



Frequently Asked Questions on the Code of Unit Trusts and Mutual Funds

This FAQ is prepared by the Investment Products Department and aims to provide basic information to market practitioners concerning the Code on Unit Trusts and Mutual Funds (“UT Code”). Applicants are encouraged to contact the relevant case team in the Investment Products Department of the Securities and Futures Commission (the “SFC”) if in doubt on any specific issues arising from the application/interpretation of the UT Code. Please note that each application for authorization is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

Note: For ease of reference, collective investment schemes that are generally known as unit trusts or mutual funds are referred to as “funds” in the following FAQ.

	Question	Answer
Basic Requirements for Fund Authorization		
1.	Why should a fund require SFC authorization?	It is the SFC’s policy intention that funds that are offered to the public in Hong Kong are subject to the prior authorization of the SFC, unless one of the exemptions under section 103 of the Securities and Futures Ordinance (“SFO”) applies. For example, funds that exclusively target “professional investors” ¹ do not require SFC authorization. The SFC derives its fund authorization powers from section 104 of the SFO.

¹ The term “professional investors” is defined in section 1 of Part 1 of Schedule 1 to the SFO and in the Securities and Futures (Professional Investor) Rules.

	Question	Answer
		<p>The UT Code sets out the basic requirements that an SFC-authorized fund must comply with. A copy of the UT Code is available in the “IP Related Publications” section of the “Intermediaries, Licensing & Investment Products – Investment Products Related Matters” page at the SFC website.</p>
2.	<p>What does SFC authorization involve?</p>	<p>In order to authorize a fund which intends to offer its products to the public, we first consider the acceptability of:</p> <ul style="list-style-type: none"> ▪ the fund’s legal form and structure ▪ the fund’s key operating parties, including the fund manager and the trustee/custodian ▪ the fund’s operational features, e.g. dealing frequency, valuation, etc. ▪ the fund’s investment nature and compliance with the relevant requirements of the UT Code ▪ the disclosure quality of the fund’s offering document ▪ the fund’s compliance with the UT Code’s post-authorization obligations, e.g. notice period for fee increases, pricing errors, etc. <p>Depending on the structure of the fund and the level of compliance with the UT Code, we may also consider other factors that are relevant to a specific fund application.</p>
3.	<p>What types of funds would be considered for authorization?</p>	<p>There are two broad categories of funds in the UT Code:</p> <ul style="list-style-type: none"> ▪ <u>Chapter 7 Funds</u>: generally referred to as straightforward Equity/Bond Funds ▪ <u>Chapter 8</u>: Specialized Schemes, including: <ul style="list-style-type: none"> i. Unit Portfolio Management Funds (Fund of Funds) ii. Money Market/Cash Management Funds iii. Warrant Funds iv. Futures and Options Funds v. Guaranteed Funds

	Question	Answer
		<ul style="list-style-type: none"> vi. Index Funds vii. Hedge Funds viii. Index Tracking Exchange Traded Funds (“ETF”) ix. Structured Funds x. Funds that invest in financial derivative instruments
Fund’s Structure and Domicile		
4.	What should I look out for when setting up umbrella fund structures?	<p>An umbrella fund structure is allowed under the UT Code. However, you should be careful about the types of sub-funds established under the umbrella fund.</p> <p>In general, we expect sub-funds in the same umbrella should share similar investment objectives and risk profiles. For example, a hedge fund or a guaranteed fund should not be established as a sub-fund under an existing umbrella that contains plain-vanilla equity/bond funds.</p>
5.	Can I domicile my fund in an overseas jurisdiction?	<p>Yes. The SFC, in general, adopts an open architecture towards admitting and authorizing overseas funds that wish to offer their products to the retail public in Hong Kong, bearing in mind investors’ interests.</p> <p>The guiding principle is that the legal and regulatory framework for these funds and the enforcement of investors’ rights in a particular overseas jurisdiction should provide a level of investor protection comparable to that offered in Hong Kong.</p> <p>For funds that are domiciled in one of the “Recognized Jurisdictions” as set out in the “List of Recognized Jurisdiction Schemes and Inspection Regimes” section of the “Intermediaries, Licensing and Investment Products – Investment Products Related Matters” page at the SFC website, the authorization process can be streamlined in certain areas. Please also read Q.6 below.</p>
6.	How does the “Recognized Jurisdiction Schemes” (“RJS”) concept work?	<p>The RJS concept only applies to Chapter 7 Funds (see Q.3 for details). It does not apply to Specialized Schemes under Chapter 8.</p> <p>Funds that are established in one of the RJS jurisdictions and are in compliance with similar regulatory requirements as those contemplated in Chapter 7 of the UT Code</p>

	Question	Answer
		<p>are deemed to have complied in substance with the core investment restrictions, operational and structural requirements (e.g. meeting procedures for investors) imposed under the UT Code. That said, the funds must still satisfy the SFC as to the eligibility of the fund manager, trustee/custodian, and that the disclosure and post-authorization obligations under the UT Code have been fulfilled.</p> <p>A list of the overseas jurisdictions for RJS is set out at the SFC website (see Q.5 above).</p>
7.	<p>If my fund is a Specialized Scheme but domiciled in one of the RJS, presumably this fund will have to fully comply with the UT Code requirements. Is this correct?</p>	<p>Yes. If there are any legal or regulatory difficulties that would make it unduly burdensome for your fund structure to comply with the UT Code in full, you should consult us as soon as practicable before proceeding any further with your application.</p>
Fund Manager’s Eligibility – Some Practical Issues		
8.	<p>As a fund manager, how would I know if I am eligible to manage an SFC-authorized fund?</p>	<p>The key requirements of a fund manager for an SFC-authorized fund are:</p> <ul style="list-style-type: none"> ▪ Having sufficient financial, technical, and human resources ▪ Experience ▪ Integrity and honesty ▪ Proper internal controls ▪ Proper regulatory oversight of the fund’s activities by a securities regulator <p>One of the key criteria for an overseas fund manager is that the fund manager must be licensed or registered with and properly supervised by a securities regulator in an Acceptable Inspection Regime (“AIR”). The list of AIR is available in the “List of Recognized Jurisdiction Schemes and Inspection Regimes” section of the “Intermediaries, Licensing and Investment Products – Investment Products Related Matters” page at the SFC website.</p> <p>For Hedge Funds which fall under Chapter 8.7 of the UT Code, there are specific requirements on the eligibility of a hedge fund manager. You should therefore ensure that you comply fully with the general requirements as well as other specific</p>

	Question	Answer
		<p>obligations under the UT Code.</p> <p>Funds that are self-managed should look closely at the requirements set out in Chapter 5.7 to 5.9 and the rules regarding the eligibility of individual directors to become fund managers under the UT Code. Please consult us if you are in doubt about the relevant UT Code requirements for self-managed schemes.</p>
9.	<p>How does the concept of “Acceptable Inspection Regime” (“AIR”) work?</p>	<p>AIR is a concept that helps the SFC maintain regulatory oversight over overseas fund managers. In general, there should be a Memorandum of Understanding entered into by the SFC with the securities regulator in each of the AIR jurisdictions to co-operate and provide mutual assistance and exchange of information regarding the activities of fund managers licensed/registered in the relevant overseas jurisdiction. In determining whether an overseas jurisdiction could be an AIR, the SFC expects the relevant overseas regulatory authority to share common and comparable supervisory principles over activities of investment managers with the SFC and to carry out inspections of the investment managers within its jurisdiction in a manner generally consistent with the inspections conducted by the SFC.</p> <p>Fund managers of an SFC-authorized fund are required to be regulated by the relevant securities regulator in an AIR. In general, this requirement applies to the investment management operations of the fund management company and/or those of its delegates who carry out investment management functions.</p> <p>Upon receipt of an application by an overseas fund manager for SFC authorization to manage an SFC-authorized fund, we normally conduct a regulatory check on the fund manager with the relevant overseas securities regulator(s).</p> <p>The SFC regularly reviews the list of AIR jurisdictions. If and when we consider it appropriate, the list may be expanded to include new jurisdictions.</p>
10.	<p>As a fund manager, can I delegate my investment management functions to a third party?</p>	<p>Yes, the UT Code allows a fund manager to delegate its investment management functions. However, the fund manager is not allowed to delegate its responsibilities. Please see Chapter 5.5(e) of the UT Code.</p> <p>Both the principal and the delegate are expected to meet the eligibility criteria for a fund manager as described in Q.8 and Q.9 above.</p>

	Question	Answer
11.	<p>Could I, a fund manager, be able to delegate my management functions to someone licensed/registered in a non-AIR?</p>	<p>In general, an SFC-authorized fund should adhere to the requirement under Chapter 5.1 of the UT Code that its fund manager and its delegate(s) for the investment management functions are regulated by the relevant regulator in an AIR, save as permitted below.</p> <p>In view of the market development and business needs, the SFC has issued guidelines to facilitate managers of SFC-authorized funds which are licensed by the SFC or subject to regulatory supervision in an AIR and who wish to delegate their investment management functions to their affiliates in a non-AIR jurisdiction (“Non-AIR Delegation”). The Circular that contains guidelines for accepting Non-AIR Delegation is available at the SFC website under “Intermediaries, Licensing and Investment Products – Investment Products Related Matters – Circular”.</p> <p>We have already authorized various funds with Non-AIR Delegation in jurisdictions such as Belgium, Japan, Netherlands and Singapore. We welcome fund houses to approach us to discuss any plan of Non-AIR Delegation.</p> <p>To facilitate the industry in preparing their applications, the SFC has posted a checklist regarding the information/documents to be submitted to the SFC at the SFC website under “Intermediaries, Licensing and Investment Products – Investment Products Related Matters – Circular”.</p>
General obligations of trustee/custodian		
11A.	<p>What are the standards expected of a trustee/custodian for the purpose of Chapter 4.5(a)(iii) of the UT Code?</p>	<p>Chapter 4.5(a)(iii) of the UT Code provides for a trustee’s/custodian’s obligation in respect of its nominees and agents in relation to assets forming part of the property of the scheme.</p> <p>The SFC wishes to clarify that for the purpose of satisfying the obligations in Chapter 4.5(a)(iii) of the UT Code, the trustee/custodian shall (i) exercise reasonable care and diligence in the selection, appointment and ongoing monitoring of its nominees, agents and delegates; and (ii) be satisfied that the nominees, agents and delegates retained remain suitably qualified and competent to provide the relevant service.</p> <p>Insofar as UCITS schemes are concerned, they are deemed to have complied with Chapter 4.5(a)(iii) of the UT Code provided that their constitutive documents comply</p>

	Question	Answer
		with all applicable home jurisdiction's laws and regulations and home regulator's requirements and the manager confirms to the SFC in writing that this is the case.
Waiver from the UT Code Requirements		
12.	If I wish to obtain a waiver from the UT Code requirements, what should I do?	<p>If you wish to apply for a waiver from any of the UT Code requirements, you should prepare a submission that addresses, at the minimum, the following key aspects:</p> <ul style="list-style-type: none"> ▪ clear and distinctive reasons in support of the waiver ▪ the impact on the fund, its investors or any other parties if the waiver is granted <p>You should note that the issue of costs alone is not sufficient justification for any waiver from compliance with the UT Code.</p> <p>Please note that authorization conditions may be imposed in certain circumstances.</p>
Authorization of Index Funds		
13.	Will the SFC consider an index on commodities futures as an acceptable index for the purpose of Chapter 8.6(a) of the UT Code?	<p>The SFC is prepared to accept a commodities futures index provided that it satisfies the index acceptability requirements in Chapter 8.6(e) of the UT Code. In view of the specific nature and risk profile of indices on commodities futures, an index fund that tracks a commodities futures index is required to make additional risk warnings and disclosures (e.g. in relation to the risks inherent in commodities and futures contracts) in its offering documents. Where an index fund seeks to track, replicate, or correspond to a commodities futures index by direct investment in constituent futures contracts, the relevant investment restrictions in Chapter 8.4A of the UT Code in relation to futures and options funds will then be applicable.</p>
Authorization of ETFs/Listed Funds		
14.	Are the participating dealers ("PDs") of ETFs obliged to process subscription and redemption orders from third party investors?	<p>An efficient creation/redemption mechanism is key to an effective arbitrage/pricing mechanism which enables an ETF to trade at a market price close to its NAV. The SFC would generally seek to require the PDs to process creation/redemption requests from third party investors save for exceptional circumstances, such as:</p> <ul style="list-style-type: none"> ▪ suspension of dealing or determination of NAV of the ETF;

	Question	Answer
		<ul style="list-style-type: none"> ▪ where in the opinion of the manager, acceptance of the application will have an adverse effect on the ETF; ▪ suspension of trading on any of the shares constituting the relevant index basket; or ▪ the ETF is not able to acquire further investments due to trading restrictions/limits in the market. <p>The procedures/conditions in respect of the creation/redemption mechanism should be clearly disclosed in the ETF's prospectus/constitutive documents. In particular, any restrictions in creation/redemption of units and the circumstances under which investors' orders may be refused should be prominently disclosed in the prospectus/constitutive documents. In addition, any fees and charges incurred by the PDs in executing investors' orders or any factors which may reduce the amount of redemption proceeds to investors should also be clearly disclosed in the prospectus.</p> <p>Consultation with the Investment Products Department is encouraged if in doubt with the specific circumstances.</p>
15.	What is the key responsibility of an ETF manager regarding the pricing/arbitrage mechanism of the ETF?	The overall responsibility of an ETF manager is to manage the ETF in the exclusive interest of investors, including the duty to closely monitor the operations (e.g. pricing/arbitrage mechanism) of the ETF. For instance, should an ETF trade at a substantial premium/discount to the NAV, the manager should investigate the matter and take appropriate action promptly.
15A.	Who would be eligible to manage an SFC-authorized physical A-share ETF through the "Renminbi Qualified Foreign Institutional Investor (RQFII) scheme"?	Under section 4 of the SFO, the SFC is to provide protection for members of the public investing in or holding financial products. Under section 104(5) of the SFO, the SFC is duty bound, in its authorization of collective investment schemes, to refuse authorization where it is not satisfied that the authorization is in the interest of the investing public. Under Chapter 5.1 of the UT Code, every collective investment scheme for which authorization is requested must appoint a management company acceptable to the SFC. In assessing acceptability, the SFC will take into consideration, amongst others, the management company's operational experience, infrastructure, systems and capability necessary for the smooth and efficient

	Question	Answer
		<p>management and operation of the product proposed.</p> <p>Under current Mainland rules and regulations, only those SFC-licensed management companies who have RQFII licences and quotas are eligible to launch RQFII physical A-share ETFs in Hong Kong. RQFII physical A-share ETF is the first RMB physical A-share ETF issued outside mainland China that seeks to track an A-share index by channelling the RMB raised outside mainland China through the RQFII quota to directly invest in a portfolio of A-shares in the Mainland market which replicates the performance of the underlying A-share index. Given that RQFII physical A-share ETF is in its initial stage of development, the SFC has to be satisfied for the purpose of investor protection that in addition to handling the cross-border nature of this product, the management company has the operational experience, infrastructure, systems and capability to implement the relevant physical index replication strategies of an A-share index in the Mainland in a smooth and efficient manner. In this regard, the experience and expertise of the management company's Mainland parent company in managing and operating physical A-share ETFs listed and traded on the Mainland stock exchanges and the related physical index replication strategies are important as the management company could tap into its Mainland parent company's relevant infrastructure and expertise to support its management and operation of the RQFII physical A-share ETF in Hong Kong.</p> <p>In view of the novelty and the technical complexity of RQFII physical A-share ETF and in the interests of protecting investors as well as Hong Kong listed market's integrity and order, at the initial stage of development of the RQFII physical A-share ETF, the SFC would require the management company of such ETF to meet all the following key criteria in assessing the acceptability of the management company:</p> <ul style="list-style-type: none"> ▪ the management company is licensed by the SFC for Type 9 regulated activity with sufficient experience in managing public funds; ▪ the management company has a valid RQFII licence from China Securities Regulatory Commission; ▪ the Mainland parent company of the management company has sufficient experience and expertise in managing and operating physical A-share ETFs listed and traded in the Mainland;

	Question	Answer
		<ul style="list-style-type: none"> ▪ the management company has in place the necessary operating systems for smooth and efficient cross border money-flow, creation/redemption and operation, and there is a smooth and efficient use of its Mainland parent company's expertise and systems, to enable the ETF's operations in the A-share market to support a listed and daily traded product in Hong Kong which directly invests and operates in the Mainland A-share market; ▪ the management company's Mainland parent company must have good standing and a good track record, considerations to be taken into account include whether there are records of past disciplinary actions or proceedings and such other similar or relevant matters in the past 5 years which may reasonably affect its good standing and competence; and ▪ the necessary RQFII quota granted by State Administration of Foreign Exchange. <p>The SFC will keep in view the above criteria as the RQFII physical A-share ETF market in Hong Kong further develops.</p>
16.	What are the authorization conditions of listed closed-ended funds?	<p>As a general policy, closed-ended funds would be acceptable under the UT Code subject to the additional conditions and requirements in view of the closed-end nature of the funds while the closed-ended funds will seek listing on the Main Board of the Stock Exchange of Hong Kong ("SEHK") and the listing platform will effectively provide liquidity to the closed-ended funds.</p> <p>In light of the above, authorization of a closed-end fund will generally be granted on condition that:</p> <ul style="list-style-type: none"> a) the fund will remain listed on the SEHK; b) the fund's last closing Net Asset Value ("NAV") will be published on the fund's website daily; c) potential risk factors regarding the closed-end nature of the fund will be fully and prominently disclosed to investors; and d) the fund will seek unitholders' approval on the following matters: <ul style="list-style-type: none"> (i) retirement of the Manager and appointment of the replacement manager;

	Question	Answer
		<ul style="list-style-type: none"> (ii) change of investment objective and/or policy; (iii) request for delisting or de-authorization; and (iv) new issue or units following listing at a price below NAV per unit (save for the issue of units pursuant to any exercise of the over-allotment option as described in the offering circular). <p>The SFC reserves the power to impose additional conditions.</p>
Authorization of structured funds		
16A.	<p>Where a structured fund adopts an unfunded swap arrangement to achieve its investment objective, does Chapter 8.8(e) of the UT Code apply to the invested assets under the unfunded swap structure?</p>	<p>The UT Code is principles-based. In applying the UT Code, the SFC will have regard to both the spirit as well as the letter of the relevant provisions in order to achieve their intended purposes.</p> <p>A structured fund may seek to achieve its investment objective primarily through the use of a funded swap or an unfunded swap. Despite the technical difference between a funded swap and an unfunded swap, the invested assets under an unfunded swap structure essentially serve the same purpose as that of the collateral under a funded swap structure, i.e. to limit a fund's risk exposure to an individual counterparty.</p> <p>As a matter of policy, the invested assets under an unfunded swap structure are expected to comply with the collateral requirements in Chapter 8.8(e) of the UT Code with necessary changes as if they were applicable to invested assets.</p> <p>For this purpose, we generally envisage the collateral or invested assets to be bonds, listed stocks, cash or cash equivalent subject to compliance with the requirements in Chapter 8.8(e) of the UT Code.</p> <p>We generally do not expect an SFC-authorized structured fund to accept unlisted collective investment schemes as collateral or invested assets. However, we are prepared to accept, on a case by case basis, an SFC-authorized structured fund to invest in unlisted collective investment scheme(s) as invested assets under an unfunded swap structure provided that (i) the performance of the structured fund directly relates to that of the unlisted collective investment scheme(s); and (ii) the unlisted collective investment scheme(s) is/are SFC-authorized scheme(s).</p>

	Question	Answer
		<p>In line with the requirement in the note to Chapter 8.8(e) of the UT Code, we also do not expect an SFC-authorized structured fund to accept synthetic ETFs as collateral or invested assets.</p> <p>For the avoidance of doubt, the above also applies to collateral held by SFC-authorized funds that fall within Chapter 8.9 of the UT Code.</p>
Authorization of structured funds/funds that invest in financial derivative instruments		
16B.	<p>Structured funds and funds that invest in financial derivative instruments are subject to, among other things, the requirements in Chapter 8.9(f)(ii) of the UT Code that the counterparties to over-the-counter derivative transactions or their guarantors shall be “substantial financial institutions”. What kind of institution would be considered as a “substantial financial institution” for the purpose of Chapter 8.9(f)(ii) of the UT Code?</p>	<p>An entity will be considered as a “substantial financial institution” for the purpose of Chapter 8.9(f)(ii) of the UT Code if it falls within the definition in Chapter 3.13 of the UT Code. The term “substantial financial institution” is defined in Chapter 3.13 of the UT Code to mean an authorized institution as defined in section 2(1) of the Banking Ordinance or financial institution with a minimum paid-up capital of HK\$150,000,000 or its equivalent in foreign currency. For the purpose of Chapter 8.9(f)(ii) of the UT Code, “financial institution” is generally expected to be an overseas banking entity which is, on an ongoing basis, subject to prudential and regulatory supervision acceptable to the SFC.</p> <p>Where an entity does not fall within such definition but still wishes to act as a counterparty to over-the-counter derivative transactions or its guarantor, the SFC may consider such entity to be a “substantial financial institution” for purpose of satisfying the requirements in Chapter 8.9(f)(ii) of the UT Code on a case-by-case basis taking into account factors such as the regulatory status of the entity or the group to which it belongs and the net asset value of the entity.</p>
Investment in real estate investment trusts (“REITs”) by SFC-authorized funds		
17.	<p>Are SFC-authorized funds allowed to invest in the initial public offering of a REIT seeking to list on a stock exchange?</p>	<p>SFC-authorized funds are currently allowed to subscribe for securities offered in initial public offerings seeking to list on a stock exchange. These subscriptions are normally conditional on the securities being successfully listed on a stock exchange. This flexibility applies equally to REITs seeking a stock exchange listing.</p>
18.	<p>Does Chapter 7.11 of the UT Code still apply to REITs? Should REITs be considered as</p>	<p>Under the revised Chapter 7.14 of the UT Code, where investments are made in listed REITs, Chapters 7.1 and 7.2 of the UT Code apply. However, where</p>

	Question	Answer
	“collective investment schemes” or “securities” for the purpose of complying with Chapter 7 requirements?	investments are made in unlisted REITs, which are either companies or collective investment schemes, then Chapters 7.3 and 7.11 apply respectively.
19.	Are SFC-authorized schemes required to obtain approval from their shareholders/unitholders and serve them advance notices if they now commence investments in listed REITs as a result of the SFC’s decision to allow such investments?	The offering document or prospectus of SFC-authorized schemes should clearly state their investment objectives, policies and investment restrictions. Therefore, where fund managers make use of the flexibility to invest in listed REITs as a result of the revision in the UT Code, they should determine and, where appropriate, seek legal advice, as to whether they have to seek approval from investors or provide them with prior notice, in accordance with the terms of the constitutive documents and offering documents of their funds.
Investment in ETFs by SFC-authorized funds		
20.	Does the SFC consider ETFs as listed securities or Collective Investment Schemes (CIS) for the purpose of Chapter 7 of the UT Code?	<p>ETFs are technically CIS. Yet the SFC is prepared to consider that ETFs with the following characteristics may be deemed as listed securities for the purposes of Chapters 7.1 and 7.2 of the UT Code:</p> <p>a) ETFs that are listed and regularly traded on recognized stock exchanges open to the public (nominal listing not accepted);</p> <p>b) the investment objective of the ETFs is to track a securities/commodities index or the performance of the ETF is linked with a securities/commodities index. Such index should be able to comply with the acceptability requirements as stipulated under Chapter 8.6(e) of the UT Code.</p> <p>All SFC-authorized ETFs are deemed as listed securities. The SFC may consider accepting other types of ETFs as securities for the purpose of Chapters 7.1 and 7.2 on a case-by-case basis.</p>
Disclosure of information to investors regarding stock lending, repo and similar over-the-counter transactions		
21.	What information is required to be disclosed to the investor regarding stock lending, repo and similar over-the-counter transactions of a fund?	If a fund may enter into any stock lending, repo or similar over-the-counter transactions, details of such arrangements should be disclosed in the fund’s offering documents. At a minimum, the following information should be provided to the investors:

	Question	Answer
		<ul style="list-style-type: none"> (a) a statement spelling out whether all incremental incomes generated from such transactions will be accrued to the fund (if the incomes are to be shared between the fund and any operating party, details of the sharing basis should be disclosed); (b) criteria for selecting the counterparties for such transactions in terms of financial standing, etc.; (c) form and nature of the collateral received by the fund in respect of such transactions (e.g. cash or liquid securities with value greater than or equal to the value of the securities lent); (d) maximum level of the fund's assets available for such transactions (e.g. as a percentage of the fund's NAV); and (e) where the securities lending agent is an affiliate of the management company's group of companies, details of such connected party transactions (please note that the securities lending fee should also be disclosed in the connected party transaction section of the fund's annual reports).
Waivers from compliance with certain provisions of the UT Code granted since 1 April 2005		
22.	<p>Are SFC-authorized close-ended funds listed on the SEHK subject to the dealing requirement under Chapter 6.13 of the UT Code whereby there must be at least one regular dealing day per month?</p>	<p>In principle, Chapter 6.13 of the UT Code aims to ensure that there are adequate redemption windows available to investors such that they may exit from their investments in a SFC-authorized fund within a reasonable period. The SFC generally considers that the listing platform on the SEHK will effectively provide liquidity to a close-ended fund, as such trading on the SEHK allows investors to purchase and sell units of the fund in a manner similar to other publicly traded securities. The SFC has, therefore, granted a waiver from compliance with Chapter 6.13 of the UT Code with respect to a close-ended fund listed on the SEHK after taking into account that, among others, the fund manager would have procedures and mechanism in place to ensure that the fund would be widely held at the point of listing – no single unitholder would hold more than 30% of the fund and there would be a minimum of 300 investors, which was in line with the basic requirement regarding public spread of investors for listings of investment companies under Chapter 21 of the Listing Rules.</p>

	Question	Answer
		<p>The above waiver was granted subject to the following conditions:</p> <ol style="list-style-type: none"> i. the fund would remain listed on the exchange; ii. the fund’s last closing NAV would be published at such times and in such manner acceptable to the SFC (e.g. the closing NAV would be published on the management company’s website on a daily basis); iii. potential risk factors regarding the close-ended nature of the fund would be fully and prominently disclosed to investors; and iv. the fund would seek unitholders’ approval on the following matters: <ul style="list-style-type: none"> • retirement of its management company and appointment of the replacement management company; • change of investment objective and/or policy; • request for delisting or de-authorization; and • new issue of units following listing at a price below NAV per unit. <p>The requirement relating to payment of redemption proceeds under Chapter 6.14 of the UT Code would not be applicable to a listed close-ended fund which has been granted a waiver from Chapter 6.13.</p>
23.	<p>Pursuant to Chapter 8.6(a) of the UT Code, the principal objective of an index fund is to track, replicate or correspond to an index on equities, debts or other securities, with an aim of providing or achieving investment results or returns that closely match or correspond to the performance of the index. Is a SFC-authorized index fund allowed to track or replicate a commodity futures index?</p>	<p>Chapter 8.6(a) of the UT Code provides a general description of indices commonly used by index funds for the purpose of tracking performance. Other indices may emerge as the market develops and the SFC is prepared to consider such indices on a case-by-case basis. The SFC has therefore granted a waiver from compliance with Chapter 8.6(a) of the UT Code and allow an index fund to track a commodity futures index, taking into account the following relevant factors:</p> <ol style="list-style-type: none"> a) acceptability of the commodity futures index in accordance with the criteria set out in Chapter 8.6(e) of the UT Code; b) the investment strategy of the fund and compliance with the UT Code requirements applicable to the types of investments that the fund would invest in; and c) additional disclosures (e.g. risks relating to the commodity futures index, information relating to the investment strategy adopted by the fund to track the

	Question	Answer
		index performance and the risks associated with the investments of the fund).
24.	Chapter 10.8 of the UT Code provides that where redemption requests on any one dealing day exceed 10% of the total number of units/shares in issue, redemption requests in excess of 10% may be deferred to the next dealing day. Can a SFC-authorized fund impose a lower threshold for deferral of redemptions?	<p>The SFC will consider other thresholds for deferral of redemptions on a case-by-case basis, having regard to the overall measures that a fund will put in place to safeguard investors' interests.</p> <p>The SFC has granted a waiver from strict compliance with Chapter 10.8 of the UT Code to a fund, whereby the fund might defer redemptions if the total number of redeeming shares in any period of four consecutive dealing days exceeded 10% of the total number of shares in issue. In granting that waiver, the SFC has considered that:</p> <ul style="list-style-type: none"> a) the fund was a daily-dealing fund and its offering document has provided that redemptions might not in any event be deferred for more than five consecutive dealing days upon receipt of a redemption request, i.e. the fund would continue to satisfy the requirements under Chapters 6.13 and 6.14 of the UT Code regarding dealing frequency and payment of redemption proceeds respectively; b) the power to defer redemptions would only be exercised under exceptional market conditions taking into account interests of the fund and its investors; c) should the fund proceed with a deferral of redemptions, affected investors would be given the right to cancel their redemption requests deferred. Also, priority of execution would be given to them over redemption applications received subsequently in order to ensure fair allocation to investors; and d) the deferral mechanism was clearly disclosed in the fund's offering document.
Appendix C		
25.	What are the transitional arrangements for the production of the Product KFS?	<ul style="list-style-type: none"> (i) The transitional arrangements for the production of KFS are: <ul style="list-style-type: none"> a) New Schemes are required to produce a KFS. b) Subject to (ii) below, Existing Schemes that continue to be marketed to the public in Hong Kong must produce KFS commencing 25 June 2011. c) Existing Schemes that are no longer marketed to the public in Hong Kong are not required to produce KFS.

	Question	Answer
		<p>(ii) In light of the nature of the following products, we would generally require the following types of Specialised Schemes to produce KFS before the funds are authorised by the Commission. This is so irrespective the fact that the application for authorization was submitted to the Commission before 25 June 2010:</p> <ul style="list-style-type: none"> • index funds (including exchange-traded funds) • structured funds; • hedge funds; • Renminbi denominated funds; and • futures and options fund (together, the “Specialised Funds”). <p>For the purposes of this FAQ, ‘New Schemes’ means collective investment schemes for which applications for authorization are submitted to the Commission on or after 25 June 2010. ‘Existing Schemes’ means: (a) collective investment schemes which have been authorized by the Commission prior to 25 June 2010 and remain authorized on that date; and (b) collective investment schemes for which applications for authorization were submitted to the Commission before 25 June 2010, but which are authorized on or after 25 June 2010.</p>
26.	<p>What are the transitional arrangements in respect of the implementation of the responsibility statement set out in paragraph 22 of Appendix C of the UT Code?</p>	<p>The new responsibility statement is now set out in paragraph 22 of Appendix C to the UT Code (“New Responsibility Statement”).</p> <p>The Commission will adopt the following implementation measures without compromising investors’ interest:</p> <p>a) For Existing Schemes (which include those funds authorized on or after 25 June 2010 but whose applications were submitted prior to 25 June 2010), they may continue to adopt the requirements set out in the previous version of the UT Code, i.e.:</p> <p>“A statement that the directors of the scheme or the management company accept responsibility for the information contained in the offering document as</p>

	Question	Answer
		<p>being accurate at the date of publication.”</p> <p>For the avoidance of doubt, Existing Schemes shall include not only single fund structure but also umbrella structure where the umbrella fund was authorized by the Commission prior to 25 June 2010 such that any new subfunds submitted for authorization after that day will also be subject to the previous UT Code requirement.</p> <p>b) New Schemes will be required to comply with the New Responsibility Statement requirement.</p> <p>c) For those schemes which are domiciled in one of the ‘Recognised Jurisdictions’ and the home regulator of such scheme has approved a responsibility statement set out in the offering document of such scheme, the scheme is deemed to have complied with paragraph 22 of Appendix C to the UT Code.</p> <p>For the purposes of this FAQ, ‘Recognised Jurisdictions’ means those jurisdictions set out in the ‘List of Recognised Jurisdiction Schemes’ available on the Commission’s website.</p>
27.	<p>If a fund has a master offering document prepared overseas, may I submit a Hong Kong Offering Document instead of the full version of the master offering document?</p>	<p>The basic disclosure requirements for a fund’s offering document are set out in Appendix C of the UT Code. The Hong Kong Offering Document must satisfy the UT Code requirements. If the Hong Kong Offering Document relies on references or information in the master offering document to form a complete disclosure document, the SFC may require that the master offering document also be authorized.</p> <p>An overseas fund should not circulate its master offering document to the Hong Kong public if the document has not been authorized by the SFC.</p>
27A.	<p>C2 of Appendix C of the UT Code has been amended to require the offering document to disclose where appropriate, the risk management policy (“RMP”) in place.</p>	<p>Pursuant to 5.5(d) of the UT Code, a management company should have in place, amongst others, adequate internal controls and written procedures for managing risks for funds under management.</p> <p>The obligation to make specific disclosures of RMP by the schemes in the offering</p>

	Question	Answer
	<p>Would the SFC please clarify whether the disclosure of the RMP employed by the schemes in the offering document is a new requirement?</p>	<p>document was mentioned in our circular for Interim Measures on the Disclosure and Submission Requirements for the authorization of UCITS III Funds domiciled in Luxembourg, Ireland and the United Kingdom by the SFC dated 31 March 2005 (the "Circular"). The Circular provides that UCITS III schemes with expanded investment powers are required to disclose a summary of the RMP employed by the schemes in the offering document. Moreover, the disclosure of the RMP policy is also required for hedge funds under 8.7(s) of the UT Code.</p> <p>With a view to codifying the above standard and achieving a level playing field with those non-UCITS funds that apply financial derivative instruments ("FDIs") for investment purposes, C2 of Appendix C of the UT Code (as revised on 25 June 2010) laid down the requirement, among others, that schemes which may extensively use FDIs for investment purposes are required to disclose the RMP in place in their offering documents. These schemes would include UCITS schemes with expanded investment powers as well as schemes falling within 8.3, 8.4A, 8.7, 8.8 and 8.9 of the UT Code.</p>
27B	<p>Does a fund manager need to approach the SFC before it offers a new share class which is denominated in a restricted currency (such as Renminbi) in respect of an SFC-authorized fund?</p>	<p>Pursuant to C5 of Appendix C of the UT Code, the offering document of an SFC-authorized fund should contain a description of the different types of units/shares, including their currency of denomination. As such, the types of share classes that are offered to the public in Hong Kong for subscription should be clearly disclosed in the offering document.</p> <p>If a fund manager would like to offer a new share class which is denominated in a restricted currency (such as Renminbi) in relation to an SFC-authorized fund, it should consult the SFC in advance before adding the disclosure of such share class in the offering document and offering it to the public in Hong Kong, as this may affect the basis of the SFC's authorization of the fund. Fund managers are reminded that the SFC has, and reserves, the right to amend or impose new conditions on, or withdraw its authorization of SFC-authorized funds as it considers appropriate pursuant to sections 104 and 106 of the SFO.</p> <p>In any event, if a fund manager would like to offer a new share class which is not denominated in a restricted currency to an SFC-authorized fund, the fund manager must update the offering document and file it with the SFC within one week from the</p>

	Question	Answer
		date of issuance pursuant to Chapter 11.1B of the UT Code.
Miscellaneous		
28.	Since the Product KFS has already included the main features of a fund, including its key risks, do I need to include an Enhanced Disclosure Box in the fund's offering document to highlight the key risks of the fund? Do I have to include the Enhanced Disclosure Box in advertisements?	<p>Since the Product KFS forms part of the offering document of a fund and provides for clear and prominent disclosure of the key risks of investing in a fund, the Enhanced Disclosure Box in the offering document of a fund is no longer required provided the relevant Product KFS of the fund is available for distribution.</p> <p>Meanwhile, an Enhanced Disclosure Box should still be included in the advertisements and marketing materials of a fund to highlight the salient features of the fund.</p> <p>However, in light of the enhanced conduct requirements set out in the Consultation Conclusions on Proposals to Enhance Protection for the Investing Public ("Consultation Conclusions") and the related amendments to the Code of Conduct for Persons Licensed by or Registered with the SFC which took effect on 4 June 2010, the Enhanced Disclosure Box is no longer required to include the "suitability statement".</p>
29.	Can I use gifts in promoting my fund?	Part II, Section 3 of the Consultation Conclusions states that gifts other than a discount of fees and charges should not be offered in promoting a specific investment product. This will become effective on 4 September 2010. The SFC has maintained such view in the Consultation Conclusions in order to help protect investors from being distracted by the gifts without paying sufficient attention to the features and risks of the specific investment product. In line with the above principles and policy, as from 4 September 2010, all marketing materials of investment products authorized by the SFC should not contain an offer of gift, other than a discount of fees and charges, in promoting a specific investment product.
30.	Existing Schemes that continue to be marketed to the public in Hong Kong on or after 25 June 2011 are required to produce a KFS and a revised offering document to comply with the other disclosure requirements set out in the	<p>The Other Disclosure Requirements are:</p> <p><i>The "Overarching Principles Section" of the Handbook</i></p> <ul style="list-style-type: none"> • New information regarding "Enquiries and complaints handling" as set out in paragraph 7.4;

	Question	Answer
	<p>Overarching Principles Section and the revised UT Code in the Handbook (“Other Disclosure Requirements”). What are the Other Disclosure Requirements?</p>	<ul style="list-style-type: none"> • The prominent note about a product described as having been authorized by the Commission as updated and set out in the Note to paragraph 1.10; and • Where conflicts of interest cannot be avoided, the measures and safeguards to manage and minimize the conflicts shall be properly disclosed to investors as set out in paragraph 4.2. <p><i>Chapter 8 of the UT Code</i></p> <ul style="list-style-type: none"> • The additional information regarding structured funds as set out in 8.8 (h); and • The additional information regarding funds (including both UCITS and non-UCITS schemes) that invest in financial derivative instruments as set out in 8.9(j). <p><i>Appendix C of the UT Code</i></p> <ul style="list-style-type: none"> • The description of the risk management policy in place, where appropriate, as set out in paragraph C2; • The description of collateral policy and criteria as set out in paragraph C2A. Please refer to Q.7 of Frequently Asked Questions on SFC Authorization of UCITS Funds for the applicability of this requirement to UCITS funds that may engage in activities such as securities lending that involve the collection of collateral; • The statement whether the annual and interim reports would be published in English and/or Chinese as set out in paragraph C18A and the Note to paragraph 11.6; and • If available, website address of the scheme as set out in paragraph C22A.
31.	<p>Is the SFC’s prior approval required for adopting (in the offering documents of an Existing Scheme) the revised provisions in the revised UT Code as set out in the “Miscellaneous” section of the table right after the Implementation Schedule in the revised UT Code?</p>	<p>All proposed changes to a scheme which fall under 11.1 of the UT Code must be submitted to the SFC for prior approval. As such, where changes are made to adopt the revised provisions in the revised UT Code relating to performance fees (6.17 of the revised UT Code), maximum interval for payment of redemption amounts (6.14 of the revised UT Code) and/or sub-managers of multimanager schemes (Note to 5.5(b) of the revised UT Code), these changes will require SFC’s prior approval</p>

	Question	Answer
		<p>pursuant to 11.1 of the UT Code.</p> <p>For the avoidance of doubt, in the absence of amendments to the constitutive documents of a scheme, where changes are made to adopt the revised provisions in the revised UT Code relating to connected party transactions (10.13 of the revised UT Code), criteria for the appointment of a Hong Kong representative (9.4 of the revised UT Code) and/or distribution of financial reports (11.6 of the revised UT Code), SFC’s prior approval will not be required, but investors should be provided with at least one month’s (or such longer period as required under the constitutive documents of the scheme or by the SFC) prior notice of any such changes.</p>
32.	<p>Can a fund manager specify in the KFS and/or another part of the offering document of an SFC-authorized fund that the fund is not a “derivative product” or is a product that does not require investors to have knowledge or understanding of derivatives for the purposes of 5.1A of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”)?</p>	<p>The revised Code of Conduct requires that an intermediary should, as part of the know your client procedures, assess a client’s knowledge of derivatives and characterize the client based on his knowledge of derivatives. Further conduct requirements are introduced in the case where a client without knowledge of derivatives wishes to purchase a derivative product.</p> <p>It is therefore incumbent upon the intermediaries to ensure that they conduct their activities in compliance with the requirements in the Code of Conduct. Fund managers of SFC-authorized funds should not confuse their obligations with the obligations of the fund distributing intermediaries. While information disclosed in the offering documents and/or KFS may be considered by an intermediary in its analysis of the product features, risks and rewards, it is nonetheless the obligation of the intermediary to ensure that it is able to satisfy the requirement on assessment and the relevant conduct requirements under the Code of Conduct. Fund managers therefore cannot substitute the judgement/assessment of the intermediary simply by labelling an SFC-authorized fund as a “non-derivative product” or a product that does not require investors to have knowledge or understanding of derivatives for the purposes of 5.1A of the Code of Conduct.</p> <p>For the avoidance of doubt, the offering document (including KFS) of an SFC-authorized fund may include disclosure regarding the extent, function, purpose and strategy of the use of derivatives as statements of facts or intention in order to enable investors to make an informed investment decision.</p>

	Question	Answer
33.	When can the time frame for payment of redemption money exceed the one-calendar month requirement under Chapter 6.14 of the UT Code?	<p>Redemption is a fundamental right of holders of a scheme. It is therefore important that the requirement of the payment of redemption money to the holder within one calendar month from the receipt of the redemption request under Chapter 6.14 of the UT Code is strictly adhered to and redemption money is paid to holders on a timely basis.</p> <p>It is only in exceptional circumstances where the market(s) in which a substantial portion of investments is made is subject to legal or regulatory requirements (such as foreign currency controls) thus making the payment of the redemption money within one calendar month not practicable, the scheme could have a longer redemption payment period exceeding one calendar month. In such a case, proper records must be kept by the management company to demonstrate and justify this (e.g. the scheme is directly subject to or adversely affected by the restrictions which are beyond the reasonable control of the management company) and holders and the Commission must be properly and promptly informed. In any event, the redemption money must be paid to holders as soon as possible after the receipt of the proceeds by the scheme.</p>
Disclosure of information to investors regarding the fund's distribution policy		
34.	What information is required to be disclosed to the investors regarding (i) the payment of dividends out of capital by an SFC-authorized fund or (ii) the charging of fees and expenses to the capital of an SFC-authorized fund?	<p>The offering documents of SFC-authorized funds should clearly state their distribution policy.</p> <p>For an SFC-authorized fund which may (i) pay dividends out of capital or (ii) charge its fees and expenses to capital, its offering documents should include a prominent risk warning which describes the effects of making distributions from capital or charging fees and expenses to capital (as the case may be). At a minimum, prominent disclosure to the following effect should be made in the fund's offering documents (including KFS):</p> <p>a) the fund / the investment manager may at its discretion pay dividends out of the capital of the fund or charge all or part of the fund's fees and expenses to the capital of the fund (as the case may be); and</p>

	Question	Answer
		<p>b) in the case where the fund may pay dividends out of capital,</p> <ul style="list-style-type: none"> (i) dividends paid out of capital amount to a return or withdrawal of part of an investor's original investment or from any capital gains attributable to that original investment. Such dividends may result in an immediate decrease of the net asset value per share/unit; and (ii) the compositions of the dividends (i.e. the relative amounts paid from income and capital) for the last 12 months are available from the investment manager / Hong Kong representative on request and also on the fund's website (if any); and <p>c) in the case where the fund may charge its fees and expenses to capital,</p> <ul style="list-style-type: none"> (i) charging all or part of the fees and expenses to the capital will result in income being increased for distribution, however, the capital that the fund has available for investment in the future and capital growth may be reduced; and (ii) the compositions of the fees and expenses being charged (i.e. the relative amounts charged to income and capital) for the last 12 months are available from the investment manager / Hong Kong representative on request and also on the fund's website (if any); and <p>d) the fund / the investment manager may amend the dividend policy or the policy on charging fees and expenses to capital (as the case may be) subject to the SFC's prior approval and by giving not less than one month's notice to investors.</p> <p>The information referred to in (a), (b)(i) and (c)(i) should also be disclosed in all marketing materials of the fund.</p>

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