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ESTATE AGENTS AUTHORITY

Dear Licensees,

Re: Licensees' Participation in the Collective Investment Scheme

The Estate Agents Authority (“EAA”) has noted that due to the recent slowdown in the activities of the property market, some licensees might diversify their businesses such as to also promoting the sale of overseas student hostels or hotel rooms. However, licensees should be aware that the sale of these properties may, subject to the terms and investment arrangement of that particular property, constitute a Collective Investment Scheme (“CIS”) which is governed by the Securities and Futures Ordinance (“SFO”).

In brief, CIS, as defined under the SFO, means an arrangement in respect of any property under which the participants do not have day-to-day control over the management, the property is managed as a whole by or on behalf of the person operating the arrangement, and/or the contributions of the participants and the profits or income from which payments are made to them are pooled, and the purpose of the arrangement is for participants to receive profits, income or other returns from the acquisition or management of the property¹.

Recently, the EAA noticed that some estate agency practitioners had acted as marketing agent and participated in various promotion activities in relation to the sales of property, such as student accommodation and hotel room units, both in Hong Kong and overseas. These promotion activities include the publishing of advertisements on the media, arranging and soliciting customers at the sales event and assisting property developers in collecting fees.

The issuing of any invitation to the public to acquire an interest or participate in the arrangement of CIS (e.g. the advertisements and distribution of promotion materials) without prior authorization or an exemption applied under the SFO may constitute an offence under section

¹ For the definition of CIS, please refer to Schedule 1 to the SFO.



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103 of the SFO. Any person carrying out activities by promoting CIS may also be considered as carrying on a business in a regulated activity which requires a licence from the Securities and Futures Commission, failing which may lead to an offence under section 114 of the SFO.

The EAA takes this opportunity to remind licensees not to engage in activities which may involve unauthorized CIS in contravention of the SFO. The EAA will continue to keep in view the development of the subject. To understand more about CIS and the SFO, you are advised to refer to the relevant provisions of the SFO and consult professional legal advice should you have any doubts and questions as to whether the activities you are engaged in amount to promoting a CIS.

Estate Agents Authority

28 August 2013