# DECLARATION ON MUTUAL RECOGNITION OF CROSS-BORDER OFFERING OF COLLECTIVE INVESTMENT SCHEMES

# Signed by Mr Tony D'Aloisio, Chairman for the Australian Securities and Investments Commission and Mr Eddy Fong, Chairman for the Hong Kong Securities and Futures Commission

## 7 July 2008

The Australian Securities and Investments Commission, an independent Commonwealth government body established pursuant to the Australian Securities and Investments Commission Act 1989 (and continued in existence by the Australian

HAVE reached the following understanding:

#### 1. Definitions

For the purposes of this Declaration, unless the context requires otherwise:

"ASIC-licensed manager" means a responsible entity licensed by the Australian Securities and Investments Commission (ASIC):

"Australian MIS" means managed investment schemes that are registered with ASIC under Chapter 5C of the Corporations Act 2001, and as defined by the relevant Australian legislation (Section 9 - Corporations Act 2001 or such other successive or equivalent legislation which defines a product similar to a "collective investment scheme" as defined in Part 1 of Schedule 1 to the SFO as amended from time to time);

"Authority" means ASIC or the Securities and Futures Commission of Hong Kong (SFC); and collectively, shall be referred to as "the Authorities";

"Corporations Act 2001" means Act No. 50 of 2001 of the Parliament of Australia to make provision in relation to corporations and financial products and services, and for other purposes;

"Dual Scheme" means a collective investment scheme which is mutually recognized by

"Laws and Regulations" means any law, regulation or regulatory requirement applicable in the jurisdiction of an Authority, and where the context permits includes any rule, direction, requirement, or policy made or given by or to be taken into account by the Authority;

"SFO" means the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) which governs the securities and futures market in Hong Kong, as amended, supplemented or otherwise modified from time to time; and

"Unit Trust Code" means the Code on Unit Trusts and Mutual Funds issued by the SFC (as may be amended, updated or replaced from time to time).

### 2. Scope of Mutual Recognition

- 2.1 SFC's recognition of Australian MIS
  - 2.1.1 Under the framework of this Declaration, the SFC intends to recognize all Australian MIS for the purpose of authorization pursuant to section 104 of the SFO provided that --
    - (a) the Australian MIS is managed by an ASIC-licensed manager and is registered with ASIC under the Corporations Act 2001 (with the exception of hedge funds as categorized in the Unit Trust Code which are ineligible for this SFC recognition);
    - (b) the Australian MIS meets the requirements referred to in paragraph 2.1.3; and
    - (c) having regard to all offers of interests in the Australian MIS that have been made at any time (whether in Hong Kong or elsewhere), promotion of membership of the Australian MIS has not been principally aimed at persons in Hong Kong and there is no reason to believe that the manager of the Australian MIS intends that promotion of membership of the scheme will be principally aimed at persons in Hong Kong.
  - 2.1.2 In principle, taking into account factors such as the regulatory regime and development of ASIC, cooperation between the Authorities, and industry

best practices in Australia, Australian MIS satisfying the descriptions in

at persons in Australia and there is no reason to believe that the manager of the Hong Kong CIS intends that promotion of membership of the Hong Kong CIS will be principally aimed at persons in Australia.

- 2.2.2 ASIC grants registration, and certain licensing and product disclosure relief to the managers of the Hong Kong CIS.
- 2.2.3 Where appropriate or necessary, ASIC may impose specific conditions on a Hong Kong CIS in the light of the specific circumstances of the scheme, whether upon or subsequent to entry of the scheme into the Australian market.
- 2.3 Where an Authority imposes limits on the extent of ownership interests that investors in its jurisdiction may have in a Foreign Scheme, then the other Authority may impose equivalent limits on Foreign Schemes offered in its jurisdiction. Where such limits have been imposed, it will be the responsibility of the manager of the relevant Foreign Scheme to monitor and ensure compliance with them.

### 3. General Principles

3.1 This Declaration serves as a basis for mutual recognition by the Authorities of Dual Schemes which are not principally intended to be offered in the jurisdiction of the Host Authority. This Declaration does not modify or supersede any Laws and Regulations, in force or applying in the respective jurisdictions of T0.0m8T10 Tf0 -1tr

- 4.4 Each Authority intends to inform the other of any significant changes in the Laws and Regulations in respect of Hong Kong CIS or Australian MIS as the case may be, that would have a material impact on the scope or matters covered by this Declaration.
- 4.5 To facilitate exchange of information under this Declaration, the Authorities hereby designate the contact persons as set forth in Attachment A.

### 5. Applicability of MOU and Other Declaration

- 5.1 This Declaration is being made within the framework of the Memorandum of Understanding, dated 8 October 2001 (the "MOU") between ASIC and the SFC, and the Declaration of Cooperation and Supervision of Cross-Border Investment Management Activity (the "Declaration on Cross-Border Investment Management Activity"), dated 26 June 2003, and nothing contained herein modifies or amends the MOU or the Declaration on Cross-Border Investment Management Activity.
- 5.2 Materials and information provided under this Declaration are to be kept confidential and governed by the provisions of paragraphs 22, 23, 24, 25 and 26 of the MOU.

#### 6. CONSULTATIONS

6.1 The Authorities intend to engage in regular consultations regarding investment management activity in their markets, and to review this Declaration periodically for the purpose of assessing its operation or in light of any significant changes as mentioned in paragraph 4.4 above.

SIGNED THIS seventh day of July 2008 By

Mr Eddy Fong, Chairman of SFC, and Mr Tony D'Aloisio, Chairman of ASIC