document
	definitive certificate or document of title		Applicants	
<b>20.16</b>	<b><i>After approval of the listing document but before issue of listing document</i></b>			
	Four copies of the listing document, one of which must be signed	CIS Applicant; CIS Operator; trustee or custodian or its functional equivalent	A signed copy of the listing document	CIS Applicant; CIS Operator
	Four copies of any application form to subscribe the CIS interests in an IPO	-	A copy of any application form for the subscription of CIS interests in an IPO	-