香港信託人公會
Hong Kong Trustees' Association

The Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

By e-mail to: SFOAmendments@sfc.hk

24 December 2012

Dear Sir

Consultation paper on proposals to enhance the regulatory regime for non-corporate listed entities

The Hong Kong Trustees' Association welcomes the SFC's consultation on proposals to enhance the regulatory regime for non-corporate listed entities.

As an organization that represents trustees in Hong Kong, we wish to respond to **Questions 4 and 5** and comment specifically on the proposal to extend the statutory disclosure requirement for price sensitive information in respect of listed corporations under Part XIVA of the SFO to Exchange Traded Funds (ETFs).

As pointed out in paragraph 34 of the consultation paper, ETFs are passively managed funds seeking to replicate the performance of a financial index or benchmark. By the very nature of ETFs' investment objectives, no active investment decision will be made by the investment managers. As for trustees and custodians, they do not, in their respective roles involve in any investment decision. And as a result of the ETFs' passive investment approach, no privileged information on any decision made by the managers will be available to them. As such, it is difficult to visualize any situation that may give rise to price sensitive information ("PSI").

Paragraph 34 of the consultation paper seems to also acknowledge the above view for traditional non-synthetic ETFs.

We agree that there are "additional risks" for synthetic ETFs as cited in paragraph 35 of the paper and as fully disclosed in the fund offering documents. However, given the nature of ETFs as discussed above, it should not, due to the presence of such "additional risks" give rise to more PSI disclosure situations.

In essence, for ETFs (be they traditional or synthetic), since they are passively managed to replicate the performance of underlying financial indices or benchmarks, it is very remote

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that there would be any "inside information" as defined under Part XIVA of SFO which would "*be likely to materially affect the price of*" such listed ETFs for disclosure purpose.

It is also difficult for imagine what sort of insider information can be obtained about "a unit holder of the entity" as contemplated in Paragraph 38 and how a trustee/ custodian may have such information in the context of an ETF.

Based on the above reasoning, we do not consider it necessary to extend Part XIVA of the SFO to cover ETFs as such tightening of regulations may drive up the operating costs of ETFs which would eventually be borne by the investing public with no genuine value.

Yours faithfully

For & on behalf of Hong Kong Trustees' Association

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