

10 May 2019

Supervision of Markets Division
Securities and Futures Commission
35/F Cheung Kong Center
2 Queen's Road Central
Hong Kong

Email: usmconsult@sfc.hk

Dear Sir/Madam,

ASIFMA AMG Response to Joint Consultation on the Model for an Uncertificated Securities Market

We apologize for the late response, and appreciate the two-week extension granted to us to respond, to the Joint Consultation on the Model for an Uncertificated Securities Market (the “**Consultation**”) issued by the Securities and Futures Commission (“**SFC**”), Hong Kong Exchanges and Clearing Limited (“**HKEX**”) and the Federation of Share Registrars Limited (“**FSR**”).

On behalf of the Asset Management Group (“**AAMG**”) of Asia Securities Industry & Financial Markets Association (“**ASIFMA**”)¹, we would like to express our support for the proposals in the Consultation to implement an uncertificated securities market (“**USM**”) in Hong Kong, i.e. dematerialization. However, we have serious concerns with the proposals in (a) paragraph 8(b) of the Consultation that investors will have the option to hold units or shares of listed funds in their own name and in uncertificated form (i.e. without paper) in an account with the issuer’s share registrar or with a sponsoring clearing or custodian participant, and (b) paragraph 129(b) of the Consultation that under the USM, issuers of listed funds will have to appoint a regulated share registrar, i.e. unless all units or shares of such funds listed in Hong Kong are held within CCASS (or the new HKEX System) and cannot be withdrawn and registered in the name of the investor concerned (the “**Proposals**”).

¹ [ASIFMA](#) is an independent, regional trade association with over 100 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative and competitive Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the [GFMA](#) alliance with [SIFMA](#) in the United States and [AFME](#) in Europe, ASIFMA also provides insights on global best practice and standards to benefit the region.

The option proposed to be given to investors of listed funds to hold shares or units of the funds in their own name and in uncertificated form in paragraph 8(b) would make the exception for listed funds to appoint a regulated share registrar in paragraph 129(b) meaningless. Deviating from the typical nominee holding structure for investors of listed investment funds and requiring a registrar to be kept would subject such funds to regulatory obligations which do not currently exist.

A listed fund or ETF, for example, has the regulatory obligation to carry out FATCA and CRS checks on any shareholders/unitholders whose names appear on its register. Neither the investment manager nor the listed fund has any control over who becomes a shareholder/unitholder thereof and would therefore only be able to request FATCA/CRS information on a post-trade basis which has already proven ineffective in Australia where investors hold direct legal title to units in ETFs. It would also create an unacceptable level of regulatory risk for the listed funds and their managers if they are liable for any non-compliance with their FATCA/CRS/AML obligations.

Furthermore, consideration would need to be given as to how effective ongoing AML/KYC monitoring can be performed when the fund manager does not control the register. Fund managers would be forced to delegate AML/KYC monitoring and possibly also FATCA/CRS compliance to registrars over which they have no control. Moreover, the Proposals, which would require the setting up of a register in Hong Kong for listed funds, would drive up ETF costs that would ultimately be borne by the investors.

Nearly all HKEx-listed ETFs are now uncertificated or dematerialised which has led to a reduction in costs associated with the relevant service provider that has been beneficial to and in the interest of investors. Hong Kong should align itself with international norms and move towards a fully uncertificated securities market and it should retain the nominee structure (i.e. HKSCC Nominees Ltd) for listed funds to avoid unnecessary costs associated with the appointment of a registrar and also to avoid the FATCA/CRS compliance issues for listed funds and their fund managers mentioned above.

Our members would suggest that the Proposals be withdrawn if the USM proposals are implemented. Otherwise, fund managers could be forced to de-list their ETFs from HKEX and list them elsewhere.

Any perceived risks relating to CCASS and the current nominee structure as regards shares/units in ETFs could be addressed in the relevant ETF's offering documentation, but we believe such risks to be minimal, especially given the concept of beneficial ownership is entrenched and well defended under the Hong Kong law.

Yours sincerely,

Asia Securities Industry & Financial Markets Association