

Updating Your Study Manual

Instructions for Inserting Version 1.1, 2003

The followings serve as the instructions for updating **Topic 5: Regulation of Intermediaries: Business Operations and Practices** of Study Manual 6 for the Licensing Examination for Securities and Futures Intermediaries. Please be reminded that only the updated sections are provided for downloading. You may replace the relevant sections with this updated version for the study manual you possess.

Instructions:

1. Download and print out the following pages.
 2. **Remove** pages 5-23 to 5-24 and **Insert** new pages 5-23 to 5-24.
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11 SFC's supervisory regime for trustees and custodians

11.1 It was noted in paragraph 2.4, topic 2 that every SFC-authorized CIS must appoint a trustee/custodian acceptable to the SFC, a trustee for an authorized unit trust and a custodian for a mutual fund corporation.

Obligations of trustee/custodian (paragraph 4.5, CUTMF)

11.2 The trustee/custodian must:

- take custody of or control all the property of the CIS and hold it in trust for the unit trust holders or the beneficiaries of the mutual fund corporation in accordance with the constitutive documents;
- register cash and registrable assets in its name (if borrowing is undertaken for the CIS, the assets may be registered in the name of the lender or its nominee);
- be liable for the acts and omissions of its nominees or agents as they affect the assets of the CIS;
- take reasonable care to ensure that the sale, issue, repurchase, redemption and cancellation of units/shares effected by the CIS are:
 - carried out in accordance with the provisions of the CIS; and
 - at valuations of the units/shares which are calculated by the management company in accordance with the provisions of the constitutive documents;
- carry out the investment instructions of the management company unless they conflict with the provisions of the offering, the constitutive documents or the Code on Unit Trusts and Mutual Funds ('CUTMF');
- take reasonable care to ensure that the investment and borrowing restrictions set out in the constitutive documents and the authorization conditions of the CIS are complied with;
- issue a report to the holders to be included in the annual report on whether or not, in the trustee/custodian's opinion, the management company has, in all material respects, managed the CIS in accordance with the constitutive documents; if not, it must state the matters in which the management company has not done so, and the action which the trustee/custodian has taken; and
- take reasonable care to ensure that the units/share certificates are not issued until the subscription monies have been paid.

Retirement of trustee/custodian (paragraph 4.6, CUTMF)

- 11.3 The trustee/custodian may not retire except upon the making of a new appointment, which must be approved by the SFC. The retirement and the new appointment must be simultaneous.

Supervision of trustee/custodian

- 11.4 The SFC requires that an acceptable trustee/custodian must either be:
- subject to regulatory supervision on an ongoing basis; or
 - appoint an independent reporting accountant ('auditor') to periodically review its internal controls and systems on terms of reference agreed with the SFC with whom the report of the auditor should be filed.

Guidelines for review of internal controls and systems of trustee/custodian

- 11.5 The SFC has issued guidelines for CIS ([CUTMF Appendix G](#)) and pooled retirement funds ('PRFs') ([Code on Pooled Retirement Funds – Appendix E](#)), stating, for the purposes of paragraph 11.4 above:
- the minimum best acceptable practice it expects from trustees/custodians for the auditor's terms of reference;
 - that in the case of an overseas supervisory authority, the SFC must be satisfied that the authority or its delegate carries out regular inspections of the trustee/custodian within the authority's jurisdiction or that the trustee/custodian is subject to regular review in a manner consistent with the SFC's requirements; and

requiring, in the case of an independent accountant's review, an auditor's report to be filed with the SFC.

Scope of review

- 11.6 The internal control review:
- should cover all material procedures and controls relevant to the responsibilities of the trustee/custodian in relation to the CIS or PRF;
 - should be carried out in accordance with generally accepted international auditing practices;
- should include the minimum terms of reference specified in the ICG:
- where the trustee/custodian or its associate carries out part of its responsibilities in an overseas jurisdiction that is unacceptable to the